

आयकर अपीलीय अधिकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 (समक्ष) Before श्री ए. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम .बालागणेश, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

I.T.A. No. 2388/Kol/2016
Assessment Year: 2007-08

Assistant Commissioner of Income-tax, Circle-2(2), Kolkata	Vs.	Nursing Vanijya Pvt. Ltd. (PAN: AAACN8512H)
Appellant		Respondent

Date of Hearing	14.08.2018
Date of Pronouncement	16.10.2018
For the Appellant	Shri Sallong Yaden, Addl. CIT, Sr. DR
For the Respondent	Shri Ravi Tulsian, FCA

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the revenue is against the order of the Ld. CIT(A)-12, Kolkata dated 21.10.2016 for AY 2007-08.

2. Ground no.1 of revenue's appeal is against the action of Ld. CIT(A) in deleting the disallowance of Rs.1,64,62,064/- under the head lease rent.

3. Brief facts of the issue are that the AO while adding the sum of Rs.1,64,62,064/- on account of lease rent has observed as under:

“In this case, Assessment under section 143(3) was completed on 27.10.2009. The assessee submitted a statement of lease rent paid on assets acquired under Lease Finance, which showed the lease rent paid as Rs. 4,99,29,431/-. It was however, noticed from the Profit & Loss A/c (schedule 12) that from the hire charges receipt of Rs. 2,20,90,094/-, the assessee deducted an expenditure of Rs. 1,64,62,064/- towards "Lease Rent". As per the list of Lease Rent, total lease rent paid during the year was Rs. 4,99,29,431/- and so the lease rent of Rs. 1,64,62,064/- was wrongly shown in the schedule 12.

2. Notice under section 148 was issued on 30.03.2012 and duly served upon the assessee. Mr. Ravi Tulsiyan, the authorised representative of the company appeared before the undersigned and submitted the necessary documents. The AR submitted Ledger copies and explained that in the P&L Ale lease rent on operating lease was shown under the lease rent in Schedule 12 whereas lease rent on finance lease was shown as depreciation in the P&L A/c at Rs. 3,85,61,636. This entire amount clubbed together amounting to Rs. 4,99,29,431/- was claimed as Lease Rent while computing income under the I.T. Act, 1961.

3. The submission of the assessee is considered carefully but not found acceptable. Assessee failed to produce any substantial evidence. Assessee has debited Rs.1,64,62,064/- in the P&L A/c as Lease rent and further claimed deduction of same in the computation. In view of this, Rs. 1,64,62,064/- is added to the total income of the assessee.”

4. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who deleted the addition by observing as under:

“4.2. I have considered the facts of the case and the submission of the appellant. The appellant has submitted documents substantiating their claim that the concerned payments are different and that there are two different types of lease rentals paid by the appellant namely, Operating lease rentals and Finance lease rentals. The list of lease rentals paid have been lied in chart 1 and 2 on pages 17 and 18 of their paper book. A perusal of these clearly show that all payments of lease rental paid are on the basis of different agreements. It is thus clear that the agreements listed in chart 11 are separate from and in addition to the agreements listed in chart-I. Accordingly, operating lease rentals of Rs.1,64,62,064/- is separate from and is in addition to finance lease rent of Rs. 4,99,29,431/-. The AO has not found anything substantial against yet he has gone ahead and disallowed the amount Simply by stating that submission of the assessee is considered carefully but not found acceptable assessee failed to produce any substantial evidence. The books of the Appellant are audited on the basis of their books of accounts. The appellant has submitted all necessary documents to support their books. The appellant has not rejected their books of accounts. There is no basis for the AO to disallow the amount and hence the addition by the AO is deleted.”

Aggrieved, revenue is before us.

5. We have heard rival submissions and gone through the facts and circumstances of the case. We note that AO misunderstood the payments made by the assessee on two different lease rentals incurred during the year. We note that for operating lease, the assessee incurred Rs.1,64,62,064/- (Break-up given in chart-II) in addition to that lease rentals of Rs.4,99,29,431/- paid on assets acquired under Lease Finance (Break-up given in chart-I). The Ld. CIT(A) has made a finding of fact that all payments of lease rental paid are on the basis of different agreements and the agreement listed in chart-II are separate from and in addition to agreement listed in Chart-I, which finding of fact has not been challenged before

us. The payments made are not doubted and audited books of assessee have not been rejected by AO. The AO's action on this issue was perverse and rightly corrected by Ld. CIT(A), so we uphold the same. Therefore, we dismiss this ground of appeal of revenue.

6. Ground no.2 of revenue's appeal is against the action of Ld. CIT(A) in deleting the disallowance of Rs.4,22,700/- under the head depreciation on chassis.

7. Brief facts of the issue are that the AO while adding the sum of Rs.4,22,700/- on account of depreciation on chassis has observed as under:

"4. The assessee was allowed depreciation of Rs.4,22,700/- on chassis. It is apparent that these chassis were not put to use in business during the relevant year. Assessee could not provide any evidence to put to use. Depreciation on mere chassis is disallowed and added to the total income of the assessee."

8. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who deleted the addition by observing as under:

"5.2 I have considered the facts of the case and the submissions of the appellant. I find force in the contentions of the appellant that depreciation of Rs. 4,22,700/- was claimed on the WDV balance brought forward from earlier years. The impugned chassis was not purchased in the FY 2006-07. It is clear that a depreciation of Rs. 4,97,294/- was claimed in the earlier AY. There was no addition to the block in the FY relevant to AY 2007-08. Once it forms a part of the block of assets it implies that the asset is used for purposes of business and depreciation shall be allowed in all the following years. In the instant case, the fact that depreciation was claimed and allowed in earlier years (and the chassis forms a part of the block of assets) shows that the chassis was ready to use. Thus, merely on the contention, that the chassis were not used in the current AY, claim of depreciation cannot be denied. The cases cited by the appellant are applicable to the instant case and hence the disallowance of depreciation by the AO has no merit and is deleted."

Aggrieved, revenue is before us.

9. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the chassis under question was an item of depreciation to the tune of Rs.4,22,700/- claimed on the WDV balance brought forward from earlier year because it was not purchased during this financial year. So, it is a part of block of assets. In such a scenario, the depreciation cannot be denied on the ground that the said asset was not used

for the purpose of business in this year under consideration. The reasons adduced by the Ld. CIT(A) to grant relief to assessee is correct and we uphold the same. So, we dismiss this ground of revenue also.

10. In the result, appeal of revenue is dismissed.

Order is pronounced in the open court on 16/10/2018

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 16th October, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – ACIT, Circle-8(2), Kolkata.
- 2 Respondent – Nursing Vanijya Pvt. Ltd., 12/1B, Lindsay Street, Kolkata-700 087.
- 3 CIT(A)-12, Kolkata. (sent through e-mail)
- 4 CIT , Kolkata
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary