

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'A', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 3106/Del/2015
Assessment Year: 2010-11**

Alliance Engineers and Construction, 1645, Sector 29, Faridabad. PAN: AAKFA0810A (Appellant)	vs.	ACIT, Circle - 1, Faridabad. (Respondent)
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Appellant by	Sh. Kapil Goel, Advocate
Respondent by	Sh. Amit Katoch, Sr. DR

Date of Hearing	14.02.2019
Date of Pronouncement	06.03.2019

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order of Id. CIT(A)-Faridabad dated 27.02.2015 for the assessment year 2010-11 on the following grounds :

1. *That the appellant denies its liability to be assessed at the income of Rs.1,49,63,355/- and accordingly denies his liability to pay tax and penalty thereon.*
2. *That having regard to facts & circumstances of the case Ld. CIT(A) has erred in law and on facts in confirming the validity of assessment even though the order/addition of Ld. A.O. was not on the basis of the material facts.*

3. That having regard to facts & circumstances of the case, and in any view of the matter, the order of Ld. Assessing Officer is any how bad in law and against the facts being non speaking and passed without applying of judicial mind.

4. That having regard to facts & circumstances of the case, and in any view of the matter, the addition of Rs. 1,23,40,247/- as on account of depreciation. Ld CIT (A) could not apply his judicial mind on the rate of depreciation of commercial vehicle on which several apex courts pronounced his verdict, accordingly the order of Ld. Assessing Officer is any how bad in law and against the facts being none speaking and passed without applying of judicial mind.

5. That on the facts and circumstances of the case the Ld. A.O. was not justified in disallowing depreciation amounting to Rs.37, 843/- on Furniture & fitting, Computer, Mobile.

6. That on the facts and circumstances of the case the Ld. CIT(A) was not justified in addition of the interest a sum of Rs. 3,50,910/- on the alleged ground of interest free advances made by the appellant to its Plot in Faridabad, whose used for business purpose.

7. That on the facts and circumstances of the case the Ld. Ld. CIT (A) was not justified in disallowing the addition of Partners capital of Rs. 22, 69,000/- without bringing any specific material on record as to why each of the addition during the relevant period was not considered, explained by him, when the source of each one of the same were duly explained.

8. That the allegation of none presentation is also baseless because on this issues I, can produce the attendance registered of the department reception.

9. That having regard to facts & circumstances of the case, and in any view of the matter, the penalty u/s 271 (1) (c) is bad in law and on the order passed himself by the Ld. CIT (A).

10. *That the assessee reserve his rights to add, alter or amend the ground of appeal at any stage and all the ground are without prejudice to each other.*

11. *That all the addition made by the Ld. A. O. is bad in law and against the facts of the case."*

2. The brief facts of the case are that the assessee filed return of income on 02.10.2010 declaring income of Rs.35,88,380/-. The assessee is a partnership firm and engaged in the business of stone aggregation and other contract work/job work. In the assessment proceedings, the Assessing Officer noticed that the assessee has claimed 30% depreciation on machinery in the profit and loss account at Rs.2,47,21,535/-, which as per Assessing Officer was not in accordance with section 32(2) of the IT Act. He, therefore, disallowed the depreciation and granted depreciation @ 15% amounting to Rs.1,23,78,090/- and accordingly disallowed the excess depreciation claim of Rs.1,23,43,445/-.

2.1 The Assessing Officer further noticed that the assessee had claimed interest to the tune of Rs. 45,48,369/-. On the other hand, the assessee had given interest free advances of Rs.29,24,254/- (Rs.12,34,254 + 16,90,000) for plot at sector 29 and Charmwood Village. The Assessing Officer after being dissatisfied with the explanation of the assessee, added interest @ 12% of advance to the income of the assessee.

2.2. The Assessing Officer further noticed that the partners of the firm have contributed towards capital in cash as under :

(i). P.K. Wadhva	Rs.4,50,000/-
(ii). Begraj Nagal	Rs.6,00,000/-
(iii). A.K. Garg	Rs.6,00,000/-
(iv). V.K. Pathak	Rs.6,19,000/-

	Rs.22,69,000/-

2.3 The assessee was asked to prove source of capital introduction but he was unable to explain the same. Therefore, the Assessing Officer made addition of Rs.22,69,000/- u/s. 69 as income from undisclosed sources. Aggrieved from the above order, the assessee appealed before the Id. CIT(A) who confirmed the action of the Assessing Officer. Aggrieved, the assessee is in appeal before us.

3. The Id. AR of the assessee submitted that while framing the assessment for the assessment year 2011-12, the Assessing Officer had allowed higher depreciation on the same fixed assets, which were carried forward from last years' balance sheet. Copy of assessment order is placed on record. Regarding disallowance of interest, it is submitted that the said plot was used for the business purpose since 2009. Regarding capital contribution by the partners into the firm, he relied on several judicial precedents placed on record. Ultimately, the Id. AR prayed to remit the case back to the file of Assessing Officer for examination of above three issues afresh.

4. On the other hand, the Id. DR, though relied upon the orders of authorities below, but had no objection to send the case back to the file of Assessing Officer.

5. After hearing both the sides and perusing the entire material on record, we notice that the higher depreciation claimed by the assessee in subsequent assessment year 2011-12 was allowed by the Assessing Officer after considering the written submissions of the assessee stating that the plants and machinery on which depreciation was claimed, rain in three shifts whereas no such fact is discernible from the orders of the authorities below. We, therefore, restore the issue back to the file of Assessing Officer to verify the true facts and decide this issue afresh also after considering as to under what circumstances, the assessee is not eligible for higher depreciation, particularly when he has been granted higher depreciation in the assessment year 2011-12 on the same machinery. The assessee is directed to substantiate its claim by way of cogent evidences before the Assessing Officer.

6. In respect to second issue, we find that the contention of the assessee that the impugned plots were being used for business purpose during the year under consideration too needs verification at the stage of Assessing Officer. The assessee is directed to place credible evidence before the Assessing Officer to justify its claim of plots being used for business purpose. Therefore, this issue is also restored to the file of Assessing Officer for deciding the same afresh after due verification.

7. In respect to third issue, we find that the nature of credit, as also stated by the AO itself in the assessment order is capital contribution by the partners in cash. However, the addition u/s. 68 of the Act was made on the ground that the assessee failed to offer any explanation before the authorities below. Before us, the assessee has submitted capital account, ITR, computation of income and bank statements of the partners who contributed in their capital account of the assessee firm. The contention of the assessee based on these evidences is that though the source of credit is proved by these evidences, yet in case it is considered otherwise, the addition cannot be made in the hands of the assessee firm and the same may be considered in the hands of the partners. For this proposition, the ld. AR has relied on following case laws :

- (i). CIT vs. Rameshwar Dass Uresh Pal Cheeka, 208 ITR 459 (P & H)
- (ii). Taj Borewells, 291 ITR 232 (Mad.)
- (iii). CIT vs. Jaiswal Grain Stores, 272 ITR 136 (All)
- (iv). CIT vs. M/s. Phool Singh Yadav & Co. Gurgaon (P&H).

8. We, however, notice that all the documentary evidence filed before us, as noted above, were filed before the ld. authorities below for consideration, is not clear from the orders of the authorities below. The assessee has, however, certified that these documents were available before the authorities below. A perusal of the orders of the authorities below, however, shows that the nature of credit, i.e., capital contribution by the partners, is not in dispute. In presence of these facts and respectfully following the aforesaid decisions of various High Courts, relied by the assessee, we find no justification to make addition of such credits in the hands of assessee firm. The ld. CIT(A), was,

therefore, not justified in sustaining the same. Accordingly, this issue is decided in favour of the assessee.

9. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 06.03.2019.

Sd/-

(Bhavnes Saini)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 06.03.2019

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Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi