

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 317/JP/2018
निर्धारण वर्ष/Assessment Year : 2009-10.

Shri Arjun Singh S/o Sh. Tara Singh Behind Kohli Medical Store, Keshavpura, Kota.	बनाम Vs.	The ACIT, Circle, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN No. AFRPS 7075 K		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : None
राजस्व की ओर से/ Revenue by: Shri Shanmuga Priya (JCIT)

सुनवाई की तारीख/ Date of Hearing : 04.06.2018.
घोषणा की तारीख/ Date of Pronouncement : 06/06/2018.

आदेश/ ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 5th December, 2017 of Id. CIT (A), Kota for the assessment year 2009-10. None has appeared on behalf of the assessee when this appeal was called for hearing despite the notice sent through RPAD at the correct address of the assessee. We further note that even on the last date of hearing i.e. 25th April, 2018 none had appeared on behalf of the assessee despite the notice for the said hearing was sent through RPAD. Thus the repeated notices issued to the assessee at the given address have not yielded any result and, therefore, we propose to hear and dispose off this appeal ex parte. The assessee has raised the solitary ground of appeal as under :-

- “ 1. The order of the learned Commissioner (Appeal) is bad in law & not justified in addition of Rs. 22,77,188/-.
2. Other Grounds of Appeals will be urged at the time of hearing.”

2. We have heard the Id. D/R and carefully perused the relevant material on record. The assessee is engaged in the business of civil construction work. The assessee has claimed higher depreciation @ 30% on dumpers, trucks, excavator/JCB. The AO disallowed the claim of the assessee on the ground that the assessee has not given these vehicles on hire. Therefore, the higher depreciation is not applicable when the assessee is not in the business of running the vehicles on hire. The assessee challenged the action of the AO before the Id. CIT (A) and reiterated his claim of higher depreciation that the vehicles are registered as commercial vehicles and, therefore, illegible for depreciation @ 30%. The Id. CIT (A) has considered and decided this issue at pages 5 to 7 as under :-

“ I have gone through assessee’s submission and AO’s findings.

The appellant is a Civil Contractor and through the JCB and Dumper as per the case laws cited may be considered for the definition of Lorries or trucks but they are not being used on hire but only being used for facilitating the civil construction business of the appellant. In fact by debiting hire charges in the account as mentioned by the A.O. in his order apparently he is also hiring from outside.

HIGH COURT OF MADHYA PRADESH BENCH AT GWALIOR in ITA No. 2/2013 in case of M/s. Anamay Construction Co. vs. Union of India and Others held –

8. *In the present case, admittedly, the assessee is in the business of civil construction. The assessee had engaged his own Trucks for transporting earth to facilitate laying of roads. Under such circumstances, the assessee cannot be said to be in the business of hiring out his Trucks for removal of earth to make him entitled for higher rate of depreciation, as removal and transportation of earth are only sub-processes of his main business of laying of roads. The order of CIT (A) entitling the assessee for higher rate of depreciation on the premise that his motor vehicles were used for removal of earth and since the earth did not belong to the assessee, therefore, the use of his motor vehicles was on hire, in the opinion of this Court, is not correct, either on facts or in law, besides not being in conformity with the test laid down by the Apex Court, as indicated above, and also, with the Board's Circular No. 609/Circular No. 652 dt. 14/6/93.*

9. *In the case of Gaylord Constructions (2010) 190 Taxman 406 (Ker) the question raised in appeal filed by the Revenue was "whether the Tribunal was justified in upholding the assessee's claim for depreciation of earth moving equipment, namely, JCB at the rate of 40%; the rate provided for 'Motor Buses, Motor Lorries, Motor Taxis, used in the business of running them on hire" and as such, the assessee was in the business of running the motor vehicles on hire, however, the question was "whether higher rate of depreciation was available for putting the JCB machine on hire" and the Court ruled that the expression "motor lorry", covered by the entry in the Appendix-1 of Income Tax Rules providing for higher rate of depreciation, has a wide meaning and will include the JCB machine, which is basically used for excavation of soil, it is a heavy vehicle also used for transportation of excavated soil, relying on the judgment of Hon'ble Supreme Court in*

the case of Bose Abraham v. State of Kerala and another, AIR 2001 SC 835. Hence, the aforesaid case is of no assistance to the facts in hand. In the case of CIT vs. Gujrat Tubewell (supra) the Court had addressed on the issue " as to whether construction of dam, bridge, building, road will fall within the meaning of manufacture or production of an article or thing entitling depreciation under sub-clause (iii) of clause (b) of sub-section (2) of Section 32A" and answered the same in negative and in favour of Revenue relying on the judgment of the Hon'ble Supreme Court in the case of CIT v. N.C. Budharaja & Co. and Anr. (1993) 114 CTR (SC) 420 where the Supreme Court held that the aforesaid provision of the Income Tax Act does not comprehend within its ambit the construction of dam, bridge, building, road, canal and other similar construction. Hence, this case is also of no assistance to the facts in hand.

10. Accordingly, the substantial question of law framed is answered in the negative and in favour of the Revenue upholding the order passed by the ITAT.

The argument of the appellant that the shifting of soil from sites etc. would make him eligible for the definition of hiring on behalf of others is therefore not relevant in this case and in my opinion he will not be entitled for a higher rate of depreciation @ 30% as has been rightly held by the AO. The disallowance of Rs. 22,77,188/- is accordingly upheld."

Thus it is clear that the Id. CIT (A) has followed various decisions of High Courts while deciding the issue. In the absence of any contrary precedents brought to our

notice, we do not find any reason to interfere with the impugned order of Id. CIT

(A).

3. In the result, appeal of the assessee is dismissed.

Order is pronounced in the open court on 06/06/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 06/06/2018.

Das/

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

1. The Appellant- Shri Arjun Singh, Kota.
2. The Respondent – The ACIT, Circle-2, Kota.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 317/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

