

**IN THE INCOME TAX APPELLATE TRIBUNAL  
CIRCUIT 'SMC' BENCH, VARANASI**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.119/VNS/2019  
Assessment Year: 2014-15**

Vinod Kumar Gupta (HUF), 20, Raghunath Nagar, Mahmoorganj, Varanasi, U.P. PAN-AABHV1586P	v.	ACIT, Central Circle, Varanasi
(Appellant)		(Respondent)

Appellant by:	Mr. O.P. Shukla, Adv
Respondent by:	Mr. A.K. Singh, Sr. D.R.
Date of hearing:	23.03.2022
Date of pronouncement:	23.03.2022

**ORDER**

**SHRI VIJAY PAL RAO, JUDICIAL MEMBER:**

This appeal by the assessee is directed against the order dated 01.03.2019 of CIT(A), for the assessment year 2014-15. The assessee has raised the following grounds:-

- "1. Because, the Id. Commissioner of Income Tax (Appeals) was not justify to conform interest of Rs. 86464.00 from Sanrachna Infra Project Pvt. Ltd., due to the deductor has not uploaded the details in 26Q hence the said amount has not reflected in 26AS therefore, the appellant has not taken the interest Rs. 86464.00 and TDS thereon. Due date for filing of return of income the said amount has not reflected in their 26Q and after expiry of one year the said amount were reflected in 26AS due to deductor has made provision after filing of return of income by the appellant.*
- 2. Because the Ld. Commissioner of Income Tax (Appeals) was not justified to disallow the depreciation claimed on Car which is used wholly and exceculy used for a business purpose and amount of Rs. 1,06,191.00 on the depreciation claimed an amount of Rs. 87,80,94.00.*
- 3. Because, the appellant craves for a right to raise any additional ground during the course of hearing of the case.*
- 4. Because the order passed by the Id. Commissioner of Income Tax (Appeals) to confirm the action of the Assessing Officer is erroneous, bad in law and on facts and is liable to the deleted."*

2. Ground No. 1 is regarding the addition made by the Assessing Officer on account of interest income as reflected in Form No. 26AS. The learned AR of the assessee has submitted that at the time of filing the return of income, no such interest receipt was reflected in Form 26AS and therefore, the assessee has not taken this interest amount as part of the declared income. Further, the said investment on which the interest of Rs. 86,464/- was paid by M/s Sanrachna Infra Project Pvt. Ltd., belongs to Ms. Usha Gupta and not to the assessee HUF. The learned AR has pointed out that the deductor of the TDS has wrongly updated the details in the PAN of the assessee instead of Ms. Usha Gupta who has made this investment and not by the assessee. He has referred to the income tax return of the assessee as well as Smt. Usha Gupta and submitted that Smt. Usha Gupta has declared interest income in her return of income. He has referred to the ledger account of Sanrachna Infra Project Pvt. Ltd., in the books of Sh. Tirupati Distributors, the proprietorship concerned Smt. Usha Gupta and submitted that the investment was made by Smt. Usha Gupta and not by the assessee HUF. Therefore, the said interest income was wrongly added to income of the assessee due to the mistake on the part of the payer and deductor of TDS who has wrongly uploaded these details of TDS in the PAN of the assessee. The learned AR has submitted that the assessee has filed an affidavit to explain these facts however, the authorities have not considered and appreciated the relevant details and document on this issue. The assessee has not received any interest from M/s Sanrachna Infra Project Pvt. Ltd., and due to the mistake, the TDS was deposited in the PAN of the assessee HUF. Hence, the learned AR has pleaded that the said amount of interest does not belongs to the assessee HUF and liable to be deleted.

3. On the other hand, the learned DR has submitted that the Assessing Officer has made the addition as per the details available in Form 26AS which clearly shows that the interest of Rs. 86,464/- was received by assessee during the assessment year under consideration and consequently the said amount was

added to the total income of the assessee. Even in the computation of income of Smt. Usha Gupta, no bifurcation of interest income has been given therefore, it is not clear whether the said amount has been offered to tax by Smt. Usha Gupta. He has relied upon the orders of the authorities below.

4. I have considered the rival submissions as well as the relevant material on record. The Assessing Officer has made the addition of Rs. 86,464/- on account of interest income as it is reflected in Form 26AS. The assessee has explained that this interest does not belonging to the assessee but the same pertains to Smt. Usha Gupta, who has invested the money in M/s Sanrachna Infra Project Pvt. Ltd.,. The learned AR has referred to the income tax return of Smt. Usha Gupta, the proprietorship of Shri. Tirupati Distributors. It is pertinent to note that if the said interest income was already offered to tax by Smt. Usha Gupta in her return of income then the same cannot be taxed twice. However, from the details filed by the assessee it is not clear in the absence of the bifurcation of the interest income of Smt. Usha Gupta as to whether she has included this amount of interest of Rs. 86,464/- in the total income declared in the return of income. Further, it is also a matter of verification whether this entry as reflected in Form 26AS is due to the mistake of the PAN of the assessee taken instead of Smt. Usha Gupta. Accordingly, in the facts and circumstances of the case, this issue is set aside to the record by the Assessing Officer for deciding the same afresh after proper verification and enquiry to ascertain the correct facts from the record and documents to be filed by the assessee. If it is found that the said interest income belongs to Smt. Usha Gupta and not to the assessee then the same cannot be added to the income of the assessee. Needless to say before passing the fresh order, the assessee be given an opportunity of hearing.

5. Ground no. 2 is regarding disallowance of depreciation on vehicle on the ground of personal use. The Assessing Officer has disallowed a part depreciation as one of the vehicles on the ground of personal use amounting to Rs. 1,66,191/-.

The learned AR of the assessee has referred to the schedule of assets and submitted that in the balance-sheet, the assessee has shown written down value of the vehicles out of which the Assessing Officer has disallowed part depreciation on delivery van. On the other hand, the learned DR has relied upon the orders of the authorities below.

6. I have considered the rival submissions as well as relevant material on record. The Assessing Officer has made a part disallowance of depreciation claimed by the assessee on delivery van which is discussed by the Assessing Officer in para 5 as under:-

*“5. Assessee has claimed depreciation of Rs.8,78,094/- which includes depreciation of car of Rs.7,07,940/-. Vide order sheet entry dated 07/11/2016, assessee was show caused as to why depreciation @20% of Rs.7,07,940/- claimed on car, may not disallowed being personal use, but no written submission filed by the assessee. Looking to the nature of business, personal use of car cannot ruled out. Therefore, after discussion with the counsel of the assessee, depreciation amounting to Rs.1,06,191/- (15% of 7,07,940/-) is disallowed being personal use and added to the total income of the assessee.”*

7. On going through the schedule of fixed assets, it is noted that the assessee has claimed depreciation of Rs. 7,7,940/- on delivery van at the written down value of Rs. 47,19,601/-. The Assessing Officer has not disputed the claim of the assessee on the second vehicle which is Mahindra XUV which is otherwise a passenger vehicle. Once the claim of depreciation on passenger vehicle is accepted by the Assessing Officer then the depreciation on delivery van cannot be disallowed on the ground of personal use. The Assessing Officer has otherwise made this disallowance on presumption and surmises without the actual fact of the use of the vehicle. Even otherwise the delivery van is hardly used for personal purpose and can be used only for the business purpose of the assessee. Accordingly, the disallowance made by the Assessing Officer on depreciation on the delivery van is not justified and the same is deleted, hence the ground no. 2 is allowed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court after conclusion of hearing on 23.03.2022.

***Sd/-***  
**[VIJAY PAL RAO]**  
**JUDICIAL MEMBER**

DATED: 23/03/2022

Varanasi

Sh

Copy forwarded to:

1. Appellant-
2. Respondent-
3. CIT(A), Varanasi
4. CIT-
5. DR-

By order  
Assistant Registrar