



IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA no.6719/Mum./2019
(Assessment Year : 2012-13)

Dy. Commissioner of Income Tax
Circle-3, Thane

..... Appellant

v/s

M/s. Samarth Lifters Pvt. Ltd.
Opp. Anand Nagar Octroi Naka
Naa Building, Next to Maa
Niketan School, Easter Express
Highway, Kopari, Thane (West) 400 601
PAN -+ AACCS6646K

..... Respondent

Assessee by : Shri Subodh Ratnaparkhi
Revenue by : Shri Sanjeev Kashyap

Date of Hearing - 08.04.2021

Date of Order - 10.06.2021

ORDER

PER S. RIFAUR RAHMAN, A.M.

The present appeal is filed by the revenue against the order passed by the Commissioner of Income Tax (appeal) - 2, Thane, by raising following grounds of appeal:-

"1. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO by not appreciating the fact that the crawler cranes/trailers are in the nature of Plant & Machinery as held by the AO.

2. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has erred in deleting the addition by not

appreciating the fact that the crawler cranes/trailers are in the nature of Plant & Machinery and thus eligible for depreciation @15% as applicable in the case of Plant & Machinery and higher rate of depreciation @30% is incorrectly claimed by the assessee.

3.The order of the CIT(A) may be vacated and that of the Assessing Officer may be restored. The appellant craves leave to add, mend, alter or delete any ground of appeal."

2. At the time of hearing, it is brought to our notice that assessee is a company in which public are not substantially interested, it is engaged in the business of providing cranes on hire and transport contractors. Assessee in its business operates Cranes/Trailers/Fork lifts/Dozers and these assessed are grouped under the head motor vehicle. Accordingly, assessee claims depreciation at the rate of 30%. However, over the years assessing officer disallowed the claim of the assessee and allows only 15% by treating the same under plant and machinery. This issue is recurring over the years and in the assessment year 2011-12, when the Ld CIT(A) sustained the disallowance made by the assessing officer, aggrieved assessee filed an appeal before ITAT, the coordinate bench decided the issue in favour of the assessee by approving the classification of the assets under the head Motor Vehicle in ITA No. 1781/Mum/2015 dated 8.12.2017.

3. In subsequent assessment years, Ld CIT(A) respectfully followed the decision of the coordinate benches. From assessment year 2013-

14 to 2015–16 the issue under consideration is settled in favour of the assessee by the respective decisions of the coordinate benches in ITA No.5738/Mum/2018 dated 3.12.2019, ITA No.2186/Mum/2018 dated 31.07.2019 and ITA No.6233/Mum./2018 dated 4.12.2019 by dismissing the appeals filed by the revenue. Since this issue is settled in favour of the assessee we do not see any reason to interfere with the findings of Ld CIT(A). For the sake of clarity we are reproducing the findings of the coordinate bench in the assessment year 2015–16:-

"5. After considering the rival submissions of both the parties and perusing the material on record, we observe that an identical issue was involved in A.Y. 2011-12 which has been decided in favour of the assessee in ITA No.1781/MUM/2015 vide order dated 08/12/2007. The operative of the said order is reproduced as under:-

6. We have gone through the orders to the authorities below as well as the order of ITAT and Hon'ble High Court wherein appeal filed by the revenue is dismissed as withdrawn. On merits, as per entry III(3)(ii) of Part A of Appendix I to I.T.Rules 1962, motor buses, motor lorries and motor taxies used in a business of running them on hire are entitled for depreciation @ 30%. (New Appendix it appears at pg. No. 82 to 89 of compendium separately submitted). From the record we found that the assessee owns several transport vehicles which are given on hire and in respect of which depreciation is claimed @ 30% as per the above referred entry. Crawler Cranes and Dozers are part of such transport vehicles, in respect of which depreciation is claimed @ 30%. The Id. AO/Hon'ble CIT(A) have held crawler cranes / dozers to be plant & machinery entitled for depreciation @ 15% and not motor vehicles entitled for depreciation @ 40%.

7. So far as nature of assets is concerned we found that a crawler crane is a crane having a power plant like a motor vehicle which runs mostly on a diesel engine which sufficient power / torque and other features of a motor vehicle like cooling systems, starter, radiator, throttle with sufficient fuel tank capacity. Normally, the crawler crane has hydraulic system, boom hoisting system, load hoist system, swing system, enclosed or open cab with lower

structure operating on a crawler belt. The crawler crane is capable of moving on its own accord on surface areas. A dozer is a continuous tracked tractor type vehicle used to move large quantities of sand, rubble etc. from one place to another. A dozer also has engine with regular power plant to help it move on its own accord one place to another.

8. As per our considered view registration is not mandatory for claiming depreciation. The term motor vehicle has not been defined under the Income Tax Act 1961. Accordingly, we have to rely on the definition of the said term as contained in Sec. 2(28) of the Motor Vehicles Act 1988. The term "motor vehicle" as per the said act reads as under. Sec.2(28) "Motor vehicles", or "Vehicle" means any mechanically propelled vehicle adopted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicles of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than 4 wheels fitted with engine capacity of not exceeding twenty five cubic centimetres."

9. The term used in above definition is of a "mechanically propelled vehicle adapted for use upon road.....". Thus, if a vehicle is capable of being run on road (adapted) then it is sufficient to categorize such vehicle as a motor vehicle. (copy of relevant page of Motor Vehicles Act, 1988 is enclosed at pg no.90&90 of paper book so filed before us). Registration of the vehicle under the Motor Vehicle Act, 1988 is not the requirement for claiming higher depreciation. Appendix I of IT Rules or Section 32 of the I.T.Act 1961 does not mandate that a vehicle should be registered under the Motor Vehicles Act, 1988 for claiming higher depreciation.

10. The Hon"ble Supreme Court in the case of I.C.D.S. Ltd. Vs. CIT, 350 ITR 0527 (SC) (2013) has held that depreciation u/s.32 could not be denied for the reason that vehicle was not registered in the name of the assessee under the Motor Vehicle Act. Similar view is taken by the jurisdictional High Court in the case of CIT Vs. Dilip Singh Sardarsingh Bagga, 201 ITR 0995 (Bombay High Court)(1994).

11. Accordingly, reliance of the AO/Hon. CIT (A) of crawler cranes / dozers not holding permanent registration under the Motor Vehicles Act, 1988 is misplaced for declining higher claim of depreciation.

12. The crawler cranes / dozers were not permanently registered under the Motor Vehicles Act, 1988 due to the fact that these vehicles though capable are not piled on public roads. The vehicles are deployed in port / factory premises and therefore do not require permanent registration under the Motor Vehicles Act, 1988. In the course of asst. proceedings, it was further explained that even though the crawler cranes were not registered with road transport authorities directly, in certain states, it was required to pay vehicle tax by obtaining temporary permit for the period of its operation in the state. The Id. AO unfortunately has assumed such payments to be in the nature of temporary entry tax. The transport vehicles in Gujarat are governed by Bombay Motor Vehicle Tax Act 1958 which extends to the whole state of Gujarat. The fees paid for temporary permits issued by Gujarat Motor Vehicle department permitted operation of the crawler cranes on public roads also for the given period of time. The assumption made by the Id. AO that such fees are some sort of entry tax is factually incorrect. The copies of RTO tax paid receipts for crawler cranes to operate in Gujarat are at pg nos. 12 to 18 of paper book. A certificate from Govt. Approved RTO consultant, M/s. Sama Auto Consultant explaining the nature of tax paid appears at pg. No.19 of paper book. It is thus the case that under the Bombay Vehicle Tax Act, 1958, the crawler cranes owned by the appellant are recognised as heavy motor vehicles.

13. The Id. AO in the Asstt. Order has further discussed the type of work carried out by cranes and arrived at the conclusion that cranes unless registered under the Motor Vehicle Act could not be termed as "Motor Lorry" entitled for depreciation @ 30%. In the said regards, we observe that it is not possible to include each and every type of vehicle in the depreciation schedule. Due to rapid industrialization, the various types of machines used in transport business are increasing day after day with each machine carrying out a particular type of activity in a more efficient manner. These machines do not find direct representation in the depreciation schedule. In such situation, the functional similarity with the nature of activity performed by the listed machine has to be done to determine under what category a particular machine would fall.

14. We also found that CBDT vide Instruction No.617 dated 13.09.1973 has even included "forklift" in the category of motor vehicle entitled for higher depreciation of 30%. The Hon. Supreme Court in the case of Chairman Rajasthan State Road Transport Corp and Other-vs-Santosh and Others 7 SCC 94 (SC)(2013) have analyzed the definition of the term motor vehicle to hold even a tractor to be motor vehicle as it is capable of being adapted to run on public roads.

15. This issue of cranes being entitled for depreciation as a motor lorry has been examined in several judicial proceedings including in the appellants own case for A.Y.1998-99. The decisions relied upon are as under. (i) DCIT Vs. Samarath Lifters Pvt. Ltd., ITA No.430/M/02, Hon. Members "G" Bench ITAT, Mumbai dated 20.12.2004 for A.Y.1998- 99. (ii) CIT Vs. Samarath Lifters Pvt. Ltd., ITA No.127 of 2006 (Bombay High Court) dated 15.12.2008 – Dismissal of appeal for A.Y.1998- 99. (iii) Shethia Erectors & Materials Handlers Pvt. Ltd., ITA No.7254/Mum/97, Hon. Members, "A" Bench, ITAT Mumbai dated 08.01.2001. (iv) DCIT Vs. Mitesh L. Shethia, ITA No.2638/Mum/1999, Hon. Members "SMC-IV" Bench ITAT, Mumbai dated 14.02.2001 (The issue of crawler crane is covered here). (v) Crown Hiring Vs. ITO, ITA No.3799/Bom/1991, Hon. Members, "C" Bench ITAT, Mumbai dated 09.02.1998. (vi) Gujco Carriers Vs. CIT, 256 ITR 0050 Gujarat (2002) (vii) Sanco Trans Ltd. Vs. ACIT, 61 ITD 0317 Madras (1997) (That crawler crane is a vehicle and not plant & machinery is decided). (viii)CIT Vs. Galord Constructions, 190 Taxman 0406 (Kerala)(2010) (ix) Sanghvi Movers (P) Ltd. Vs. DCIT, 110 ITD 001 (Pune) (2008) (x) FIS Logistic P. Ltd. Vs. ACIT, 61 SOT 24 (Kolkata) (2014) (xi) Ansari Holding & Investment (P) Ltd. Vs. DCIT, 12 SOT 0438 (Hyderabad)(2007). (xii) John Energy Ltd. Vs. DCIT, 154 ITD 0451 (Ahmedabad) (2015) (xiii)Chairman Rajasthan State Road Transport Corp. & Others-vs Santosh & Others, 7 SCC 94 (SC) (2013).

16. In view of the above discussion and considering judicial pronouncements as quoted above we do not find any merit in action of lower authorities for declining higher claim of depreciation at 30% on Crawler Cranes and Dozers.

17. In the result, appeal of the assessee is Allowed."

We further note that the Coordinate Bench of this Tribunal in ITA No.2186/MUM/2018, by order dated 31/07/2019 for the A.Y. 2014-15 has decided the issue in favour of the assessee by following its earlier order for A.Y. 2011-12. In view of these facts, we are inclined to uphold the order of the Id.CIT(A) by dismissing the appeal of the Revenue."

4. In the net result, the appeal filed by the Revenue is dismissed.
Order pronounced in the open court on 10.06.2021

Sd/-
C.N. PRASAD
JUDICIAL MEMBER

Sd/-
S. RIFAUH RAHMAN
ACCOUNTANT MEMBER

MUMBAI, DATED: 10.06.2021

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai