

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "C", BANGALORE**

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT
AND**

SHRI B.R.BASKARAN, ACCOUNTANT MEMBER

**ITA No.2503 & 2504(Bang)/2018
(Assessment Years : 2011-12 & 2012-13)**

M/s Deepa Developers,
Karangalpady,
Mangalore-560 003
PANNo.AAEFD0601Q

Appellant

Vs

The Asst. Commissioner of Income tax,
Circle-2(1),
Bangalore

Respondent

**Appellant by : Sri Srinivasan, Advocate
Revenue by : Dr. Pradeep Kumar, Addl.CIT**

Date of hearing : 27-06-2019

Date of pronouncement : 28-06-2019

ORDER

PER SHRI B.R.BASKARAN, ACCOUNTANT MEMBER :

Both the appeals filed by the assessee are directed against the orders passed by Ld CIT(A), Mangaluru and they relate to the assessment years 2011-12 and 2012-13. Since some of the issues urged in these appeals are

common in nature, they were heard together and are being disposed of by this common order, for the sake of convenience.

2. We heard the parties and perused the record. The assessee is a Partnership firm. It is engaged in the business of undertaking civil contract works, engaged as developer and builder and also runs hotel.

3. The first issue urged in AY 2011-12 relates to the disallowance made u/s 40A(3) of the Act. At the time of hearing, the Ld A.R did not press the grounds relating to the same and hence they are dismissed as not pressed.

4. The next issue common in both the years under consideration relate to the disallowance of interest expenditure made u/s 40(a)(ia) of the Act for non-deduction of tax at source. The assessee had taken loan from M/s Tata Capital Limited for purchase of car and paid interest thereon without deducting tax at source. Hence the AO disallowed the interest expenditure in both the years by invoking the provisions of sec.40(a)(ia) of the Act. The Ld CIT(A) also confirmed the same, since the assessee could not furnish Form No.26A as required under the first proviso to sec. 201(1) of the Act.

5. The Ld A.R submitted that the assessee has taken loan form a leading finance company for purchase of car and interest was paid thereon. Accordingly he pleaded that the assessee may be provided with one more opportunity to furnish the certificate as required under sec. 201(1) and to explain the compliance of the second proviso to sec. 40(a)(ia) of the Act.

6. The Ld D.R, on the contrary, submitted that the assessee has not furnished the certificate till date and hence no purpose will be served in affording one more opportunity to the assessee.

7. Having heard rival contentions, we are of the view that, in the interest of natural justice, the assessee may be provided with one more opportunity, since the vehicle loan has been taken from one of the leading companies. Accordingly we set aside the order passed by Ld CIT(A) on this issue in both the years and restore the same to the file of the AO for examining this issue afresh in both the years, after affording adequate opportunity of being heard to the assessee. After hearing the assessee, the AO may take appropriate decision in accordance with law.

8. The next issue contested in AY 2011-12 relates to disallowance of Lifetime tax paid on purchase of car treating the same as Capital expenditure. The assessee had claimed life time tax paid on purchase of car as revenue expenditure, but the AO disallowed the same holding it as capital expenditure. The Ld CIT(A) confirmed the same by observing that the payment of life time tax is compulsory at the time of purchase of car and hence it shall form part of cost of acquisition of car.

9. The Ld A.R submitted that the Car can be put to use even with temporary registration without paying life time tax and hence it cannot be said that the same will form part of expenditure incurred to put the asset ready for use. The Ld A.R took support of decision rendered by Ahmedabad bench of Tribunal in the case of Elecon Engineering Company Ltd vs. ACIT

(ITA No.3893/Ahd/07 dated 18-05-2012) and submitted that the Tribunal has allowed the life time tax as revenue expenditure.

10. On the contrary, the Ld D.R submitted that the life time tax is paid along with purchase cost and hence the Ld CIT(A) has rightly treated the same as capital expenditure.

11. We notice that the Ahmedabad bench of Tribunal has examined an identical issue in the case of Elecon Engineering Company Limited (supra) and has held that the life time tax paid at the time of purchase of car is revenue expenditure with the following observation:-

“7. We have considered the rival submissions and perused the materials on record and gone through the orders of authorities below. We find that it was submitted by the assessee before ld. CIT (A) as per page nos. 3 and 4 of paper book that it is not necessary to pay the R.T.O. Tax to put the cars into use and it cannot be paid within the time prescribed in the respective law but the cars can be used before paying the same. It was also submitted that it has no enduring benefit and the value of the vehicle is not appreciated by paying the R.T.O. Tax. Reliance was also placed on the judgment of Hon'ble Allahabad High Court rendered in the case of [Janardan Prasad Ashok Prasad vs. CIT](#) as reported in 193 ITR 186. It was submitted that in this case, it was held by Hon'ble Allahabad High Court that the depreciation was allowable even though the vehicle was plied without getting the permit as provided under the [Motor Vehicles Act](#). One more submission is made that these expenses are allowable as per the provisions of [Section 43B](#). We find that this is not an allowing Section but it is in fact restricting the allowance of deduction in respect of tax which is not paid. Even if It is otherwise

allowable, it cannot be allowed if the same is not paid within the relevant year. Therefore, the reliance of the assessee on this Section is not relevant because in the present case, the disallowance was made on this basis that expenditure is capital expenditure. Regarding the first contention that cars can be used before paying the R.T.O. Tax and regarding reliance placed by the assessee on the judgment of Hon'ble Allahabad High Court rendered in the case of Janardan Prasad Ashok Prasad vs CIT (Supra), we find that this disallowance is not justified because payment of road tax does not result into the creation of any capital asset. Capital asset i.e. car is already in existence and the road tax is required to be paid for running the car.

8. In our considered opinion, it is a revenue expenditure and not a capital expenditure. Fuel is also required to run a car and without fuel, no car can be run but still it cannot be said that expenditure incurred on fuel for running a car is capital expenditure. Similarly expenditure incurred on road tax to enable the assessee to run a car on road cannot be considered a capital expenditure. We, therefore, decide this issue in favour of the assessee.”

We notice that the Ahmedabad bench of Tribunal has decided this issue in favour of the assessee by following the decision rendered by Hon'ble Allahabad High Court in the case of [Janardan Prasad Ashok Prasad vs. CIT](#) (supra), wherein the question of “user of asset” was decided. Since the vehicle can be plied before paying Road tax, it was held that the assessee would be entitled to depreciation. Based on this decision, the co-ordinate bench has further observed that the Road tax is paid to enable the assessee to run the car on the Road. Accordingly it was held that it is not a capital

expenditure. Since a view has already been taken by the co-ordinate bench, following the same, we set the order passed by Ld CIT(A) on this issue in AY 2011-12 and direct the AO to allow the life time tax as revenue expenditure.

12. The next common issue urged in both the years relate to the enhancement of disallowance made out of car expenses towards personal use. The assessee voluntarily disallowed a sum of Rs.30,000/- and Rs.50,000/- respectively in AY 2011-12 and 2012-13 towards personal expenses. The AO noticed that the disallowance of Rs.30,000/- made in AY 2011-12 worked out to 27.56% of car running expenses (excluding life time tax claimed as part of car expenses). Accordingly he disallowed 27.56% of Car depreciation and Car interest expenses. In AY 2012-13, the disallowance of Rs.50,000/- made by the assessee worked out to 11.36% of the car running expenses. Accordingly the AO disallowed 11.36% of Car depreciation and Car interest in that year. The Ld CIT(A) confirmed the same in both the years.

13. The Ld A.R submitted that the car has been mainly used for the purpose of business only and the assessee, on a safer course, has disallowed lump sum amount to take care of personal expenses, if any, out of Car running expenses. He submitted that the tax authorities are not justified in disallowing part of depreciation and interest expenses, since the Car was substantially used for the purposes of business only. He submitted that the AO has disallowed 27.56% of depreciation and interest expenses in AY 2011-12 and 11.36% in AY 2012-13. The varying percentage of disallowance would show that there is a flaw in the methodology adopted by

the AO and further the AO was not also sure about the exact usage of car for personal purposes.

14. On the contrary, the Ld D.R submitted that the assessee has voluntarily disallowed round sum out of car running expenses. Since the assessee did not disallow part of depreciation and interest expenses in terms of sec.38(2) of the Act, the AO has disallowed part of both the expenditure.

15. We notice that the provisions of sec.38(2) warrant disallowance of part of interest expenses and depreciation, if the asset is not exclusively used for the purposes of business. The voluntary disallowance made by the assessee out of car running expenses would show that the car was used for personal purposes also. However, the computation made by the AO for disallowing depreciation and interest by adopting the round sum disallowance made by the assessee as the base, in our view, is not appropriate. This is evidenced by the fact that the AO himself has disallowed 27.56% of depreciation and interest expenses in AY 2011-12 and 11.36% in AY 2012-13, which were inconsistent. Since the assessee did not have actual details of use of car for personal purposes, the possible personal use can only be estimated. The Ld A.R submitted that the car has been mainly used for business purposes only. Hence, on a conspectus of matter, we are of the view that this issue can be put to rest, if the disallowance out of car depreciation and car interest is restricted to 10% in both the years. Accordingly we set aside the order passed by Ld CIT(A) on this issue in both the years and direct the AO to disallow 10% of car depreciation and car interest in both the years.

16. In the result, both the appeals of the assessee are treated as partly allowed for statistical purposes.

Order pronounced in the open court on 28-06-2019

Sd/-

(N.V.VASUDEVAN)
VICE PRESIDENT

Dated: the 28th June, 2019.

***am**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

Sd/-

(B.R.BASKARAN)
JUDICIAL MEMBER

By Order

Asstt.Registrar

