



**IN THE INCOME TAX APPELLATE TRIBUNAL,
RANCHI ' SMC' BENCH, RANCHI**

BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA No.315/Ran/2017
Assessment Year : 2012-13

New Punjab Motor Transport, Room No.28, Dimna Road, Mango, Jamshedpur	Vs.	ITO, Jamshedpur	Ward-1(2),
PAN/GIR No.AAFFN 4221 P			
(Appellant)		..	(Respondent)

Assessee by : Shri Devesh Poddar, Adv
Revenue by : Shri A.K.Mohanty, JCIT

Date of Hearing : 22/11/ 2018
Date of Pronouncement : 22 /11/ 2018

ORDER

This is an appeal filed by the assessee against the order of the CIT(A), Jamshedpur dated 12.9.2017 for the assessment year 2012-13.

2. In Ground No.1 of appeal, the grievance of the assessee is that the CIT(A) erred in not allowing depreciation at higher rate of 30% to the assessee on Excavators.

3. The brief facts of the case are that the Assessing Officer disallowed depreciation claimed by the assessee on higher rate of 30% on Excavator and, thereby, made an addition of Rs.10,69,441/-.

4. On appeal, the CIT(A) confirmed the same.

5. Before us, Id A.R. of the assessee has filed copy of order of this Bench of the Tribunal in the case of the assessee itself for the assessment year 2010-11 and submitted that the Tribunal vide its order dated 11.3.2016 passed in ITA No.309/Ran/2014 has confirmed the order of the CIT(A) in allowing depreciation on excavator at higher rate of 30% and, therefore, following the same, the disallowance made should be deleted.

6. Ld D.R. agreed with the above submission of Id A.R. of the assessee.

7. After hearing the rival submissions and perusing the materials on record, I find that the Tribunal for the assessment year 2010-11 vide its order dated 11.3.2016 in the appeal filed by the revenue has held as under:

' 18. In the assessment order, the AO did not allow higher rate of depreciation as claimed by the assessee. However, the Id CIT(A) directed the AO to allow higher rate of depreciation @ 30% in respect of trucks, trailers and excavators. Hence, the revenue has filed appeal on this ground.

19. We have heard both the sides and perused the record of the case. The question before us whether trucks, trailers and excavators as claimed by the assessee would fetch higher rate of depreciation or not? We find that the ITAT Kolkata in the case of M/s. Bothra Shipping Services vs ACIT in ITA Nos.58 -61/Kol/2013 for assessment years 2004-05 to 2007-08 order dated 19.12.2014 considered the issue and after discussing various case laws in the said order, held that pay loaders, JCBs and 400V loaders can be classified as plant and machinery for the purpose of depreciation and not as motor bus, motor lorry or any transport/goods vehicles JCB is entitled to higher rate of depreciation claimed by the assessee. Hence, respectfully following the said decision (supra), we uphold the findings of the CIT(A) in allowing higher rate of depreciation. This ground is rejected.'

8. Respectfully following the decision of the Tribunal, I set aside the orders of lower authorities and allow depreciation at the rate of 30% claimed by the assessee.

9. In Ground No.2 of appeal, the grievance of the assessee is that the CIT(A) erred in confirming the disallowance of interest of Rs.4,36,006/- paid to M/s. SREI Equipment Finance Pvt Ltd., and M/s. Tata Capital Ltd., towards payment of instalment of vehicle finance for non-deduction of tax u/s.194C of the Act by applying the provisions of section 40(a)(ia) of the Act.

10. The brief facts of the case are that the Assessing Officer disallowed interest payment of Rs.4,36,006/- to M/s. SREI Equipments Finance Pvt Ltd., and M/s. Tata Capital Ltd., on the ground that the assessee failed to deduct TDS u/s.194C of the Act.

11. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

12. Before me, Id A.R. of the assessee has filed Annexure-A to Form No.26A issued by the Chartered Accountant to contend that the interest paid by the assessee was shown by M/s. SREI Equipments Finance Pvt Ltd., in the return of income filed and contended that no disallowance was warranted under section 40(a)(ia) of the Act.

13. Id D.R. supported the orders of lower authorities.

14. I have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the Assessing Officer disallowed interest payment of Rs.4,36,006/- paid to M/s. SREI Equipments Finance Pvt Ltd., and M/s. Tata Capital Ltd., for non-deduction of TDS u/s.194C of the Act by invoking the provisions of section 40(a)(ia) of the Act, which was confirmed in appeal by the CIT(A).

15. Before me, Id A.R. has filed Annexure-A to Form No.26A issued by the Chartered Accountant to contend that interest income paid by the assessee has been shown as income by M/s. SREI Equipments Finance Pvt Ltd., and, therefore, no disallowance of interest income was warranted. I find that total disallowance of



interest made by the Assessing Officer was Rs.4,36,006/-. The assessee has filed Form 26A of Rs.3,99,765/- contending that interest paid by the assessee was shown as income by M/s. SREI Equipments Finance Pvt Ltd. This document was not filed before the CIT(A). Therefore, I set aside orders of lower authorities on this part of the issue back to the file of the Assessing Officer for verification and thereafter to readjudicate the same as per law.

16. With regard to the balance amount of Rs.36,241/-, the assessee has not filed any evidence nor made any arguments as to why the disallowance should be deleted. Hence, I confirm the disallowance of Rs.36,241/-

17. In the result, appeal of the assessee is partly allowed for statistical purposes...

Order pronounced on 22 /11/2018.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Ranchi; Dated 22/11/2018
B.K.Parida, SPS

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Copy of the Order forwarded to :

1. The Appellant : New Punjab Motor Transport,
Room No.28, Dimna Road, Mango,
Jamshedpur
2. The Respondent. ITO, Ward-1(2), Jamshedpur
3. The CIT(A)- Jamshedpur
4. Pr.CIT- Jamshedpur
5. DR, ITAT, Ranchi
6. Guard file.
//True Copy//

By order

**Sr. Pvt.secretary,
ITAT, Ranchi
on tour**