

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.5230/Del/2016

[Assessment Year : 2012-13]

Bindra Automotive System Pvt.Ltd., C/o-SSAR & Associates, CA, 4852/24, 1 st Floor, Near Sanjivan Hospital, Ansari Road, Daryaganj, New Delhi-110002. PAN-AADCB2016R	vs	ITO, Ward-5(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Sh. Om Parkash, Sr.DR	
Date of Hearing	27.12.2021	
Date of Pronouncement	31.01.2022	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2012-13 is directed against the order of Ld. CIT(A)-2, New Delhi dated 23.06.2016. The assessee has raised following grounds of appeal:-

1. *“That the assessment order passed by the Ld. AO deserves to be quashed since the same is not in accordance with the law.*

2. *That under the facts and circumstances of the case, the CIT(A) is grossly erred in sustaining the disallowance of Rs. 660000/- on account of Bank Guarantee written off.*

3. *That under the facts and circumstances of the case, the CIT(A) is grossly erred in sustaining the disallowance of Rs. 103664/- on account of Depreciation.*

4. *That the appellant craves leave to add, amend, alter or withdraw any ground of appeal at the time of hearing with the permission of the Hon'ble ITAT, Delhi Bench.”*

2. At the time of hearing, no one appeared on behalf of the assessee. Notice sent by speed post duly served and the acknowledgement is returned therefore, it is presumed that the notice duly served to the assessee. It is seen from the records that the assessee has not appeared despite being given various opportunities therefore, the appeal is taken up for hearing in the absence of the assessee.

3. Facts giving rise to the present appeal are that the return of income was filed through e-mode declaring income of Rs.29,16,850/- by the assessee on 29.09.2012. The case was selected for scrutiny through CASS. In response to this statutory notice, Ld. Authorized representative of the assessee company attended the assessment proceedings time to time filed details as

called for. While framing the assessment, the Assessing Officer (“AO”) made various disallowances. The AO noticed that the assessee had claimed an amount of Rs.6,60,000/- in the Profit & Loss A/c as expenses under the head “DBD for Bank Guarantee Witten off”. The assessee was asked to explain the same. Before the AO, the assessee submitted that the amount deposited long back for which neither the guarantee nor the deposit is traceable, hence the same had been written off from the books being untraceable and unrecoverable. The AO was not satisfied by the reply given by the assessee therefore, he made addition of Rs.6,60,000/-. Further, the AO made disallowance of house tax of Rs.10,567/- and sales tax penalty of Rs.28,785/-. The AO also disallowed depreciation of Rs.1,03,664/-.

4. Aggrieved against this, the assessee preferred the appeal before Ld.CIT(A) who after considering the submissions, dismissed the appeal.

5. Aggrieved against this, the assessee is in appeal before this Tribunal.

6. Ground Nos.1 & 4 of the assessee’s appeal are general in nature hence, need no separate adjudication.

7. Ground No.2 raised by the assessee is against the sustaining the disallowance of Rs.6,60,000/- on account of Bank Guarantee written off.

8. Ld. Sr. DR supported the order of authorities below and submitted that the assessee could not prove its claim with the supporting evidences.

9. I have heard the Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. I find that Ld.CIT(A) has given finding on fact by observing as under:-

4.0 *“Ground no. 3 of the appeal is directed against the disallowance of expenses claimed for DBD Bank Guarantee written off amounting to Rs. 6,60,000/-. The appellant has claimed an amount of Rs. 6,60,000/- in the P&L account under the head DBD for Bank Guarantee written off. The AO asked the appellant to explain the details and nature of the same. The appellant in reply to the AO submitted that the DBD for Bank Guarantee written off pertains to the amount deposited long back for which neither the guarantee nor the deposit is traceable. Hence the same has been written off from the books, being untraceable and unrecoverable. As the appellant failed to explain before the AO that the amount written off had earlier been taken into the income of the appellant and no supporting*

evidences to explain whether the amount written off pertains to revenue income or capital income in earlier year(s) were filed, the same was disallowed and added to the total income of the appellant. The appellant before the undersigned submitted the same reply, that the amount is not traceable and hence written off from the books, as submitted before the AO. I am very well satisfied with the findings of the Assessing Officer as the appellant did not submit any documentary proof regarding the amount written off. Being a private limited enterprise, it is difficult to assume that an amount of Rs. 6,60,000/- being a bank guarantee was not traceable by the appellant nor does it have any documentary proof regarding the same. The appellant claims that it does not have any clue regarding the amount being capital or revenue in nature nor has any evidences regarding whether the amount was actually a part of the income in the earlier years. Thus, as the onus was on the appellant to prove the genuineness of the claim, the ground of appeal is dismissed as nothing was placed on record to prove that the amount regarding Bank Guarantee written off was actually part of the income in the current or earlier year(s).”

10. The finding on fact by the Ld.CIT(A) is not rebutted by the assessee by placing any contrary material on record. Therefore, I do not see any reason to interfere in the finding of Ld.CIT(A) and the same is hereby, affirmed. Ground No.2 of assessee's appeal is dismissed.

11. Ground No.3 is against the sustaining the disallowance of Rs.1,03,664/- on account of depreciation.

12. Ld.Sr.DR supported the order of authorities below and submitted that the depreciation was rightly disallowed and the assessee could not prove the higher depreciation with material evidences even the facts as per audit report claimed depreciation of Rs.9,10,491/- which was admissible as per Income Tax Rules, 1962 therefore, there is no infirmity in the finding of authorities below.

13. I have heard the Ld.Sr.DR and perused the material available on record and gone through the orders of the authorities below. I find that Ld.CIT(A) has decided the issue by observing as under:-

5.0. “Ground No.4 of the appeal is directed against the disallowance of Rs.1,03,664/- from depreciation claimed by the appellant in the return of income. The AO has allowed depreciation of Rs. 9,10,491/- which has been claimed as per the Tax Audit Report and duly signed by the tax auditor, as submitted by the appellant in the assessment proceedings. The dispute in the disallowance of depreciation arose because the appellant submitted two depreciation charts and claimed depreciation in the return of income at a higher figure than that claimed while filing the computation of income before the AO. It was averred before the Assessing Officer as well as before me that the computation of income in which lower depreciation was

claimed was actually the first -draft and not final and had been enclosed by mistake. The Assessing Officer has not accepted the above contention of the appellant for the reasons given in paras 7.1 and 7.2 of the assessment order which are reproduced below:-

"7.1 This submission of the assessee was considered but the same is not acceptable because of the following factual position:-

a) In the computation of income filed with the return of income alongwith letter dated 30.09.2013, the income has been shown at Rs.30,25,517/-, in which depreciation as per Income Tax Rules has been claimed at Rs.9,10,491/-.

b) The said depreciation chart of Rs.9, 10,491/- is filed by the assessee with the Tax Audit Report which is also duly signed by the Tax auditors.

c) The other alleged depreciation chart is not a part of Tax Audit Report, nor the same is signed by the Tax Auditors. Even in this depreciation chart the assessee has claimed depreciation of Rs.22,593.89p in respect of "Traveller Euro-ii" which has been sold during the year for Rs. 1,50, 000/-, the WDV of which as per this chart has been shown at Rs.3,00,625.93p and after excluding Rs.1,50,000/- from this WDV of Rs.3,00,625.93p, depreciation has been claimed on the balance amount of Rs. 1,50, 625.93p amounting to Rs.22593.89 which is not permissible because the said asset has been sold during the year.

d) Even the number of assets does not tally with each other as shown in both the depreciation charts. Even the second depreciation chart in which depreciation has been claimed at Rs.10,14,154,66 is not authentic.

7.2 In view of above, depreciation is allowed only at Rs.9,10,491/- which has been filed with the Tax Audit Report and duly signed by the Tax Auditor."

The appellant has not been able to explain the above anomalies pointed out by the Assessing Officer either at the assessment or first appellate stage. Accordingly, the action of the Assessing Officer in restricting the depreciation to Rs.9,10,491/-, which is also in consonance with the Tax Audit Report duly signed by the Tax Auditor, is upheld and this ground of appeal is also dismissed."

14. The assessee has not given any supporting evidences to substantiate its contention that the disallowance of depreciation of Rs.1,03,664/- was uncalled for when the closing WDV of Assessment Year 2012-13 has been taken as closing WDV of Assessment Year 2011-12. All other additions and adjustments for purchase and sales have been accepted, depreciation of Rs.10,14,155/- has been claimed as the figure had been wrongly taken from the computation of taxable income given erroneously as against the correct computation which was subsequently submitted and reason for difference in computation and return for income was

taken for wrong depreciation. I find that the auditor has computed depreciation of Rs.9,10,491/- in the audit report. The assessee has not furnished any certificate from the Auditor as there was any error or mistake in his audit report. Therefore, in the absence of such certificate by the Tax Auditor, I do not see any reason to interfere in the findings of the authorities below, the same is hereby affirmed.

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

Order pronounced in the open Court on 31st January, 2022.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI