

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
& SHRI MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2847/Ahd/2017

(निर्धारण वर्ष / Assessment Year : 2011-12)

<b>M/s. Nabros Transport Pvt. Ltd.</b> D-1201, Titanium Square, Thaltej Cross Road, Thaltej, Ahmedabad - 380054	<b>बनाम/</b> Vs.	<b>DCIT</b> Circle-3(1)(1), Ahmedabad.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAA CN3 724 D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Arti N. Shah, A.R.
प्रत्यर्थी की ओर से / Respondent by :	S.K. Dev, Sr. DR

सुनवाई की तारीख / Date of Hearing	06/05/2019
घोषणा की तारीख /Date of Pronouncement	28/05/2019

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the assessee against the order of the CIT(A)-7, Ahmedabad ('CIT(A)') in short), dated 08.09.2017 arising in the assessment order dated 24.11.2016 passed by the Assessing Officer (AO) under s. 143(3) r.w.s 147 of the Income Tax Act, 1961 (the Act) concerning A.Y. 2011-12.

2. The solitary issue in the present appeal is towards disallowance of depreciation amounting to Rs. 38,07,910/-.

3. The assessee is a private limited company carrying on business of transportation services. The return filed by the assessee for A.Y. 2011-12 was reopened and subjected to scrutiny assessment. The AO *inter alia* noticed that assessee has claimed depreciation of Rs. 54,39,870/- @ 50% on written down value of Rs. 1,08,79,739/- on vehicles categorized under plant and machinery. It was further noticed by the AO that the vehicles in question were purchased in earlier F.Y. 2009-10 on which assessee has already claimed depreciation @ 50% in A.Y. 2010-11. The assessee has continued to claim depreciation @ 50% in the impugned assessment order 2011-12 as well on the remaining WDV. In an explanation called for towards the accelerated depreciation claimed @ 50%, the assessee relied upon a Notification No. 37/2009/F. No. 142/01/2009-TPL read with Notification No. 10/2009 dated 19.01.2009 whereby the CBDT has amended the Table to the New Appendix-I prescribing the rates at which depreciation is admissible. As per the aforesaid notifications, new commercial vehicle which is acquired on or after 01.01.2009 but before 01.10.2009 and is put to use before 01.10.2009 for the purposes of business or profession will get 50% depreciation. The assessee thus claimed depreciation at higher rate on acquisitions of commercial vehicles during the window period. However, the AO did not find the enhance claim of depreciation @ 50% valid for the subsequent A.Y.

2011-12 presently in question. The AO observed that the enhanced depreciation was valid for only one year i.e. preceding assessment order 2010-11 only on the ground that no separate block for claiming depreciation @ 50% has been inserted in this regard. The AO accordingly adopted normal rate of depreciation @ 15% and consequently disallowed excess depreciation to the tune of Rs. 38,07,910/- and added the same to the total income of the assessee.

4. The first appeal of the assessee before the CIT(A) against the aforesaid action of the AO also went without success.

5. Further aggrieved, the assessee is in appeal before the tribunal.

6. The Ld. AR for the assessee referred to Clause 32(1)(ii) to submit that the assessee is entitled to such percentage of depreciation on written down value of assets as may be prescribed for any block of assets. It was contended by the Ld. AR for the assessee with reference to Sec. 43(6)(c) that once the asset falls in any block of assets, the assessee will be entitled to the rate applicable for the assets falling within the block for the purposes of granting depreciation. It was further contended with reference to the decision of CIT vs. Sonal Gum Industries [2010] 322 ITR 542 (Gujarat) that once it is found that assets are used for business, it is not necessary that all items falling within that block have to be simultaneously used for being entitled to depreciation. The Ld. AR, therefore, referred to the original Notification No. 10/2009, dated 19.01.2009 and subsequent

modification therein to submit that the notification in unequivocal terms enables depreciation at accelerated rate on all new commercial vehicles acquired within the specified period of 01.01.2009 and 01.10.2009 and put to use for the purposes of business or profession within that period. It was contended that in view of express stipulations made in the notification by seeking to amend the Table to New Appendix-I, there was no warrant for the AO to take a different view and restrict the depreciation at 15% artificially without any rationale.

7. The Ld. DR on the other hand relied upon the order of the lower authorities.

8. We have carefully considered the rival submissions. The eligibility of depreciation at accelerated rate on new commercial vehicles acquired between 01.01.2009 to 01.10.2009 is in controversy. As noted extensively in earlier paras, Notification No. 10/2009 issued by the CBDT dated 19.01.2009 along with subsequent modification therein (towards period of acquisition of asset), the assessee is entitled to depreciation @ 50% on all new commercial vehicles acquired within the stipulated time frame. The Table to New Appendix-I prescribing the rates at which depreciation is admissible has also been simultaneously amended by the CBDT in exercise of powers conferred to it by Sec. 295 of the Income Tax Act, 1961. Therefore, applying lower rate of depreciation in variance with the

special rate of depreciation allowance do not resonate with the amended position of law. We thus, find considerable merit in the plea taken on behalf of the assessee as noted in preceding paragraph. The action of Revenue to restrict the higher depreciation to only first year where assets were acquired is devoid of sound basis and contrary to the notification. Consequently, we set aside the order of the CIT(A) and direct the AO to restore the claim of depreciation allowance on commercial vehicles at accelerated percentage.

9. In the result, appeal of the assessee is allowed.

**This Order pronounced in Open Court on 28/05/2019**

Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Ahmedabad: Dated 28/05/2019

TANMAY

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आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।