

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya (AM)

I.T.A. No. 4556/Mum/2018 (Assessment Year 2013-14)

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| Mr. Manojkumar Arya 5A, Shahnaz, 90 Napean Sea Road Mumbai-400 006. PAN : AABPA5640B (Appellant) | Vs. | ITO Ward 3(3)(3) Room No. 672/688AA Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent) |
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| Assessee by | None |
| Department by | Shri Chaitanya Anjaria |
| Date of Hearing | 8.7.2019 |
| Date of Pronouncement | 23.9.2019 |

ORDER

This appeal by the assessee is directed against the order of learned CIT(A) dated 17.4.2018 and pertains to A.Y. 2013-14.

2. Grounds of appeal read as under :-

1. The Hon. CIT(A) erred in confirming the disallowance of claim of Depreciation of Rs.4,18,513/-.
2. The Hon. CIT(A) was not justified in confirming the disallowance of interest of Rs.1,39,556/-.
3. The Hon. CIT(A) ought to have judiciously interpreted the judgement in the cases of Virmati Ramkrishna, Eastern Investments Ltd. and Seth R. Dalmia.

The Appellant craves leave to add, alter or amend the above Grounds of Appeal, as the Occasion may Demand or circumstances may require.

3. The assessee in this case is an individual and received salary income as a director in the company and also has shown income from other sources consisting of bank charges and motor car hire charges. During the inquiry the Assessing Officer found that the assessee has purchased the car on 24.6.2011. The car has been given on hire of a company in which the assessee is a

director. The assessee has shown Rs. 1,80,000/- as hire charges received for the same. The assessee has adjusted claim of depreciation amounting to Rs. 4,18,513/- against hire charges. The assessee also borrowed Rs. 20 lakhs from HDFC Bank for purchasing the motor car. The assessee also adjusted interest expenditure of Rs. 1,39,466/- from the same source. Resultant loss from other sources was adjusted against salary income. The Assessing Officer proceeded to disallow interest expenses as well as depreciation. For disallowing depreciation he gave various reasons like no log book was maintained. The Assessing Officer also proceeded to hold there was no justification for the assessee to purchase car to earn mere income and suffer loss. He proceeded to disallow depreciation as well as interest on the ground that there was no need purchase for the assessee to engage into the said activity.

4. Upon the assessee's appeal learned CIT(A) confirmed the order of the Assessing Officer.

5. Against the above order the assessee is in appeal before the ITAT.

6. I have heard the learned Departmental Representative. None appeared on behalf of the assessee, hence the issue is being adjudicated upon hearing learned Departmental Representative and perusing the record.

7. Upon careful consideration I find that the facts are undisputed. The assessee has purchased a car. The assessee has incurred interest expenditure for the amount borrowed for purchase of car. The assessee has put the car on hire and has earned hire charges. In this view of the matter, in my considered opinion claim of expenditure regarding interest and depreciation have to be allowed. There is no doubt about the genuineness of expenditure. It is only the opinion of the Assessing Officer that there was no need to engage into this kind of activity. In my considered opinion it is settled law that Revenue authorities should not sit into the shoes of the businessmen and decide upon appropriateness of the expenditure or activity. Accordingly, I set aside the orders of the authorities below and delete the disallowance.

8. In the result, this appeal by the assessee stands allowed.
Order has been pronounced in the Court on 23.9.2019.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 23/9/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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