

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

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND  
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA Nos.44 and 45/Bang/2018
Assessment years : 2013-14 and 2014-15

M/s. Deepa Developers, D. No.4-6-577/31, Mahendra Arcade, Karangalpady, Mangaluru – 575 003. <b>PAN : AAefd 0601 Q</b>	Vs.	Assistant Commissioner of Income-tax, Circle – 1(1), Mangaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. K. R. Narayana, JCIT-DR(ITAT)(Bengaluru)

Date of hearing	:	10.11.2019
Date of Pronouncement	:	27.11.2019

**ORDER**

***Per N. V. Vasudevan, Vice President:***

These are appeals by the assessee against two orders of CIT(A), Mangalore, both dated 29.10.2018, relating to Assessment Years 2013-14 and 2014-15.

**Assessment Year 2013-14**

2. The grounds of appeal raised by the assessee reads as follows:-

1. *The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

2. *The learned CIT[A] is not justified in upholding the disallowance made u/s.40[a][ia] in respect interest paid to M/s. Tata Capital limited, for purchase of Car amounting to Rs.57,192/- under the facts and in the circumstances of the appellant's case.*

3. *The learned CIT[A] is not justified in sustaining the disallowance in respect of depreciation and interest paid on purchase of Rolls Royce Car to the extent of 12.92% of the disallowances made by the learned A.O. of Rs.88,85,321/- as ascribed to personal use of the car based on the appellant's disallowance of a round sum of Rs.75,000/- out of running expenses under the facts and in the circumstances of the appellant's case.*

3.1 *Without prejudice the learned CIT [A] failed to give a direction to the A.O. to rework the depreciation allowable by enhancing the WDV of the Rolls Royce Car to the extent of depreciation disallowed in the subsequent years in the value of Rolls Royce Car.*

3.2 *The learned CIT[A] failed to appreciate that the above disallowance is contrary to law in as much as the firm although is a taxable entity does not -have a living personality and the expenses were incurred wholly and exclusively 'or the purposes of the business of the appellant firm even assuming for argument's sake it was used for the personal purposes of the partners and consequently the disallowance made requires to be deleted.*

4. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234-B of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*

5. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

3. The assessee, a partnership firm, engaged in the business of promoting, developing and building and acting as civil contractors and hotel owners. As far as ground No. 2 raised by the assessee is concerned, the facts are that the assessee had made payment of interest of Rs.57,192/- to M/s. Tata Capital towards finance charges. The assessee did not deduct tax at source while making the aforesaid payment of finance charges and therefore the AO invoking the provisions of section 40(a)(ia) of the Income Tax Act, 1961 ('the Act') disallowed the claim of the assessee for deduction of the aforesaid sum while computing the income from business. Consequently, the aforesaid sum was added to the total income of the assessee. The action of the AO was confirmed by the CIT(A) and hence the assessee has raised ground No. 2 before the Tribunal.

4. At the time of hearing, it was brought to our notice by the learned Counsel of the assessee that identical disallowance of finance charges was made in assessee's own case for Assessment Years 2011-12 and 2012-13 and the matter came up for consideration before the Hon'ble ITAT in ITA Nos.2503 and 2504/Bang/2018. The Tribunal, vide its order dated 28.06.2019, decided the issue of disallowance of finance charges paid to Tata Capital as follows:-

*"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. “*

5. It can be seen from the aforesaid decision that the Tribunal has given liberty to the Assessee to show before the AO that TATA Capital to whom the interest was paid had included the interest income received from the Assessee in their return of income and in that event, there is no loss to the revenue and therefore the disallowance of interest expenses should not be made. Respectively following the aforesaid decision, we restore the issue to the file of the AO for the purpose of enabling the assessee to establish before the AO that Tata Capital has included the finance charges received from the Assessee in their returns of income and therefore there can be no loss to the Revenue and therefore no disallowance can be made u/s.40(a)(ia) of the Act. The AO will afford opportunity of being heard to the assessee before deciding the issue.

