

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A", NEW DELHI**

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER  
AND  
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.: 2740/Del/2016  
Assessment Year: 2011-12

Sh. Raj Kumar Yadav [Proprietor: M/s Paras Travel & Raj Filling Station] Station H No. 810, Sector- 4 Gurgaon <b>PAN- ADSPK5609G</b>	Vs	DCIT Circle- 1(1) Gurgaon
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Mrs. Kavita Gupta, C.A.
Department by	P.V. Gupta, Sr. DR

Date of hearing:	09.04.2019
Date of Pronouncement:	11.04.2019

**ORDER**

**PER BRR KUMAR, AM:**

**GROUND OF APPEAL**

1. That the Commissioner of Income-tax (Appeals) erred on facts and in law in upholding the disallowance of depreciation to the tune of Rs. 2,82,426 on vehicles (i.e., bus/tempo traveller), on the ground that such vehicles were not used for commercial purposes.

1.1. That the Commissioner of Income-tax (Appeals) erred on facts and in law in not appreciating that the vehicles were used by the appellant purely for commercial purposes and thereby, depreciation @ 50% was rightly claimed.

1.2. That the Commissioner of Income-tax (Appeals) erred on

*facts and in law in not appreciating that the business of the assessee is of transport (carrying the staff for different companies) and therefore the disputed vehicles i.e. Bus and Tempo Traveller are Commercial Vehicles.*

1.3. *That the Commissioner of Income-tax (Appeals) erred on facts and in law in holding the view taken by A.O. that commercial vehicles cannot be hiring vehicles.*

1.4. *That the Commissioner of Income-tax (Appeals) erred on fact and in law in holding that the appellant failed to substantiate that the aforesaid vehicles were used for commercial purposes.*

1.5. *That the commissioner of Income Tax (Appeals) has wrongly mentioned that no evidence has been filed to show the vehicles are commercial in nature is totally wrong as copy of receipt of passenger tax /road permit mentioning the vehicles as Commercial were produced and were put on record.*

1. The moot issue to be adjudicated in this case is that whether the depreciation claimed by the assessee at the rate of 50% as pleaded before us is allowable as per the provisions of the Income Tax Act or not.

2. The Ld. CIT(A) confirmed the additions made by the AO on the grounds that the depreciation on

(a) Bus- 1986

(b) Tempo Traveller- 7344

was to be allowed only at the rate of 30%. The Ld. CIT(A) held while confirming the addition (or) restricting the depreciation that no documentary evidence was produced by the assessee at the assessment stage to show that the vehicles were "commercial" as per the definition and no such claim was made before the AO.

3. On perusal of the documents filed before us in the paper book namely the Registration certificate and the insurance policy and by the very nature of the vehicle i.e. bus and tempo traveller, we find that they straightly fall under the definition of commercial vehicles and eligible for 50% depreciation as per part B of the depreciation table wherein it has been clearly mentioned that new commercial vehicles which are acquired on or after first day of

January, 2009 but before the first day of April, 2009 and is put to use before the first day of April, 2009 for the purpose of business or profession are eligible for depreciation at the rate of 50%. (Vide notification no. 10/2009 dated 19.01.2009 w.e.f. 01.09.2009). Commercial vehicle is defined in the notes to the Depreciation table as under:

“3A. Commercial vehicle means heavy goods vehicle, heavy passenger motor vehicle, light motor vehicle, medium goods vehicle and medium passenger motor vehicle but does not include maxi-cab, motor-cab, tractor and road-roller. The expressions heavy goods vehicle, heavy passenger motor vehicle, light motor vehicle, medium goods vehicle, medium passenger motor vehicle, maxi-cab, motor-cab, tractor and road-roller shall have the meanings respectively as assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988).”

4. Hence, keeping in view the provisions of the Act, depreciation is hereby allowed at the rate of 50% on the two vehicles.

5. As a result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 11.04.2019.

Sd/-  
(LALIET KUMAR)  
JUDICIAL MEMBER

Sd/-  
(B. R. R KUMAR)  
ACCOUNTANT MEMBER

Dated:11-04-2019.  
BCG

*Copy of order to: -*

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

Assistant Registrar  
ITAT, New Delhi

Date of dictation	10.04.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	