

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.1201/Bang/2019
Assessment year : 2015-16

Chadha Auto Agencies, “Mohan Plaza”, Deshpande Nagar, Hubballi – 580 029. PAN: AACFC 2883M	Vs.	The Income Tax Officer, Ward 1(1), Navanagar, Hubballi.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Suman Lunkar, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for Dept.

Date of hearing	:	10.10.2019
Date of Pronouncement	:	16.10.2019

ORDER

This appeal by the assessee is against the order dated 29.03.2019 of the CIT(Appeals), Hubballi relating to assessment year 2015-16.

2. The issue that arises for consideration in this appeal are two-fold viz., (i) Whether the AO was justified in disallowing depreciation on vehicles on the ground that there would have been personal user of the vehicle?; and (ii) whether the CIT(Appeals) was justified in disallowing vehicle maintenance expenses in exercise of powers of his enhancement without giving notice of enhancement to the assessee?

3. The assessee is a partnership firm comprising of 5 partners. The assessee carries on the business of a dealer in two wheelers. They were in all about about 7 cars on which the assessee claimed depreciation. The

AO was of the view that the assessee could not establish by producing log book to show that the vehicles were wholly and exclusively used for the purpose of business of assessee. He was of the view that the usage of 4 cars out of 7 cars for the purpose of business was not established and accordingly 50% depreciation claimed was disallowed by the AO. The details of depreciation claimed by the assessee as per books of account was as follows:-

SI No	Cars	Depreciation Amount
1	Tata Nano	19,492
2	Tata Nano	40,299
3	Innova	1,38,826
4	Skoda	1,07,730
5	BMW	5,60,168
6	Maruti Ritz	88,684
7	Swift	1,07,107
	Total	10,62,305

4. On appeal by the assessee, the CIT(Appeals) confirmed the action of the AO and further found that vehicle maintenance expenses by the same analogy should have also been disallowed by the AO. Accordingly, the CIT(A) directed the AO to disallow 50% of the vehicle maintenance expenses out of Rs.1,77,847 claimed as vehicle maintenance expenses by the assessee. Admittedly, there was no notice of enhancement issued by the CIT(Appeals) before doing so.

5. As far as the second issue, whether the CIT(Appeals) can make an enhancement of income without proper notice, I agree with the submission of assessee based on the decision of the ITAT Pune in the case of *Naresh Sunderlal Chugh v. ITO [2018] 93 taxmann.com 485 (Pune Trib.)* wherein the Tribunal took the view that powers of enhancement cannot be

exercised by the CIT(Appeals) u/s. 251 of the Income-Tax Act, 1961 [“the Act”], without affording the assessee opportunity of show cause against such enhancement. In view of the above, I direct that the disallowance of 50% of total expenses on account of vehicle maintenance expenses cannot be sustained and the same is directed to be deleted.

6. As far as the first issue regarding disallowance of depreciation is concerned, the Id. counsel for the assessee placed reliance on the decision of the Hon'ble Gujarat High Court in the case of *CIT v. Fluid Controls Mfg. Co., 280 ITR 86 (Guj)* wherein it was held that once the conditions laid down in section 32 are satisfied, then full depreciation has to be allowed. I have perused the decision and I find that the same is in relation to a case, where disallowance of depreciation was not on account of personal user of the vehicle. U/s. 38(2) of the Act, the claim for depreciation can be restricted to a fair proportion part having regard to user of the machinery for the purpose of business of assessee. Considering the reasons given by the AO in the order of assessment wherein he has doubted only the use of 4 cars wholly for the purpose of business of assessee and also taking note of the nature of business of assessee and the turnover of the assessee is more than Rs.48 crores, I feel the disallowance on account of personal user can be reasonably estimated @ 25%. It is ordered accordingly.

7. In the result, the appeal by the assessee is partly allowed.

Pronounced in the open court on this 16th day of October, 2019.

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 16th October, 2019.
/ Desai Smurthy /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.