

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH, COCHIN (SMC)</b>
<b>BEFORE SHRI GEORGE GEORGE K., JM</b>

ITA Nos. 750 to 752/Coch/2019
Assessment Years: 2008-09 to 2010-11

Smt. Usha Johnson, Prop. Maruthayath Transports, Maruthayath Building, Pallimukku, Kundara, Kollam-691 501. [PAN:AFJPJ 3511R]	<b>Vs.</b>	The ITO, Ward-4, Kollam
<b>(Assessee -Appellant)</b>		<b>(Revenue-Respondent)</b>

<b>Assessee by</b>	Shri Sandeep Gopalakrishnan, Adv.
<b>Revenue by</b>	Shri Mritunjaya Sharma, Sr. DR

<b>Date of hearing</b>	26/02/2020
<b>Date of pronouncement</b>	28 <sup>th</sup> /02/2020

### **ORDER**

Per GEORGE GEORGE K., JM

These appeals at the instance of the assessee are directed against three orders of the CIT(A), Trivandrum, all dated 10/10/2019. The relevant assessment years are 2008-09 to 2010-11.

2. Common issue is raised in these appeals, hence they were heard together and are being disposed of by this consolidated order.

2.1 The solitary issue raised is whether the CIT(A) is justified in confirming the Assessing Officer's order in restricting the depreciation claim on vehicles to 15% instead of 30% claimed by the assessee.

3. The brief facts of the case are as follows:

The assessee is an individual who is proprietrix of Maruthayath Transports. The proprietor concern is engaged in the contract work of transportation with Indian Oil Corporation Ltd. (IOCL) and Bharat Petroleum Corporation Ltd.(BPCL). For the assessment years 2008-09 to 2010-11, the assessee had claimed depreciation on vehicles at the rate of 30%. During the course of assessment proceedings for the assessment years 2008-09 to 2010-11, the Assessing Officer noted that the assessee was awarded contract for one year and TDS was deducted by IOCL and BPCL u/s. 194C of the I.T. Act. Further, the Assessing Officer noticed that the assessee has not included any income from hiring of vehicles in the profit and loss account. After examination of the work order/contract note issued by IOCL to assessee, the Assessing Officer was of the view that the assessee was engaged in contract work and does not give vehicles on hire. Therefore, depreciation on vehicles was restricted only to 15% as against 30% claimed by the assessee.

4. Aggrieved by the orders passed by the Assessing Officer for the assessment years 2008-09 to 2010-11 in restricting the claim of depreciation, the assessee preferred the appeals before the first appellate authority. During the course of appellate proceedings, copy of the contract note entered between the assessee and

IOCL and BPCL was submitted by the assessee. The Ld. AR has also filed a brief written submission.

4.1 The CIT(A) after examining the contract note entered by the assessee with IOCL and BPCL concluded that it is not a case of hiring of motor vehicles simplicitor but a bundled contract for transportation of cylinders. It was further noticed by the CIT(A) that the assessee was not paid for idle time of the motor vehicles kept at the service of the Oil companies. After examining the terms of the contract the CIT(A) concluded that it is only a case of works contract and not hiring of motor vehicles. The CIT(A) by placing reliance on the judgment of the Hon'ble Uttarakhand High Court in the case of Indian Oil Corporation Ltd. (410 ITR 106), confirmed the view taken by the Assessing Officer in restricting the claim of depreciation to 15%.

5. Aggrieved by the orders of the CIT(A), the assessee has filed these appeals before the Tribunal. Identical grounds have been raised for all the assessment years. The assessee has filed a brief written submission which reads as follows:

*"The learned appellate authority has failed to appreciate the exact nature of the business run by the assessee and has not considered the merits of submissions which are further elucidated as follows. The Appellate Authority has based the entirety of its reasoning on the basis of the contracts the assessee has executed with the above mentioned companies. The contract has been interpreted as a contract for transport wherein it is in reality a contract in lieu of 'supply of tangible goods'. The same is clearly evident in OIL AND NATURAL GAS CORPN. LTD. Versus TRICHY CONSTRUCTION COMPANY 2017 (49) S.T.R. 278 (Mad.). The Hon'ble High Court of Madras rightly held that "As ONGC had exclusive use of tankers, it was case of "charter hire payment" - it was not Goods Transport Agency service under Section 65(50b) of Finance Act, 1994, wherein service provider provides transport of goods and also issues consignment note - As no consignment note was issued and ONGC was*

*consignor as well as consignee" . The facts of the same are similar to the present case and clearly shows that the Assessee is engaged in the business of 'charter hire business' or 'supply of tangible goods'.*

*2. In the following decision, GLOBAL VECTRA HELICORP LTD. Versus COMMISSIONER OF S.T., MUMBAI-II 2016 (42) S.T.R. 118 [Tri. - Mumbai), the Hon'ble Customs Excise and Service Tax Appellate Tribunal, West Zonal bench, Mumbai held in the issue of ONGC hiring helicopter at its disposal to ferry persons and cargo for their offshore operations where the Flight crew and maintenance crew with fully operational helicopters made available for exclusive use by charterer and All necessary conditions, permissions from DGCA and compliance of law of DGCA undertaken by appellant, the Liability to pay taxes and insure goods with appellant and where Helicopters mobilized/delivered by appellant against consideration to their client without transferring right of possession and effective control effectively.*

*Purports the agreement of being for charter hiring. Supply of Tangible Goods for Use Service (SOTG), impugned activity clearly falling under SOTG services.*

*a. A similar hiring of trucks by companies at its disposal to ferry cargo for their operations where the Driver and maintenance of the truck is made available for exclusive use by the assessee and All necessary conditions, permissions from all authorities and compliance of law is undertaken by the assessee, the Liability to pay taxes and insure goods also rests with the assessee and the trucks are-mobilized by the assessee against consideration to their client without transferring right of possession and effective control occurs in the present case and hence it is clearly seen that the activity of the Assessee falls under the service definition of Supply of Tangible.*

*4. In EIH LTD. Versus COMMISSIONER OF CENTRAL EXCISE, DELHI-1 2019 (24) G.S.T.L. 592 (Tri. - Del.) the Hon'ble CESTAT, PRINCIPAL BENCH, NEW DELHI held that in the case of Hospitality industry providing aircraft on chartered hire basis along with trained pilot and necessary engineering crew for its operation, during period May, 2008 to May, 2010 and charging consideration on the basis of per hour for total time consumed during flight, Such services rightly classifiable as Supply of Tangible Goods service and not as Transportation of Passenger by Air service since effective control and possession of aircraft remained with Hospitality Industry, the service provider. The same further elucidates the Assessee's claim that the Service being provided is Supply of Tangible Goods in lieu of letting out to hire and not Transportation Service,*

*5. In PETRONET LNG LTD. Versus COMMISSIONER OF SERVICE TAX, NEW DELHI 2016 (46) S.T.R. 513 (Tri. - Del.) the Hon'ble CESTAT, PRINCIPAL*

*BENCH, NEW DELHI has held that Tangible goods - Supply of tangible goods - Charter agreement of tanker between owner and assessee - Stipulating that (i) statutory licences, permissions, insurances, etc. were in name of owners, and not in name of assessee; (ii) in case Government requisitioned the tanker during charter period, compensation paid would be retained by owner, and even though no hire charges were payable by assessee, such period was counted as part of charter; and (iii) Manager, Master, personnel and other crew are employed by owner - HELD : Transfer of legal right to use of tankers was complete - Requisition by Government was under authority of legislation or other statutory power, and contractual recognition of such overarching authority cannot be considered to be in derogation of transaction, which otherwise amounts to transfer of right to use, in favor of user - Mere fact Manager, Master, personnel and other crew are employed by owner was immaterial as there were several other clauses in agreements which stipulated that personnel on board the vessels operated strictly in terms of detailed instructions, guidelines and directives issued by assesses, and they could be replaced by owners on valid compliant about by assessee - On holistic consideration of terms of agreement, there was demise of tanker in favour of assessee, hence there was transfer of right to use with possession and effective control, falling within exclusionary clause of Section 65[105J(zzzz)] of Finance Act, 1994.*

*6. Without prejudice to the above grounds, the doctrine of essence may be looked upon wherein the actual facts of the matter may be considered irrespective of the facts represented on paper. A similar stand has been taken by the honourable High Court of Kerala in Commissioner of Income Tax, Cochin v. FED Bank Financial Services Ltd. 2010 KHC 456 wherein the honourable court has held that," In our view, higher rate of depreciation is provided only in respect of items of machinery, plant etc. which really deteriorates very fast on account of extensive use. A vehicle on hire is extensive/y used and so much so, it's value erodes faster than a vehicle privately owned and used by somebody. Keeping this in mind, we feel a vehicle engaged in route operation suffers same erosion in value as a contract carriage let on hire. So much so, in our view, the motor buses engaged in route operation fall under description of vehicles hired out for use. Therefore, the route operation of the buses leased out by the respondent to the Madhya Pradesh Road Transport Corporation should be treated as use of the vehicle on hire entitling the vehicle for higher rate of depreciation at 40%. "*

5.1 The Ld. DR apart from strongly supporting the orders of the income tax authorities, relied on the judgment of the Hon'ble High Court of Kerala in the case of State of Kerala vs. M/s. Thampi & Company (S.T.R. No. 134 of 2008) (judgment dated 22/06/2019).

6. I have heard the rival submissions and perused the material on record. The assessee's proprietary concern was engaged in the business of contract work of transportation with IOCL and BPCL. The assessee had not disclosed any income from hiring of vehicles in the profit and loss account. The relevant part of the contract note entered between the assessee and IOCL and BPCL is reproduced in the impugned orders of the CIT(A) (Paras 4.3 and 4.4). From the reading of the contract note, it is clear that this is not a case of pure hiring of vehicles by IOCL and BPCL. The assessee has bundle of responsibilities. The assessee has to undertake loading/ unloading and stacking/destacking etc. On examination of the contract note, it is amply evident that it is a case of assessee being engaged in the business of contract. The contract entered between the assessee and the oil companies is not a case of hiring motor vehicles simplicitor and deduction has been made by the Oil companies u/s. 194C of the I.T. Act. The judgment of the Hon'ble Uttarakhand High Court in the case of Indian Oil Corporation Ltd. (supra) is applicable to the facts of the instant case. The Hon'ble Uttarakhand High Court, while dealing with issue of tax deduction at source on transportation contract, which is identical to the fact of this case, held that it is a case of contract business liable for deduction of tax at source u/s. 194C of the I.T. Act and not u/s. 194I of the I.T. Act. The relevant portion of the judgment of the Hon'ble Uttarakhand High Court in the case of Indian Oil Corporation Ltd. (supra) is reproduced in para 4.6 of the impugned orders of the CIT(A), hence the same is not reproduced here.

6.1 The judgments relied on by the Ld. AR in the written submission are distinguishable. In the cases relied on by the Ld. AR, I notice that there was a clear finding to the effect that effective control and possession of the aircraft/vehicles was retained by the persons making the payments. In the instant case, from the reading of the terms of contract, it is clear that this is not a case of hiring of motor vehicles simplicitor. Unless the assessee is engaged in the business of hiring of motor vehicles simplicitor, she will not be entitled to the claim of higher rate of depreciation of 30%. In this case, the assessee is engaged in contract business and is not in the business of letting vehicles on hire simplicitor. Hence the assessee is not entitled to the claim of higher rate of depreciation. It is ordered accordingly.

7. In the result, the appeals of the assessee are dismissed.

Order pronounced in the open court on 28<sup>th</sup> February, 2020.

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

Place: Kochi

Dated: 28<sup>th</sup> February, 2020

GJ

Copy to:

1. Smt. Usha Johnson, Prop. Maruthayath Transports, Maruthayath Building, Pallimukku, Kundara, Kollam-691 501.
2. The Income Tax Officer, Ward-4, Kollam.
3. The Commissioner of Income-tax(Appeals), Trivandrum.

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4. The Pr. Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin