आयकर अपील य अ धकरण, अहमदाबाद यायपीठ

IN THE INCOME TAX APPELLATE TRIBUNAL,
''C'' BENCH, AHMEDABAD

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.2344/AHD/2017**

नधारण वष/Asstt. Year: 2014-2015

Karnavati Polyester Pvt. Ltd., B/H Cozy Hotel, RanipurPatia Bus Stand, Narol-Sarkhej Highway, Ahmedabad-382441. **PAN: AABCK4806G**	Vs.	D.C.I.T, Circle-2(1)(2), Ahmedabad.

(Applicant)		**(Respondent)**

Assessee by :	Shri A.L. Thakkar, A.R
Revenue by :	Shri L.P. Jain, Sr.DR

सुनवाई क तारख/**Date of Hearing : 24/10/2019**
घोषणा क तारख /**Date of Pronouncement: 28/11/2019**

आदेश/O R D E R

PER MAHAVIR PRASAD, JUDICIAL MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-2, Ahmedabad dated 28/09/2017 arising in the matter of assessment order passed under s. 143(3)of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 01/12/2016 relevant to Assessment Year (A.Y) 2014-15.

The assessee has raised the following grounds of appeal.

1. *The learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs.3,56,476/- made by the Assessing Officer for the alleged excess claim of depreciation on Tempo.*

2. The learned Commissioner of Income Tax (Appeals) has erred in confirming the of disallowance of Rs.7,02,783/- made by the Assessing Officer for the alleged late payment of employees contribution to PF amounting to Rs.5,27,123/-- and ESIC amounting to Rs. 1,75,630/ u/s.36(1)(va)/2(24)(x) of the I.T Act, 1961-.

3. The Appellant craves leave to add, alter, amend or modify any of the grounds of appeal on or before the date of hearing of appeal.

2. The 1st issue raised by the assessee is that the learned CIT (A) erred in confirming the disallowance made by the AO for ₹3,56,476.00 on account of excess depreciation on tempo.

3. The AO during the assessment proceedings found that the assessee has claimed depreciation on the purchase of tempo of ₹10,18,501.00 at the rate of 50% whereas the assessee is eligible for depreciation at the rate of 15% under the provisions of section 32 of the Act. Accordingly the AO worked out the excess amount of depreciation amounting to ₹3,56,476.00 and added to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the learned CIT (A) who has confirmed the order of the AO.

Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

5. The learned AR before us at the outset submitted that the impugned issue is covered against the assessee in its own case by the order of this

tribunal in ITA No. 3424/AHD/2016 vide order dated 11 December 2018 pertaining to the Assessment Year 2013-14.

6. On the other hand, the learned DR vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that the impugned issue is covered against the assessee in its own case (supra). The relevant extract of the order is reproduced as under:

> *7. We have heard the rival contentions and perused the materials available on record. It is a fact on records that the assessee has claimed depreciation at the rate of 50% whereas it is eligible for the depreciation at the rate of 15% on the value of the assets. Therefore we do not find the reason to interfere in the order of authorities below.*
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> *7.1 The issue before us pertains to the assessment year 2013-14 which needs to be adjudicated by us. There are powers given to the income tax authorities under section 147, 263 and 154 of the Act to bring the income under the net of tax which escaped assessment. But the authorities below have not exercised their powers by resorting to the provisions of these sections in respect of those where the assessee has claimed excessive depreciation on the tempos. Therefore we are not inclined to adjudicate the contention raised by the Ld. DR for issuing a direction to the AO to reopen the cases under section 147 of the Act on account of the excess claim of depreciation. In this regard, we find support and guidance from the judgment of Hon'ble Supreme Court of India in case of ITO Vs. MuralidharBhagwan das reported in 52 ITR 335 wherein it was held as under:*
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> > *"Section 33(4) of 1922 Act only refers to a finding or direction made by an appellate authority and does not itself confer any power on an appellate authority to make a finding or direction. Indeed, section 34 of 1922 Act deals with entirely a different aspect, that of empowering an ITO to bring to*

assessment escaped income, and has no concern with the powers of an appellate authority. The provision which deals with the powers of an appellate authority is section 31 of 1922 Act".

7.2 In view of the above we are not inclined to give any direction to the AO for reopening the cases where the assessee has claimed excess depreciation. In view of above the ground of the appeal of the assessee is dismissed.

7.1 Respectfully following the same, we do not find any infirmity in the order of the authorities below. Hence the ground of appeal of the assessee is dismissed.

8. The 2nd issue raised by the assessee is that the learned CIT-A erred in confirming the disallowance of ₹70,273.00 on account of late payment of employeeôs contribution to PF and ESIC.

9. At the outset, the ld. AR before us conceded the fact that the issue is covered against the assessee by the Honôble Gujarat High Court in the case of CIT vs. GSTRC reported in 41taxmann.com 100 wherein it was held as under:

"In view of the above and for the reasons stated above, and considering section 36(1)(va) of the Income Tax Act, 1961 read with sub-clause (x) of clause 24 of section 2, it is held that with respect to the sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section (2) applies, the assessee shall be entitled to deduction in computing the income referred to in section 28 with respect to such sum credited by the assessee to the employees' account in the relevant fund or funds on or before the "due date" mentioned in explanation to section 36(1)(va). Consequently, it is held that the learned tribunal has erred in deleting respective disallowances being employees' contribution to PF Account / ESI Account made by the AO as, as such, such sums

were not credited by the respective assessee to the employees' accounts in the relevant fund or funds (in the present case Provident Fund and/or ESI Fund on or before the due date as per the explanation to section 36(1)(va) of the Act i.e. date by which the concerned assessee was required as an employer to credit employees' contribution to the employees' account in the Provident Fund under the Provident Fund Act and/or in the ESI Fund under the ESI Act."

In view of the above, we do not find any infirmity in the order of the authorities below. Hence, the ground of appeal of the assessee is dismissed.

10. In the result, the appeal filed by the assessee is **dismissed.**

Order pronounced in the Court on 28/11/2019 at Ahmedabad.

-Sd-	**-Sd-**
(WASEEM AHMED)	**(MAHAVIR PRASAD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

(True Copy)

Ahmedabad; Dated 28/11/2019
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