

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, BENGALURU**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
and  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.998/Bang/2016  
(Assessment year: 2012-13)

M/s.Aakruti Holdings,  
CTS No.122/91, Srinath Chambers,  
New Cotton Market,  
Hubli. ... Appellant  
*PAN:AAOFA 3722 H*

Vs.

Asst. Commissioner of Income-tax,  
Hubli. ... Respondent

Appellant by : Shri S.V.Ravishankar, Advocate.  
Respondent by : Ms. Swapna Das, JCIT(DR)

Date of hearing: 07/05/2019  
Date of pronouncement: 14/06/2019

**O R D E R**

**Per PAVAN KUMAR GADALE, JM :**

The assessee has filed the appeal against the order of the CIT(A) Hubli, passed u/s 143(3) and 250 of the Income-tax Act,1961 ['the Act' for short].

2. The assessee has raised the following grounds of appeal:

1. "The order of the Authorities below in so far as it is against the Appellant, is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

**Page 2 of 6**

2. The Authorities below erred in assessing the Appellant on a total income of Rs.1,17,50,230/- as against the returned income of Rs.1,04,59,060/- under the facts and circumstances of the Appellant's case.
3. The Authorities below are not justified in sustaining a sum of Rs.6,42,166/- claimed towards depreciation deserves to be deleted under the facts and circumstances of the Appellant's case.
4. The Authorities below are not justified in sustaining a sum of Rs.3,49,008/-
5. claimed towards interest paid on loans deserves to be deleted under the facts and circumstances of the Appellant's case.
6. The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.
7. In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”

3. Brief facts of the case are that the assessee-firm is engaged in the business of construction and developers. The assessee filed the Return of income for the assessment year 2012-13 on 28/09/2012 with total income of Rs.1,04,59,060/- and the Return of income was processed u/s 143(1) of the Act on 16/2/2013. Subsequently, the case was selected for scrutiny under CASS and notices u/s 143(2) and 142(1) of the Act were issued. In compliance, learned AR appeared from time to time and produced books of account, bills, vouchers and details. AO, in the course of scrutiny proceedings, found

that two cars were reflected in the balance-sheet registered in the name of the partner and loan was obtained in the name of the partner, registration fee and life time tax was paid in the name of the partner. Therefore, AO is of the view as to why depreciation, life time tax and interest on car should not be disallowed. The learned AR filed explanation on 12/1/2015 referred at para.3 of the assessment order. But AO was not satisfied with the explanations and the assessee firm could not prove that cars were used exclusively for the purpose of the business. Therefore, made disallowance of depreciation of Rs.6,42,166/- on cars and disallowed interest on car loan of Rs.3,49,008/-. Similarly, disallowed Rs 3 lakhs being paid towards garden expenses and applied provisions of section 40(a)(ia) of the Act for non-deduction of TDS and made addition and assessed the total income at Rs.1,17,50,230/- vide order u/s 143(3) dated 18/2/2015.

4. Aggrieved by the order, the assessee filed appeal with the CIT(A). The CIT(A) having considered the grounds of appeal, submissions and the finding of the AO, has confirmed the disallowance of depreciation and interest on car loan and granted relief in respect of garden expenses by deleting addition and partly allowed the appeal.

**Page 4 of 6**

5. Aggrieved by the order, the assessee has filed an appeal with the Tribunal. At the time of hearing, learned AR submitted that cars are purchased by the partners for the business and disclosed in the balance-sheet of the firm. Car are used exclusively for the purpose of business and therefore, the claim of depreciation on cars and interest on car loan should be allowed. The learned AR also substantiated his argument by filing paper book consisting of the financial statement and ledger extract and bills in respect of cars. Contra, Ld. DR supported the orders of the lower authorities.

6. We heard the rival submissions and perused the material on record. The learned AR's submissions that cars have been purchased for business and are used exclusively for business operations and the interest on car loan was to be allowed on commercial expediency. The learned AR referred to page 17 of the paper book where ledger accounts and partner's capital accounts have been filed. On perusal of ledger accounts of both partners, we found that partners have also made drawing and there is refund of advance payment of cars. When clarification was sought, learned AR's submissions are not satisfactory and further emphasized that the AO also has disallowed interest on car loan without any basis. On

perusal of financial statements and the submissions of the learned AR, we found that these aspects are not discussed by the AO in the assessment order and new facts are emerging in the course of hearing proceedings. Whereas AO, in the assessment order has not given proper findings in respect of disallowance of depreciation except making observation that cars are not used for business purpose. We found there is no clarify in respect of usage of car, obtaining of loan and interest. Therefore, we are of the opinion that these facts are to be examined and accordingly, we restore this disputed issue to the file of the AO for limited purpose to verify evidence filed in the course of hearing about usage of car and also in respect of interest on car loan. Accordingly, these grounds of appeal are allowed for statistical purposes.

7. In the result, the assessee's appeal is allowed for statistical purposes.

*Order pronounced in the open court on 14<sup>th</sup> June, 2019.*

Sd/-  
**(B.R. BASKARAN)**  
**ACCOUNTANT MEMBER**  
Place : Bengaluru  
Date : 14/06/2019  
*srinivasulu, sps*

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

**Copy to :**

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore