

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 960 /Ahd/2015
Assessment Year 2011-12**

M/s. Prasad Multi Services Pvt. Ltd. Office No., 306, Zodiac Square, S.G. Highway Opp. Gurudwara, Ahmedabad-380054 PAN: AACCP0464A (Appellant)	Vs	The ACIT, Circle-5, Ahmedabad-380015 (Respondent)
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**ITA No. 1049 /Ahd/2015
Assessment Year 2011-12**

The ACIT, Circle-5, Ahmedabad-380015 (Appellant)	Vs	M/s. Prasad Multi Services Pvt. Ltd. Office No., 306, Zodiac Square, S.G. Highway Opp. Gurudwara, Ahmedabad-380054 PAN: AACCP0464A (Respondent)
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**Revenue by: Shri V.K. Singh, Sr. D.R.
Assessee by: Shri T.P. Hemani, A.R.**

Date of hearing : 26-06-2018
Date of pronouncement : 13-08-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

These two appeals filed by assessee and Revenue for A.Y. 2011-12, arise from order of the CIT(A)-9, Ahmedabad dated 29-01-2015, in proceedings under section 143(3) of the Income Tax Act, 1961; in short ~~the Act~~.

2. The assessee has raised following grounds of appeal:-

- “1. Learned AO erred in law as well as on facts in denying depreciation @ 30% on Telescopic Crane amounting to Rs. 5,75,663 and instead allowed depreciation @ 15% despite these cranes are used in the business of running them on hire. Learned CIT(A) erred in law as well as on facts in confirming the same.*
- 2. Learned AO erred in law as well as on facts in denying depreciation @ 30% on Rail for Tower Crane amounting to Rs. 1,04,718 and instead allowed depreciation @ 15% despite these cranes are used in the business of running them on hire. Learned CIT(A) erred in law as well as on facts in confirming the same.*
- 3. Learned AO erred in law as well as on facts in denying depreciation @ 30% on Tower Crane amounting to Rs. 4,46,686 and instead allowed depreciation @ 15% despite these cranes are used in the business of running them on hire. Learned CIT(A) erred in law as well as on facts in confirming the same.*
- 4. Learned AO erred in law as well as on facts in denying depreciation @ 30% on Mobile Tower Crane amounting to Rs. 79,91,842 and instead allowed/ depreciation @ 15% despite these cranes are used in the business of running them on hire. Learned CIT(A) erred in law as well as on facts in confirming the same.*
- 5. Learned AO erred in law as well as on facts in denying depreciation @ 30% on Crawler Cranes amounting to Rs. 41,30,063 and instead allowed depreciation @ 15% despite these cranes are used in the business of running them on hire. Learned CIT(A) erred in law as well as on facts in confirming the same.*
- 6. Learned AO erred in law as well as on facts in denying depreciation @ 30% on Tower Crane Masts amounting to Rs. 9,85,047 and instead allowed depreciation @ 15% despite these cranes are used in the business of running them on hire, Learned CIT(A) erred in law as well as on facts in confirming the same.”*

3. The revenue has raised following grounds of appeal:-

- “1. The CIT(A) has erred in law and on facts in directing to grant relief of Rs.26,35,445/- on Hydra Cranes by allowing depreciation @30% and thereby deleting the addition of Rs.71,17,010/- made on account of disallowance of the excess claim of depreciation on Cranes by not considering that the Hydra Cranes do not fall in the category of "Heavy Motor Vehicle".*
- 2. On the facts and circumstances of the case, the Ld. Commissioner of Income tax (A) ought to have upheld the order of the Assessing Officer.*
- 3. It is, therefore, prayed that the order of the Ld. Commissioner of Income tax (A) may be set-aside and that of the Assessing Officer be restored.”*

4. The brief fact of the case is that return of income declaring income of Rs. 80,64,260/- was filed on 29th Sep, 2011. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) on 15th Nov, 2013. The assessee is engaged in the business of hiring out construction material and equipment. On

scrutiny, the assessing officer has noticed that assessee has claimed depreciation on cranes on higher rate @ 30%. After perusal of the nature of business and other details filed by the assessee, the assessing officer observed that assessee has claimed total depreciation of Rs. 1,95,04,909/- on cranes during the year. However, as per the income tax rules, the allowable rate of depreciation is 15% on plant and machinery. He further observed that as per IT rules higher rate of depreciation @ 30% is applicable in the case of motor buses, mother lorries and motor taxies used in the business of running them on hire. The details of deprecation claimed on different cranes as produced in para 3.2 of assessment order is reproduced as under:-

Type of Crane	Opening WDV	Addition for more than 180 days	Addition for less than 180 days	Sold During the Year	Asset Block (Rate of depreciation)	Depreciation claimed	Closing WDV
Telescopic Crane	1918875	0	0	0	30%	575663	1343212
Rail for Tower Crane	349.061	0	0	0	30%	104718	244343
Tower Crane	1202083	286875	0	0	30%	445686	1042271
Mobile Tower Crane	11110800	3150000	24757347	0	30%	7991842	31026305
Crawler Cranes	12919810	0	1694133	0	30%	4130063	10483880
Tower Crane Masts	0	2320000	1926983	0	30%	985047	3261936
Hydra Crane	19200075	0	0	1630441	30%	5270890	12298744
TOTAL						19504909	

Therefore, the assessee was show caused why depreciation @ 30% should be allowed on the cranes which are not falling in the category of motor buses, motor

lorries and motor taxies used in the business of running them on hire. The assessee has explained that hydra crane which is used on road is registered as motor vehicle and it is four wheeled pick and carry hydra crane cum transport vehicle used for picking material and shifting the same. In its submission, the assessee has mainly referred to the hydra cranes. The assessing officer has not accepted the explanation of the assessee stating that the cranes used by the assessee are not truck cranes and the same are not falling in the category of heavy motor vehicles. Consequently, he has restricted the claim of depreciation @ 15% as against the claim of depreciation of the assessee @ 30%.

5. Aggrieved assessee has filed appeal before the Id. CIT(A). The Ld. CIT(A) has partly allowed the appeal of the assessee by stating that only hydra cranes can be termed as mobile cranes and eligible for higher depreciation @ 30%. The relevant part of the decision of the Id. CIT(A) is reproduced as under:-

“As it can be seen from the description of these cranes that tower crane , crawler crane, railroad crane, telescopic crane as described by their definition and their pictures also that by any imagination these types of cranes cannot be termed as mobile cranes. As defined very clearly they are rather fixed types of cranes hence even cannot be even categorized as mobile cranes hence they are not eligible for higher rates of depreciation. Even tipper is also, has mobility as its mounted on truck but as discussed(supra)it has not also been considered as road transport vehicle Andhra High Court in the case of Commissioner Of Income Tax vs Progressive Engineering Co. on 19 November, 1997 (1998) 148 CTR AP 551, 1998 230 ITR 729 AP, 1998 100 Taxman 25. Simply by mounting over a truck a crane does not automatically becomes eligible for higher rate of depreciation being a mobile crane, Its basic capacity or nature of work is a major criterion to decide this. These cranes are mere of nature of plant as decided by several courts as discussed in above paragraphs. In its paper book the appellant has failed to file copy of the registration as to which category these cranes have been registered before RTO under Motor Vehicle Registration Act. Hence these cranes cannot be termed as motor or lorry or in the definition of mobile cranes as decided by Hon'ble Gujrat High Court in the case of Gujico Carriers.

Therefore, by a detailed discussion it is very clear that the appellant is mostly having those types of cranes which are not eligible of higher depreciation as is evident from the discussion in above paragraphs they can be termed as plant and machinery hence they are eligible for depreciation @15%. The appellant also furnished copies of RC booklets (issued by RTO) in relation to 4 Cranes registered with RTO namely GJ-10K-3271, GJ-10K-2864, GJ-10K-2863 and GJ-10K-2581. All the RC booklets showed that these cranes had been purchased in F.Y. 2004-05. In its submission, the appellant referred only to Hydra cranes. Hence, it is assumed that all the RC books submitted pertained to Hydra Cranes which had been purchased in earlier years. In relation to other cranes, the assessee did not furnish RC books. Only bills pertaining additions to the other crane blocks on which 30% depreciation had been claimed were submitted. When these cranes don't even fall in the category of vehicles, there is no question of

registering them with RTO. Hence, there is no doubt that the claim of depreciation in relation to all these cranes at 30% is wrong and has to be limited to only 15% (7.5% for those that were used for less than 180 days). In my considered opinion hydra cranes can only be termed as mobile cranes and are eligible for higher depreciation @30%. Therefore the A.O is directed to re-compute eligible depreciation on this type of cranes only. Accordingly, higher depreciation on the other types of cranes are hereby denied. Hence the appeal on this ground is partly allowed."

