

आयकर अपीलीय अधिकरण , 'डी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, CHENNAI**

श्री एन.एस.आर.गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 797/Mds/2017

निर्धारण वर्ष/Assessment Year : 2010-11

Conybio Healthcare (I) Pvt. Ltd.,  
No. C-39, Thiruvika Industrial Estate,  
Guindy, Chennai – 600 034.

Assistant Commissioner of Income  
Tax,  
Corporate Circle -1(3),  
Chennai 600 032.

**[PAN: AABCC 1948D]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. N.C. Prabhakar, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri. S. Vijayaprabha, JCIT

सुनवाईकीतारीख/Date of Hearing

: 02.11.2017

घोषणाकीतारीख/Date of Pronouncement

: 10.01.2018

**आदेश/ ORDER**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-1, Chennai in ITA Nos. 494/13-14, New No. ITA 103/CIT(A)-2013-14 dated 05.12.2016 for assessment year 2010-11.

2. M/s Conybio Healthcare (I) Pvt Ltd., the assessee, is a multi-level marketing company and imports its products from Malaysia. The products include vests, briefs, knee-caps, elbow-braziers and also some ayurvedic products. During this a y 2010-11, it added an apartment in Porur for Rs. 80,69,798/- to its fixed assets and claimed depreciation of Rs. 4,03,490/- which included on the value of the land also and the interest at Rs 8,97,996/- on the borrowing. The AO noted that the asset in question i.e., the apartment was purchased by Shri K. Kanagendran, Director of the assessee, in his individual name, on under the scheme "Griha Prakash", out of the loan of Rs 60,00,000/- sanctioned by the LIC Housing Finance Ltd on 30.6.2008. For the fy 2008-09, the interest and the principal was directly remitted by him. The assessee explained that Shri K. Kanagendran paid the interest and the principal at Rs 15,32,414/- and the balance Rs 44,67,586/- is shown under the head "secured loans". The AO rejected such explanation as an after- thought and held that the depreciation and the interest claimed by the assessee could not be allowed as a deduction as it is not the owner of the asset. On appeal, the CIT(A) dismissed the appeal. Aggrieved against the order of the CIT (A), the assessee filed this appeal with following grounds of appeal:

*"1) The Order of the learned Commissioner of Income-tax (Appeals-1) is opposed to law, equity and justice.*

2) *The learned CIT Appeals-1 has confirmed the order of the lower authorities in confirming the disallowance of depreciation amounting to Rs.4,03,490/- and disallowance of interest amounting to Rs.8,97,996/-.*

3) *The learned CIT Appeals-1 while adjudicating the matter has disallowed the above two additions by relying on ITAT decisions in the case of Edwise Consultants P Ltd Vs. Additional CIT 143 ITD 307 (Mumbai) but erroneously overlooked the fact that your appellant being a Multilevel Marketing Company wherein neither the financials nor the banks came forward to lend the loans for acquiring the property. This fact has not been disputed by the learned CIT Appeals-1 in para No.6 and para No.7 of the appellate order in page No.3.*

4) *The learned CIT Appeals-1 has erroneously come to a conclusion by overlooking the nature of the business of your appellant and also when there is no pecuniary advantage to be gained by your appellant by claiming interest and depreciation and without these two expenditures your appellant has already incurred loss and therefore by these facts which are on record only goes to show that the asset which ought to have belonged to your appellant was acquired in the name of the director only to obtain loan to satisfy the lenders.*

5) *Your attention is also invited to the decision of the Gujarat High Court in the case of PWS Engineers Ltd Vs. DCIT rendered on 6.6.2016 wherein the department invoked sec.40A(2) on the excessive remuneration paid to the Directors wherein the rate of tax for the company as well as Directors was at 30% and it will not make any difference by allowing the expenditure in the hands of the company as the issue was revenue neutral on the same analogy when there is no pecuniary advantage by claiming these expenditures, the same should be allowed as a business expenditure in the hands of the appellant considering the nature of the business of your appellant.*

6) *For the above reasons and such other reasons to be adduced at the time of hearing, your Appellant prays that the addition made by the Learned Assistant Commissioner of Income- tax may be deleted and justice rendered in accordance with law."*

3. The AR presented the case on the above lines . Per contra, the DR submitted that for claiming the depreciation, the assessee should establish that (i) it is the owner of the impugned asset and (ii) that asset that it is used for the purpose of the business. From the facts established , it is clear that the impugned asset , being an immovable property, the assessee is not able to show that it was acquired by it in its name by showing the required registered deed etc. Further, it has not laid any material to establish that such asset was used for the purpose of its business also . Then, the DR took us through relevant portion of the assessment order and the appeal order and supported the findings therein.

4. We heard the rival contentions and gone through relevant material. The relevant portion of the order of the CIT(A) is extracted as under :

*"7. It is pleaded by the appellant that it intended to acquire property for which it approached several developers and financial institutions for obtaining loan which were orally rejected. Thereafter it applied to the LIC housing finance from which the requisite loan was obtained and was utilized to secure the capitalized asset of Rs.80,69,798. The appellant also placed on record that they were compiling reasons for acquiring the asset in the name of the director and that no pecuniary advantage had accrued to the director on account of the same. Further that such a decision to acquire the property in the name of the director and utilize the same for the appellant company was approved by the Board of Directors in a Resolution passed.*

*8. The requisites for claim of depreciation u/s 32 of the Act includes the asset to be owned and used for the purpose of business. In this case the asset was not owned by the appellant company but by the director.*

*9. It will serve useful purpose to refer to decision in Edwise Consultants P Ltd v. Addl.CIT 143 ITO 307 (Mumbai) in this regard. In that case the issue was with regard to disallowance of depreciation on 3 cars registered in the name of the directors while the same were shown in the books of the company and appeared as asset of the company in its balance-sheet. The motorcars were used for the business of the assessee company and accordingly depreciation was claimed on the said cars. The Tribunal noted that not only the invoice/bills has been issued in the individual names of the directors but they were also the registered owners of the said cars. The said cars have been shown no doubt as assets in the books of account of the company. After considering the extant authorities on the subject the ITAT negated the claim of the appellant upholding the view taken by the CIT(A) who had observed that payment having been made by the assessee company for the cars which were purchased by the directors in their own name requires that such payment be treated as advance/ loan to the directors . The facts of the case pari material similar to the facts obtaining in the case at hand. The impugned assets not only have been acquired by the director but also have been held legally as such. Hence following the ratio in the case of Edwise Consultants (supra) I am constrained to affirm the view taken by the AO and in as much negating the claim of the appellant with regard to claim of depreciation and interest of the impugned asset. This ground of appeal is dismissed.”*

From the above, it is clear that the CIT (A) found that the impugned asset is not only acquired by the director but also have been held legally by him as such. After this finding also, the assessee is not able to establish that it is the owner of the impugned asset and such asset was used for the purpose of its business . In the facts and circumstances, we do not find any reason to interfere in the order of the CIT(A). The assessee's appeal grounds fail .

5. In the result, the assessee's appeal is dismissed.

Order pronounced on Wednesday, the 10<sup>th</sup> day of January, 2018 at Chennai.

**Sd/-**

(एन.आर.एस .गणेशन)

**(N.R.S. GANESAN)**

**न्यायिकसदस्य/Judicial Member**

**Sd/-**

(एसजयरामन)

**(S. JAYARAMAN)**

**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 10<sup>th</sup> January, 2018

**JPV**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent

4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)

6. गार्डफाईल/GF