

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.375/Ind/2017
Assessment Year: 2013-14**

ACIT-4(1), Indore (Revenue)	<u>बनाम/</u> Vs.	M/s. Umbra Mining Pvt. Ltd. M-3, Sapna Chamber, 12/1, South Tukoganj, Indore (Respondent)
PAN:AABCU3251H		
Revenue by	Shri V.J. Boricha Sr. DR	
Respondent by	None	
Date of Hearing:	01.05.2019	
Date of Pronouncement:	07.05.2019	

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal at the instance of revenue pertaining to A.Y. 2013-14 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-II, Indore, (in short 'CIT(A)'), dated 06.02.2017 which is arising out of the order u/s 143(3) of the Income Tax Act 1961 (hereinafter called as

the 'Act' framed on 17.03.2016 by ACIT,4(1) Indore. The revenue has raised following grounds of appeal:

"1. Whether on the facts and in circumstances of the case the ld. CIT(A) has justified in deleting the addition made on account of depreciation and in allowing the depreciation @30% on dumpers which were used for in own business by the assessee.

While holding so the Ld. CIT(A) has failed to appreciate the provisions of section 32 of the IT Act where the depreciation @ 30% is allowable only on the vehicles running on hire."

2. When the case was called non-appeared on behalf of the assessee. Case was heard with the assistance of Ld. Departmental Representative (DR) and records available.

3. Brief facts of the case as culled out from the records are that the assessee is a Private Limited Co. engaged in the business of mining and crushing of stones. E-return of income filed on 09.10.2013 declaring total income of Rs.20,50,577/-. Case was picked up for scrutiny followed by serving of notices u/s 143(2) and 142(1) of the Act. Various details were called. Reply duly submitted by the assessee. Various additions were made but as the instant appeal relates to disallowance of depreciation, fact relating thereto is that depreciation @30% claimed for vehicles running on hire but the Ld. AO was of the view that the assessee is eligible to only 15% depreciation. For this

reason disallowance for depreciation of Rs.73,67,771/- was made along with other additions. Income assessed at Rs. 97,91,020/-.

4. Aggrieved assessee preferred an appeal before the ld. CIT(A) and partly succeeded.

5. Now the revenue is in appeal before the Tribunal raising sole issue of deleting disallowance of depreciation by the ld. CIT(A).

6. Ld. Departmental Representative (in short Ld.DR) vehemently argued supporting the order of the assessing officer and submitted that the assessee is not into the business of transportation and therefore, addition of depreciation claimed on vehicles for running them on hire should not be allowed.

7. We have heard Ld. DR and perused the record placed before us. The grievance of the revenue is confined to deletion of disallowance of depreciation claimed by the assessee @ 30% on dumpers used by the assessee for its own business. We observe that the Ld. CIT(A) allowed the assessee's claim of 30% depreciation treating the vehicles to have been used for hire and transportation by taking a view that where the goods are transported from one place to another and there may be one person who may take the

service of one vehicle for transportation or there may be many, it does not make any difference.

8. Under the provision of Income Tax Act depreciation @ 30% is allowed on the cost/WDV of motor buses, motor lorries and motor taxies used in a business of running them on hire.

9. From perusal of the finding of the Ld. CIT(A) it does not transpire as to whether the assessee who is mainly into the business of quarrying, crushing and sale of stones, earned or received any amount towards freight on transportation charges for providing the services of transporting stone to site of the customers by use of its dumpers. Just because the assessee is transporting the excavated stones to the site of the customers, one cannot presume that the assessee is into business of transportation or running the dumpers on hire.

10. In our considered view Ld. CIT(A) ought to have examined this fact by calling necessary details from the assessee including sales bills or other receipts which could prove that transportation or freight charges were charged by the assessee to its customers for sending the goods to the site of the customer which may prove that business of hiring or transportation was parallely carried by assessee.

We therefore, set aside the issues raised in this appeal to the file of the Ld. CIT(A) for afresh adjudication in the light of our observation made herein above after providing assessee a reasonable opportunity of being heard.

11. In the result, appeal of the Revenue is allowed for statistical purposes.

Order was pronounced in the open court on 07.05.2019.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 07/05/2019

Patel, P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Assistant Registrar