6. During the course of appellate proceedings before us, the Id. counsel has furnished paper book containing details of submission made before the assessing officer and Id. CIT(A). During the course of assessment and appellate proceedings, he has contended that assessee is eligible for depreciation on higher rate in the case of Telescopic Crane, Rail for Tower Crane, Tower Crane, Mobile Tower Crane, Crawler Cranes and Tower Crane Masts. He has also placed reliance on the judicial pronouncement in the case of Bothra Shipping Services vs. CIT-XII, Kolkatta (2010) 8 taxman.com 62(Kol) dated 16th July, 2010. On the other hand, Id. departmental representative has vehemently supported the order of assessing officer and also contended that Id. CIT(A) is not right in allowing depreciation @ 30% on hydra crane without considering the detailed finding of assessing officer.

7. We have heard the rival contentions and perused the material on record carefully. As per profit and loss account for the year 31st March, 2011 the assessee has shown income from machine hiring during the year under consideration. Out of total income of Rs. 17,17,92,943/-, assessee has shown hiring income of Rs. 2,10,04,957/- from air compressor, cranes, DG set, Geni, hydra crane, boorn placer, transit mixer. In its submission before the assessing officer and CIT(A), the assessee has mainly referred to hydra cranes. The assessee has only furnished RC Books in respect of Hydra Crane. But the assessee has failed to furnish any relevant material and supporting evidences to justify its claim of deprecation at higher rate in respect of telescoping crane, rail for tower crane, tower crane, mobile tower crane, crawler crane and tower crane masts. The assessee has placed reliance on the decision of ITAT in the case of Bothra Shipping Services however we observe that facts of the case of the

assessee are clearly distinguishable from the facts of the above cited case of Kolkata ITAT. In the case of Bothra Shipping Services the issue in the appeal was pertaining to crane mounted vehicle, JCB and 400 wheel loaders which were registered as heavy or medium motor vehicle by RTO and were used in the business of hiring them out to other within ambit of expression motor lorries. However, in the case of the assessee it has used different kinds of cranes which are not mounted on the vehicle. We have noticed that Hon'ble Jurisdictional High Court of Gujarat in the case of Gujco Carrier Vs. DCIT (2002) 122 taxman 2006 (Guj) held that motor vehicle like fire truck, fork lift truck and crane truck which are designed for special services fall within the category of other trucks also called motor lorries. Further in the case of Gujco Carrier the motor crane was registered as a heavy motor vehicle and was an integral part of motor vehicles on which it was mounted and it was registered as heavy motor vehicles and that crane was used for lifting and moving goods. Mobile crane was also registered with RTO as heavy motor vehicle which was mounted on a truck. It was held in the above cited case that lorry or truck would mean not only any motor vehicle designed to carry freight or goods but also to perform said services like fire fighting, therefore, a truck adopted or designed to carry a crane is mounted for such services on lifting load, moving it side by side, rotating it or moving it horizontally. Similarly the CBDT Instruction No.617 refer to folk lifting truck of higher rate of depreciation. On the perusal of the findings of the jurisdictional High Court in the case of Gujco Carrier it is clear that types of cranes having with the assessee are completely of different from categories mentioned in the decision of Hon'able jurisdictional High Court in the case of Gujco Carrier and in the instruction no.617 of the CBDT.

After perusal of the above decision of Jurisdictional Hon'ble High Court we observe that all the 7 categories of cranes on which higher rate of depreciation were claimed were not integral part of truck crane as elaborated above in the judicial findings except the hydra crane being mounted on the truck on which the Id. CIT(A) has correctly allowed the higher rate of depreciation.

Therefore we do not find any merit in the appeal of the assessee and appeal of the revenue. Accordingly, both the appeals are dismissed.

8. In the result, the appeal of the revenue and the appeal of the assessee are dismissed.

Order pronounced in the open court on 13-08-2018

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 13/08/2018

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश का प्रतिलिपि अर्पण / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपील अाधिकरण,
अहमदाबाद