

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.2327/Bang/2019
Assessment Year: 2009-10

M/s. P.N. Rao M/s. Brahmaya& Co. Chartered Accountants 10/2, Khivraj Mansion, Kasturba Road Bengaluru 560 001 <b>PAN NO : AABFP8461F</b>	<b>Vs.</b>	ACIT Circle-1(1) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Smt. Pratibha, A.R.
<b>Respondent by</b>	:	Shri Ganesh R. Ghale, D.R.

<b>Date of Hearing</b>	:	22.04.2021
<b>Date of Pronouncement</b>	:	23.06.2021

**O R D E R**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The Assessee has filed this appeal challenging the order dated 29.8.2019 passed by Ld. CIT(A)-1, Bengaluru and it relates to the assessment year 2009-10.

2. The assessee is aggrieved by the decision of Ld. CIT(A) in partially confirming the disallowance made by the A.O. in respect of depreciation claimed by the assessee.

3. The facts relating to the issue are stated in brief. The assessee is a dealer in textiles/readymade garments for men. During the course of assessment proceedings, the A.O. noticed that

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the assessee has claimed depreciation @ 100% amounting to Rs.52,03,586/- under the block “furniture & fittings”. The assessee had claimed depreciation @ 100% claiming that they are temporary constructions. During the course of assessment proceedings, the A.O. asked the assessee to produce bills & vouchers in support of purchase of furniture and fixtures. The assessee could not produce bills for an amount of Rs.14,55,919/-. Hence, the A.O. disallowed the same holding that the assessee could not prove the expenditure. For the remaining amount of Rs.37,47,667/- the assessee produced bills. It was submitted that the assessee is having showrooms at various places taken on rental basis and these expenses have been incurred on interior decoration of the said showrooms. Since, these show rooms are run on rented premises, it was contended that these expenditures are to be categorized as temporary constructions. Accordingly, it was claimed that the assessee is eligible for depreciation @ 100%.

4. The A.O. noticed that the assessee has capitalized these expenditures in the books of accounts as “furniture & fixtures” and for income tax purposes, it is claimed as temporary constructions. Hence the AO did not agree that these expenditures relate to temporary structures. Accordingly, he held that the depreciation is allowable @ 10%, as applicable to furniture and fixtures. Accordingly, he allowed depreciation of Rs.3,74,776/- and disallowed the balance amount of Rs.33,72,897/- claimed by the assessee as depreciation.

5. Before Ld. CIT(A), the assessee submitted that the amount of Rs.14,55,919/- disallowed by the A.O. for want of bills/vouchers included following item of expenses.

Commission	-	Rs.1,25,000/-
Electricity charges	-	Rs. 15,288/-
Rent	-	Rs.5,00,000/-
Salaries	-	Rs. 41,807/-
Shop insurance	-	Rs. 33,427/-
Shop maintenance	-	<u>Rs. 1,400/-</u>
<b>Total</b>	-	<b><u>Rs.7,16,922/-</u></b>

The assessee furnished rental agreement in support of the payment of rent. It was submitted that these expenses have been incurred during the time of setting up of the showroom and hence, they have been capitalized in the books of accounts. Considering the rental agreement, the A.O. took the view that electricity charges of Rs.15,288/-, rent of Rs.5,00,000/- and shop insurance of Rs.33,427/- (all related to the premises taken on rent through rental agreement) can be allowed to be capitalized and depreciation @ 10% be allowed. Accordingly, the Ld. CIT(A) confirmed the disallowance of remaining amount and directed to allow depreciation @ 10% on the above said 3 payments.

6. With regard to the disallowance of depreciation on the remaining amount of Rs.37,47,667/-, the Ld. CIT(A) noticed that the expenditure incurred on interiors and furnishings including flooring, counters, etc. are being used as it is by the assessee even at the time of hearing the appeal. The expenditure had been incurred by the assessee during the financial year 2008-09 and the same was continued to be used by the assessee even in the year 2019. Accordingly, the Ld. CIT(A) took the view that these expenditures cannot be considered to be temporary in nature. Accordingly, he confirmed the order of the A.O. in restricting the depreciation claim to 10%. Aggrieved, the assessee has filed this appeal before the Tribunal.

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7. I heard the parties and perused the record. The Ld. A.R. placed her reliance on the written submissions filed before Ld. CIT(A). The Ld. D.R. placed his reliance on the order placed by Ld. CIT(A).

8. The first issue relates to disallowance of Rs.14,55,919/- out of which the Ld. CIT(A) has allowed capitalization to the extent of Rs.5,48,715/- and directed the AO to allow depreciation @ 10%, as applicable to furniture & fixtures. The plea of the assessee is that the Ld. CIT(A) should have allowed capitalization of entire amount of Rs.14,55,919/-. However, it is an admitted fact that the assessee has not produced any bills/vouchers in support of these payments. The assessee could furnish details of cheque numbers relating to these payments, but could not establish the nature of expenses for which these payments have been made. Since the assessee could produce rental agreements, the Ld. CIT(A) has allowed capitalization of payments related to building. It is a settled proposition that the onus to prove the expenditure lies upon the assessee. Since the assessee has failed to prove the nature of expenditure, I do not find any infirmity in the order passed by Ld. CIT(A) on this issue.

9. The next issue relates to restricting the depreciation to 10% in respect of interior and other expenses incurred on the showrooms. I noticed earlier that the Ld. CIT(A) has given a categorical finding that interiors, furniture and fixtures installed in the year 2008 continued to be used even in the year 2019. Accordingly, the Ld. CIT(A) has observed that these expenses have given enduring benefit to the assessee. These facts clearly demonstrate that the expenditure incurred by the assessee cannot be termed towards temporary structures. Another fact that the assessee, on the first issue, has sought capitalization of entire

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amount of Rs.14,55,919/-. On the above said amount also, the assessee had claimed depreciation 100%. The AO disallowed the entire amount for want of bills/vouchers. Before Ld CIT(A), the assessee has only sought capitalization and depreciation @ 10%. Thus, the assessee has accepted the treatment given by AO in respect of the above said amount of Rs.14,55,919/-. Hence it is not appropriate on the part of the assessee to take a different stand with regard to the remaining amount. Accordingly, I am of the view that the Ld. CIT(A) was justified in confirming the order of the A.O. in restricting the depreciation to 10%.

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

Order pronounced in the open court on 23<sup>rd</sup> June, 2021

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 23<sup>rd</sup> June, 2021.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore**