

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गराव, न्यायिक सदस्य एवं**  
**श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**  
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

**आयकर अपील सं./I.T.A.No.513/Vizag/2017**  
(निर्धारण वर्ष / Assessment Year: 2013-14)

SLC Projects Pvt. Ltd.  
Visakhapatnam  
[PAN No.AAJCS8616C]  
(अपीलार्थी / Appellant)

ACIT, Central Circle-2  
Visakhapatnam  
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri I. Kama Sastry, AR  
प्रत्यार्थी की ओर से / Respondent by : Shri Ravi Shankar Narayan,  
DR  
सुनवाई की तारीख / Date of hearing : 01.05.2018  
घोषणा की तारीख / Date of Pronouncement : 04.05.2018

**आदेश / O R D E R**

**PER D.S. SUNDER SINGH, Accountant Member:**

This appeal filed by the assessee is directed against order of the Commissioner of Income Tax (Appeals)-3, {CIT(A)}, Visakhapatnam vide ITA No.483/2015-16/CIT(A)-3/VSP/2017-18 dated 31.8.2017 for the assessment year 2013-14.

2. Ground No.1 is related to the depreciation on vehicles. The assessee is a civil and electrical contractor and for the assessment year 2013-14, the assessee has claimed the depreciation on vehicles @ 30% as against allowable rate of 15%. Therefore, the A.O. has called for the explanation as to why the depreciation should not be restricted to 15% on vehicles. The A.O. has given more than five opportunities to the assessee to explain as to why the depreciation should not be restricted to 15% and the assessee did not furnish any explanation. The depreciation on vehicles is allowed at higher rate @ 30% on commercial vehicles which are running on hire. If the vehicles are used in the business of the assessee, eligible depreciation is @ 15% on vehicles. In the instant case, though assessee had claimed the depreciation @ 30%, no evidence was produced before the A.O. to prove that the assessee had used the vehicles for running them on hire. Therefore, the A.O. restricted the depreciation @ 15% and disallowed the balance amount of ₹ 13,07,021/-

3. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A). Before the Ld. CIT(A) also, the assessee has not produced any material evidence to show that the vehicles are used in running them on hire. The assessee has neither produced the

agreement nor any document at the time of appeal also. Therefore, the Ld. CIT(A) confirmed the addition made by the A.O.

4. Aggrieved by the order of the Ld. CIT(A), the assessee has taken up the matter to the Tribunal.

5. During the appeal hearing, the Ld. A.R. argued that in the earlier years, the assessee has used the vehicles for running on hire and the vehicles were included in the block of assets for the purpose of depreciation @ 30%, hence argued that once the assets are included in the block, the same cannot be altered and the depreciation required to be allowed continuously at higher rate, irrespective of it's usage. The Ld. A.R. further argued that after introduction of concept of block of assets, individual asset is no more in vogue and the assets are grouped into the block of assets and depreciation is allowed on such block. Therefore, argued that since the vehicles are included in 30% depreciation block, the assessee would be continuously entitled for the higher rate of depreciation irrespective of its usage in the subsequent years. The assessee also relied on the decisions of Hon'ble Delhi High court in the case of CIT(A) Vs. Oswal Agro Mills (341 ITR 0647), and the CIT(A) Vs. Yamaha Motor India Limited 328 ITR 0297 and argued that since the assessee has used the vehicles for commercial purpose in the

earlier years and the assets were grouped in the block of assets as per section 43(6)(c) of the Income Tax Act, 1961 (hereinafter called as 'the Act'), the asset cannot be shifted from higher depreciation block to lesser rate of depreciation block.

6. On the other hand, the Ld. D.R. argued that though the assessee has included the vehicles in the block of assets of commercial vehicles, the assessee has not used the vehicles for running them on hire. The assessee's business is civil and electrical contracts. The assessee is not engaged in the business of running the vehicles on hire and it was used only for the purpose of assessee's business. Therefore, there is a change in usage of vehicles from running them on hire to using them for own business purpose. Therefore, argued that the assessee is entitled for normal rate of depreciation. It is not correct to argue that irrespective of usage, the assessee would be entitled to higher rate of depreciation perpetually. The Ld. D.R. relied on the decision of High Court of Kerala in the case of N.D. Joseph Vs. CIT 325 ITR 200.