6. As far as ground Nos. 3.1 and 3.2 are concerned, the facts giving rise to the aforesaid grounds of appeal are that the assessee claimed depreciation on Rolls Royce Car and also expenses on maintenance of the car. The depreciation claimed on Rolls Royce Car was Rs.60,58,830/- and the maintenance claimed was a sum of Rs.3,02,829/-. The assessee had also borrowed monies for

acquisition of these cars and the interest paid on such borrowing was a sum of Rs.28,26,491/-. The assessee, on its own, had disallowed in the computation of total income a sum of Rs.75,000/- out of vehicle maintenance expenses, on account of personal use of the car by the partners. The AO however disallowed depreciation, maintenance expenses as well as on interest paid on borrowings for acquisition of the cars on the ground that these expenses were not wholly and exclusively incurred for the purpose of business of the assessee and did not contribute in any possible way to the earning of income by the assessee.

7. On appeal by the assessee, the CIT(A) was of the view that there was a personal usage of the vehicle calling for some disallowance as per provisions of section 38(2) of the Act. He also found that the percentage of disallowance at Rs.75,000/- suo moto by the assessee on account of vehicle maintenance expenses was 12.95% of the total expenses (including expenses on car maintenance of Rolls Royce Car of Rs.3,02,829/-). The CIT(A) was of the view that in keeping with the disallowance of vehicle maintenance expenses, depreciation on interest on monies borrowed for acquiring the Rolls Royce Car should be disallowed on account of personal usage. Accordingly, the disallowance made by the AO was reduced substantially by the CIT(A). Still aggrieved, the assessee has raised ground Nos.3, 3.1 and 3.2 before the Tribunal.

8. At the time of hearing, it was brought to our notice by the learned Counsel of the assessee that identical issue came up for consideration in assessee's own case in ITA Nos.2503 and 2504/Bang/2018 for AY 2011-12 & 2012-13, vide its order dated 28.06.2019, and the Tribunal decided the issue as follows:-

*“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.”*

9. Respectfully following the decision of the Tribunal rendered on identical facts and circumstances of the case, we direct the AO to restrict the disallowance to 10% of the interest expenditure, depreciation and maintenance expenses.

10. The other grounds are only consequential. The AO is directed to give consequential relief.

### **Assessment Year 2014-15**

11. As far as the appeal for Assessment Year 2014-15 is concerned, the ground 3, 3.1, 3.2 and 4 were not pressed and hence dismissed as not pressed. The only ground that requires adjudication by us is ground No. 2 raised by the assessee which reads as follows:-

*“2. The learned CIT[A] is not justified in sustaining the disallowance of a sum of Rs.75,68,167/- being the life time tax paid on Rolls-Royce Car under the facts and in the circumstances of the appellant's case.”*

12. As far as ground No.2 raised by the assessee is concerned, the facts are that the assessee owned a Rolls Royce Car on which it had paid a life time tax of Rs.75,68,167/-. The assessee claimed life time tax as revenue expenditure. The car was originally registered at Pondicherry and used in Mangalore. The life time tax was paid in Karnataka after the expiry of the duration of Road Tax paid in Pondicherry. The AO held that the payment of life time tax was a capital expenditure and cannot be allowed as a revenue expenditure and deduction. He however allowed depreciation on the life time tax treating it as part of the cost of the Rolls Royce Car. On appeal by the assessee, the CIT(A) confirmed the order of the AO.

13. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. At the time of hearing, it was brought to our notice that identical issue was considered and decided by the Tribunal in assessee's own case in ITA Nos.2503 and 2504/Bang/2018 for AY 2011-12 & 2012-13, vide its order dated 28.06.2019, as follows:-

*"1. 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 ITA Nos.2503 & 2504(B)/2018 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 ITA Nos.2503 & 2504(B)/2018 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."*

14. In short the Tribunal held that expenditure incurred on road tax to enable the assessee to run a car on road cannot be considered a capital expenditure. Respectfully following the decision of the Tribunal, we direct the AO to allow claim of the assessee for deduction of life time tax as revenue expenditure.

15. In the result, both the appeals are partly allowed.

*Order pronounced in the open court on this 27th day of November, 2019.*

Sd/-  
**(A. K. GARODIA)**  
**Accountant Member**

Sd/-  
**(N. V. VASUDEVAN)**  
**Vice President**

Bangalore.

Dated: 27<sup>th</sup> November, 2019.

/NS/\*

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.