



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.61/CTK/2016
Assessment Year : 2009-2010

DCIT, Circle 1(1), Sambalpur	Vs.	M/s Ib Valley Transport, Lamtibahal, Brajarajnagar.
PAN/GIR No.AABFI 6752 Q		
(Appellant)	..	(Respondent)

Assessee by : Shri Mahendra Kumar Kedia, AR
Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 02/11/ 2017
Date of Pronouncement : 07 /11/ 2017

ORDER

Per N.S.Saini, AM

This is an appeal filed by the revenue against the order of the CIT(A)-Cuttack, dated 30.11.2015 for the assessment year 2009-2010.

2. The sole issue involved in this appeal is that the CIT(A) erred in deleting the disallowance of excess depreciation on Tippers of Rs.43,74,093/-.

3. The brief facts of the case are that the assessee is engaged in the business of transport. During the year under appeal, the assessee claimed depreciation on Tippers of Rs.87,48,186/-. According to the Assessing Officer, the assessee being in the business of transportation was not entitled to claim depreciation at a higher rate of 30%. It was



allowable only in the business of letting vehicles on hire. In the case of the assessee, who is doing transportation business, depreciation allowable on Tippers is 15%. Therefore, he disallowed excess claim of depreciation of Rs.43,74,093/- and added the same to the income of the assessee.

4. Being aggrieved by this order of the Assessing Officer, the assessee filed appeal before the CIT(A).

5. The assessee contended that it runs the business of running the motor Tippers or motor lorries on hire in the name of M/s. Ib Valley Transport for transporting the goods of M/s. MCL and others from one destination to another destination on hire for which it received transport charges. The assessee has engaged his own vehicles in the business of giving the same on hire for goods transport only. He relied on the CBDT circular No.653 dated 14.6.1993, where it was clarified that higher depreciation will be admissible on motor lorries used in the assessee's business of transportation of goods on hire. It was submitted that similar views have been taken by the Hon'ble Gauhati High Court in the case of ABC India Ltd vs CIT, 226 ITR 914(Gau) and Hon'ble Kerala High Court in the case of CIT vs. Balakrishna Transports, 233 ITR 133 (Ker).

6. The CIT(A) considering the submission of the assessee observed that the assessee is engaged in the transport business and used its vehicles and tippers in carrying the goods from one destination to another destination and in lieu of the same received transportation charges. As



the assessee has used such vehicles only in the transportation business for which it was hired by the principal, therefore, it was eligible to claim depreciation at a higher rate of 30%. The claim of the assessee was also corroborated by the judicial pronouncements because the business of the assessee is transporting goods on hire only. Hence, the CIT(A) directed the Assessing Officer to allow depreciation @ 30% claimed by the assessee.

7. Being aggrieved by this order of the CIT(A), the revenue is in appeal before us.

8. Ld Departmental Representative submitted that the higher rate of depreciation at 30% claimed by the assessee on use of its tippers in the business of transportation was disallowed by the Assessing Officer on the ground that the assessee was not engaged in the business of letting the vehicles on hire. According to the Assessing Officer, as per section 32 of the Act, depreciation on motor vehicles used for own business is allowable @ 15% depreciation. Therefore, the CIT(A) was not justified in deleting the excess depreciation claimed by the assessee at Rs.43,74,093/-.

9. On the other hand, Id Authorised Representative of the assessee supported the order of the CIT(A).

10. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. The undisputed facts of the case are that during the year under consideration, the assessee was



engaged in the transport business and used its own tippers in the business of transportation. The assessee claimed depreciation at a higher rate of 30% on these tippers. The Assessing Officer disallowed the claim of higher depreciation to the assessee on the ground that the assessee has used tippers for its own business and has not let them out on hire.

11. On appeal, the CIT(A) allowed the claim of the assessee on the ground that tippers were used in the business of transportation of the assessee relying on the decision of Hon'ble Gauhati High Court in the case of ABC India Ltd., (supra) and the decision of Hon'ble Kerala High Court in the case of Balakrishna Transports (supra).

12. We find that the Hon'ble Gauhati High Court in the case of ABC India Ltd. (supra) has held that the assessee was engaged in the business of transport and carried on the business with the help of its own trucks as well as hired trucks of other persons. The Assessing Officer disallowed the claim for higher depreciation at 40% to the assessee which was confirmed by the Tribunal. On further appeal, the Hon'ble Gauhati High Court held that the assessee company used the motor vehicles and lorries for running on hire, therefore, was entitled for higher rate of depreciation at 40%.

13. Further, the Hon'ble Kerala High Court in the case of Balakrishna Transport (supra) has held that the assessee was engaged in the business of plying transport buses carrying passengers on different routes and claimed depreciation on the buses at 40 per cent. The Assessing Officer



rejected the claim of higher depreciation @ 40% on the ground that buses were not hired out but regular charges were recovered from passengers from one point to another depending on the distance of travel. The Tribunal allowed the claim. On further appeal to the Hon'ble High Court, the Hon'ble High Court held that whether the payment was made by one person or a group of persons or by individual passengers would be of total irrelevance in the context. The real question was whether the assessee engaged in the business of plying vehicles as an activity, used the concerned vehicles for hire or not. The assessee firm was engaged in transport activities. The transport activity was as regards plying of transport buses carrying passengers on different routes determined by the transport authorities. The passengers who travelled in such buses travelled on hire and, therefore, the assessee was entitled to the higher depreciation.

14. We find that no contrary decisions of Hon'ble Supreme Court of Hon'ble High Courts were cited by Id Departmental Representative during the course of hearing. Therefore, we do not find any good reason to interfere with the order of the CIT(A), which is hereby confirmed and grounds of appeal of the revenue are rejected.

15. In the result, appeal filed by the revenue is dismissed.

Order pronounced on 07/11/2017.

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER



Cuttack; Dated 7 /11/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : DCIT, Circle 1(1), Sambalpur
2. The Respondent. M/s Ib Valley Transport,
Lamtibahal, Brajarajnagar
3. The CIT(A)- Cuttack
4. Pr.CIT- Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack