

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad
(Through Video Conferencing)

Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri D.S. Sunder Singh, Accountant Member

ITA No. 672/Hyd/2017		
Assessment Year: 2012-13		
Gondyala Surender Rao, Hyderabad. PAN – AHMPG 5729R (Appellant)	Vs.	Dy. Commissioner of Income-tax, Circle – 9(1), Hyderabad (Respondent)
Assessee by:	Shri B. Shanthi Kumar	
Revenue by:	Shri Sunil Kumar Pandey	
Date of hearing:	17/11/2020	
Date of pronouncement:	17 /11/2020	

ORDER

Per D.S. Sunder Singh, A.M.

This is Revenue's appeal for the A.Y 2012-13 against the order of the CIT (A) - 7, Hyderabad, dated 04.08.2016.

2. On perusal of record, we find that there was a delay of 88 days in filling the appeal before the Tribunal. To this effect, the assessee filed condonation petition. After hearing both the sides, the delay is condoned and the appeal is admitted for hearing and adjudication.

3. The grounds of appeal raised in this appeal are related to the sustaining of addition of Rs. 25,57,317/- pertaining to loss on sale of vehicles.

4. During the assessment proceedings, the AO found that the assessee has claimed the loss on sale of vehicles to the extent of Rs. 25,57,317/- by debiting the same to the P& L Account. As the assessee failed to produce the details with regard to loss on sale of vehicles and with the view that the loss on sale of capital asset is not allowable as business expenditure as the vehicles constitute capital assets, he made the addition of Rs. 25,57,317/- to the returned income.

5. On appeal, the CIT(A) sustained the addition with a finding that the loss claimed on sale of vehicles was neither a business loss nor a short term loss and the assessee has deliberately made a wrong claim on sale of vehicles as expenditure, against which, the assessee is in appeal before the Tribunal.

6. We have heard both the parties and perused the material on record. In the instant case, the assessee's claim is that the vehicles were purchased in the year under consideration and sold in the same year, which constitutes short term loss, hence, requested to allow the expenditure. The Id. CIT(A) gave a finding that the assessee had purchased the vehicles in the earlier years and most of the vehicles were already with the assessee as on 31/03/2011. The depreciation was claimed in the earlier years and, thus, held that claim of the assessee was a wrong claim and the same is not allowable. For the sake of clarity and convenience we extract the relevant part of the finding of the CIT(A) in his order, which gives factual position:

"4.3 I have considered the assessment order, submission of the assessee and he assessment records/documents filed by the assessee during the course of assessment proceedings. The following factual position emerges:

(i) It is seen from the records that the assessee arrived at loss from sale of vehicles in a peculiar way. The loan amount balance as on 31.03.2012 was reduced from W.D.V. as on 31.03.2011 for each of the vehicle to arrive

at difference. From the above difference, the sale value was reduced to arrive at loss.

(ii) The assessee has already reduced the sale value from W.D.V. for calculation of depreciation allowable/ claimed.

(iii) The assessee claimed depreciation in profit & Loss account and also the loss on sale of vehicles as arrived at as above.

(iv) From the details of loss claimed on sale of vehicles it is seen that the claim of the assessee that vehicles were purchased and sold during the year is not correct. Most of the vehicles were already with assessee on 31.03.2011 and depreciation w.r.t. above was claimed.

(v) The assets were capital assets, they were treated as such by the assessee also, the depreciation is claimed as admissible by the assessee.

(vi) The claim of loss of sale on assets is without any basis and is not allowable under the provisions of Income Tax Act, 1961, though the Assessing Officer has only mentioned that loss on capital assets is not allowable and made addition.

(vii) From the factual position as brought out above, it is seen that the assessee has deliberately made a wrong claim of loss on sale of vehicles as expenditure.

5. In view of the factual position and findings as brought out in para 4 above, the grounds of appeal raised by assessee are rejected.”

6.1 During the appeal hearing, the Id. AR did not make out a case that the loss claimed by the assessee was genuine loss or resulting out of business loss. Therefore, we do not find any reason to interfere with the order of the CIT(A) and the same is upheld. Accordingly, we dismiss the grounds raised by the assessee on this issue.

7. In the result, appeal of the assessee is dismissed

Order pronounced in the Open Court on 17th November,
2020.

Sd/- (P. MADHAVI DEVI) JUDICIAL MEMBER	Sd/- (D.S.SUNDER SINGH) ACCOUNTANT MEMBER
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Hyderabad, dated 17th November, 2020.

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- 4 Pr. CIT – 7, Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File