7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. In the year under consideration, the assessee has used the vehicles for the purpose of his own business. As per Rule 5 schedule of depreciation,

the motor buses or lorries or taxies used in the business of running them on hire are eligible for the depreciation @ 30%. Though in the earlier years, the assessee claimed the depreciation @ 30% which was allowed by the department, merely because of the vehicles were included in the block of assets, the higher rate of depreciation cannot be allowed unless the same are put to use for running them on hire. This fact of commercial usage of vehicles was not established by the assessee with any documentary evidence. For a query from the bench, the Ld. A.R. of the assessee has accepted that during the impugned assessment year, the assessee has not used the vehicles for running them on hire. The assessee has relied on the decisions of Delhi High Court in the case of CIT(A) Vs. Yamaha Motor India Pvt. Ltd., 328 ITR 0297. In cited case, the question raised was allowability of depreciation in the case of discarded and written off assets in the books of accounts and passive usage of the vehicles but not the rate of depreciation of vehicles running them on hire. In the case of CIT(A) Vs. Oswal Agro Mills Limited (341 ITR 0647), the issue was allowability of depreciation on block of assets. Hon'ble High court held in that case that it is not possible to exclude a particular asset from the block. For ready reference, we extract para Nos.29 to 32 which reads as under:

**29.** As per amended section 32, deduction is to be allowed - "In the case of any block of assets, such percentage on the written down value thereof as may be prescribed". Thus, the depreciation is allowed on block of assets, and the revenue cannot segregate a particular asset therefrom on the ground that it was not put to use.

**30.** With the aforesaid amendment, the depreciation is now to be allowed on the written down value of the 'block of assets' at such percentage as may be prescribed. With this amendment, individual assets have lost their identity and concept of 'block of assets' has been introduced, which is relevant for calculating the depreciation. It would be of benefit to take note of the Circular issued by the revenue itself explaining the purpose behind the amended provision. The same is contained in CBDT Circular No. 469, dated 23-9-1986, wherein the rationale behind the aforesaid amendment is described as under :

"6. 3 As mentioned by the Economic Administration Reforms Commission (Report No. 12, para 20) , the existing system in this regard requires the calculation of depreciation in respect of each capital asset separately and not in respect of block of assets. This requires elaborate book-keeping and the process of checking by the Assessing Officer is time consuming. The greater differentiation in rates, according to the date of purchase, the type of asset, the intensity of use, etc. , the more disaggregated has to be the record-keeping. Moreover, the practice of granting the terminal allowance as per section 32(1) (iii) or taxing the balancing charge as per section 41(2) of the Income-tax Act necessitate the keeping of records of depreciation already availed of by each asset eligible for depreciation. In order to simplify the existing cumbersome provisions, the Amending Act has introduced a system of allowing depreciation on block of assets. This will mean the calculation lump sum amount of depreciation for the entire block of depreciable assets in each of the four classes of assets, namely, buildings, machinery, plant and furniture."

**31.** It becomes manifest from the reading of the aforesaid Circular that the Legislature felt that keeping the details with regard to each and every depreciable assets was time consuming both for the assessee and the Assessing Officer. Therefore, they amended the law to provide for allowing of the depreciation on the entire block of assets instead of each individual asset. The block of assets has also been defined to include the group of assets falling within the same class of assets.

**32.** Another significant and contemporaneous development, which needs to be noticed is that the Legislature has also deleted the provision for allowing terminal depreciation in respect of each asset, which was previously allowable under section 32(1) (iii) and also taxing of balancing charge under section 41(2) in the year of sale. Instead of these two provisions, now whatever is the sale-proceed of sale of any depreciable asset, it has to be reduced from the block of assets. This amendment was made because now the assesseees are not required to maintain particulars of each asset separately and in the absence of such particular, it cannot be ascertained whether on sale of any asset, there was any profit liable to be taxed under section 41(2) or terminal loss allowable under section 32(1) (iii) . This amendment also strengthen the claim that now only detail for "block of assets" has to be maintained and not separately for each asset.

**7.1** The above case law relied up on by the assessee does not help the assessee. The question in the instant case is whether the block of assets consisting of vehicles which were claimed to be running them on hire is

eligible for 30% Depreciation or 15% Depreciation depending on usage of vehicles. There was no segregation of the assets in a block in this case. The assessee failed to prove that the vehicles were put to use for commercial purpose. No explanation was offered by the assessee either before the AO or before the Ld. CIT(A), hence it was considered that the entire block of vehicles in the higher rate of depreciation was shifted for normal depreciation according to the usage of vehicles, hence there is no deviation from the decision of Hon'ble High court and the same is helpful to the revenue on the facts of the case.

7.2 In the instant case, the assessee failed to produce the evidence before the A.O. or before the CIT(A) to show that the vehicles were running on hire. The vehicles were put to use for the assessee's business purposes. As per Rule 5 and the schedule of depreciation, the allowable depreciation in the case of vehicles used for the business purpose was 15% but not 30%. The Ld. D.R. relied on the decision of N.D. Joseph Vs. CIT 325 ITR 200 (Kerala), wherein Hon'ble High court held that where the trucks and JCBs were mainly used for assessee's own business and partly let out to other purpose, since items are predominantly used in the assessee's own business, assessee was entitled for depreciation only at normal rates. In the instant case, there was no evidence to show that the vehicles were used for running them

on hire, therefore, we hold that the assessee is not entitled for higher rate of depreciation and entitled for only at normal rate of depreciation. Accordingly, we uphold the order of the Ld. CIT(A) and dismiss the appeal of the assessee on this ground.

8. Ground No.2 is related to the disallowance u/s 14A r.w. Rule 8D income tax Rules. The assessing officer found that the assessee had made investments of ₹ 15.45 crores in various companies and no expenditure was disallowed as per section 14A read with rule 8D of the Act. Since the assessee has not made any disallowance, the A.O. made the disallowance of ₹ 23,61,223/- u/s 14A read with rule 8D of the Act.

9. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The Ld. A.R. argued that no expenditure required to be disallowed in case the assessee did not earn any exempt income. In the instant case, the assessee has not earned any dividend income which is exempt u/s 14A of the Act. On identical facts, this Tribunal in the case of D. Veerabhadra Reddy (HUF) Vs. JCIT, Kakinada in ITA No.263/Vizag/2014 dated 23.6.2017 for the assessment year 2009-10 placing reliance on Hon'ble Madras High Court judgement in the case of Redington India Limited Vs. Additional CIT 77 Taxmann. Com 257 held that no

disallowance is called for when there is no exempt income. For ready reference, we extract relevant paragraph No.6 of this Tribunal order which reads as under:

*"6. We have heard the rival submissions and perused the material on record. The assessee has rental income from godowns and the business loss. The assessing officer has completed the assessment u/s 143(3) by order dated 04.11.2011. The Ld.CIT has called for the record u/s 263 and issued the notice for revision for incorrect set off of business loss against the rental income. After verification of the material on record, the Ld.CIT has dropped the issue with regard to incorrect set off of business loss against the income from property which was examined by the assessing officer. During the course of revision proceedings, it has come to the notice of Ld.CIT that the assessee has made investments in shares and bonds and did not make disallowance which was required to be made u/s14A of IT Act. The assessee explained that there were no expenses incurred in relation to the exempt income which was claimed as deduction for the assessment year 2009-10. Hence, the assessee argued before the Ld.CIT that Section 14A is not applicable in assessee's case. As per the observation of the Ld.CIT, the assessee made the investments to the tune of Rs.19,90,625/- in shares and bonds from the borrowed funds and the interest expenditure relating to the earning of dividend income is required to be disallowed u/s 14A. Though CIT opined that the expenditure relating to the earning of dividend income required to be disallowed, there was no finding given by the CIT in his order with regard to earning of dividend income. The CIT also did not rebut the explanation offered by the assessee stating that no expenditure was incurred for making the investments. The Ld.DR did not make any clarification with regard to the quantum of dividend income earned by the assessee. The Ld.AR submitted paper book enclosing the copy of statement of computation, return of income, balance sheet and profit and loss account. It is seen from the profit and loss account and the statement of computation of income that the assessee has not derived any dividend income. When the assessee has no exempt income, the question of disallowance u/s14A r.w.Rule 8D is not called for. The same view is expressed by the decision of Hon'ble Madras High Court in Redington (India) Ltd. Vs. Addl.CIT, 77 taxman.com 257, Hon'ble Delhi High Court in Chem Investments Vs. CIT, 61 taxman.com 118 and the Hon'ble Gujarat High Court in Principal CIT Vs. Sintex Industries Ltd., 82 taxman.com 171 held that no disallowance is called for when assessee makes small investment from the surplus funds. There was no dividend income earned by the assessee and the case was taken for revision to disallow the business loss claimed against the property income which was examined by the AO and dropped the assessment proceedings and the Ld.CIT also satisfied that there is no case for revision on account of incorrect set off of business loss. With regard*

*to the issue of disallowance u/s 14A as per the judicial pronouncements no disallowance is called for when there is no exempt income. Therefore, we are of the considered opinion that there is no case for revision of order u/s 263 and accordingly we set aside the orders of the CIT and allow the appeal of the assessee."*

10. Since the facts are identical, we hold that no disallowance is called for u/s 14A of the Act in the absence of exempt income. Accordingly, the order of the Ld. CIT(A) on this issue is set aside and this ground of appeal of the assessee is allowed.

11. Ground No.3 is related to the credit for TDS. In the instant case, the assessee had received advances of ₹ 30.76 crores and the tax was deducted by the payer on the entire amount which was paid to the assessee. The assessee claimed TDS of ₹ 70,61,000/- in the return of income. However, the A.O. allowed the TDS to the extent of income admitted in form No.26AS as per section 199 read with rule 37BA of the Act and disallowed the balance amount of TDS. The assessee filed appeal requesting to allow the entire credit for TDS. As per section 199 read with rule 37B of the Act, the credit for tax is allowed only on the income admitted relatable to the TDS. Therefore, in the absence of the receipt not being admitted for the assessment year under consideration, we do not find any error in the order of the Ld. CIT(A) and the same is upheld.

12. Ground No.3.1 is related to the alternate ground with regard to TDS claim restricted by the A.O. The A.O. allowed TDS of ₹ 12,12,924/- in the assessment year under consideration out of the TDS amount of ₹ 70,61,000/- made by the DGNP Visakhapatnam. The assessee has requested as an alternate ground to allow the credit for TDS of the balance amount in the subsequent year as and when the income is admitted. The A.O. is directed to allow the credit for TDS in the subsequent years as and when the income is admitted as per law. This ground is allowed for statistical purposes.

13. Ground Nos.4 & 5 are general in nature which does not require specific adjudication.

14. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

The above order was pronounced in the open court on 4<sup>th</sup> May'18.

Sd/-

(वी. दुर्गराव)

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 04.05.2018

VG/SPS

Sd/-

(डि.एस. सुन्दर सिंह)

**(D.S. SUNDER SINGH)**

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – SLC Projects Pvt. Ltd., Plot No.A-20, Door No.50-104-2, TPT Colony, Seethammadhara, Visakhapatnam
2. प्रत्यार्थी / The Respondent – The ACIT, Central Circle-2, Visakhapatnam
3. आयकर आयुक्त / The PCIT (Central), Visakhapatnam
4. आयकर आयुक्त (अपील) / The CIT (A)-3, Visakhapatnam
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /  
DR, ITAT, Visakhapatnam
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Sr. Private Secretary  
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