

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 2954/Ahd/2014
Assessment Year 2008-09**

The DCIT (OSD)-I, Circle-4, Ahmedabad (Appellant)	Vs	Jaihind Projects Ltd., 3 rd Floor Venus Atlantis Corporate Park, Nr. Prahladnagar Auda Garden, Satellite, Ahmedabad-380015 PAN: AAACJ9366R (Respondent)
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Assessee by: None
Revenue by: Shri S.S. Shukla, Sr. D.R.

Date of hearing : 18-04-2022
Date of pronouncement : 20-04-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the revenue against the order of the Id. Commissioner of Income Tax (Appeals)-VIII, Ahmedabad in Appeal no. CIT(A)-VIII/DCIT/Cir.4/65/12-13 vide order dated 25/08/2014 passed for the assessment year 2008-09.

2. The Department has raised the following grounds of appeal:-

“1. The Ld. CIT(A) has erred in law and on facts to admit additional evidences in violation of Rule 46A of IT Rules.

2. The Ld. CIT(A) erred in law and on facts to delete the disallowance of claim of depreciation on Construction Vehicles given on hire at higher than permissible under the head 'Plant & Machinery'.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

4. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of the Assessing Officer may be restored to the above extent.”

3. The brief facts in relation to the case are that original assessment was completed u/s 143(3) of the Act on 22-12-2010. Thereafter case was reopened u/s 148 of the Act to *inter-alia* disallow excess depreciation on 'Construction' vehicles claimed @ 40% of WDV. The claim of excess depreciation to the tune of Rs. 22,42,228/- was disallowed by Ld. Assessing Officer by holding that 'construction vehicles' do not carry any higher rate of depreciation but were eligible for normal rate of depreciation @15% only.

4. In appeal against the assessment order, the assessee submitted that the assessee is eligible for a higher rate of depreciation since the vehicles were give on hire and assessee has shown rental income from those vehicles. The Ld. CIT(A) allowed the claim of excess depreciation by holding as under:

“On a careful consideration of the entire facts of the case, it is noted that though the vehicles were construction vehicles the appellant has

given these vehicles on hire and the rental or higher receipts have been offered for income. It is also further observed that **the vehicles have been used for the purpose of higher and letting out regularly during the course of year as a regular income from these vehicles are being shown.** It is not a case where the principal use of the vehicles was for the purpose of business but only a small and casual letting out was made by the appellant. **The appellant has demonstrated that the vehicles were let out almost during the entire part of the year.** The appellant has also shown the income earned from letting out of these vehicles in the profit and loss account for the year. The issue regarding existence of vehicle is not in dispute. The vehicles are registered with the RTO as motor vehicles, which is clearly evident from the copies of registration book submitted during the course of appellate proceedings. **The AO has also examined these certificates and booklets. And in the remand report no factual observation regarding this aspect has been given by her. The observation of the AO that no evidence regarding name and addresses of the parties to whom the vehicles have been given on rent appear to be factually incorrect as the appellant has given before me all those details.** In of these facts I am of the considered opinion that the claim of the appellant regarding higher rate of depreciation as the vehicles were let out on hire during the year, is acceptable. The disallowance made by the AO is therefore, directed to be deleted.

5. Before us, the Ld. Departmental Representative argued that the assessee was in construction business and there is nothing to demonstrate that the vehicles were let out commercially on hire. It is not the case that the assessee was engaged in the business of letting on vehicles on hire. On the contrary the assessee was engaged in construction activity and is not engaged in the business of letting vehicles for hire on a commercial basis and the vehicles were not used for plying commercially. The Ld. DR submitted that additional details were filed before Ld. CIT(A) in respect of claim of higher rate of depreciation, who admitted the same by way of additional evidence, whereas the assessee did not file these details during assessment proceedings, despite being provided ample opportunity during assessment proceedings. In response, Ld. Counsel for the assessee placed reliance on the observations made by Ld. CIT(A) in the appellate order and also placed on record order of ITAT Ahmedabad in the case of M/s Akash Oil Field Service in ITA 3207/Ahmedabad/2014 which is to the effect that vehicles let out for hire are eligible for claim of depreciation at a higher rate.

6. We have heard the rival contentions and perusal the material on record. We note that during the course of proceedings before Ld. CIT(A), the assessee submitted a request under Rule 46A for admission of additional evidence in respect of claim of depreciation on commercial vehicles. The copy of submissions filed by the assessee was forwarded to Ld. Assessing Officer for his comments. The Ld. Assessing Officer vide letter dated 03-01-2014 requested the assessee to appear before him and Ld. Assessing Officer finally provided his comments vide letter dated 02-06-2014. In the said letter, Ld. Assessing Officer submitted as under:

*“The assessee has submitted registration certificates of the construction vehicles on which depreciation @40% has been claimed by the assessee. A perusal of the same shows that the vehicles are Tata 207, Tata LMV, HGV etc. but the same don't qualify for depreciation @ 40% as per the income tax rules depreciation rates. **The assessee has not submitted any details to show that the rental income earned is from the same vehicles . No evidences as name and address of the parties to whom these vehicles have been given on rent and copy of accounts have not been submitted by the assessee even though specifically asked to.** In view of the above the addition made by the AO. is correct as the vehicles don't qualify for depreciation @40%.”*

Now, in our view there are apparent contradictions in the remand report submitted by Ld. Assessing Officer and the order of Ld. CIT(A), wherein the remand report states that no details of hiring of vehicles viz. name of parties, copies of accounts etc. were submitted in remand proceedings whereas the Ld. CIT(A) in the order has stated that all details were examined by him in appeal. While we are of the view that it is a settled law that vehicles let on hire are eligible for higher depreciation, but in the instant facts, in our view there are apparent factual contradictions which leads us to conclude that the assessee has not been able to irrefutably establish whether vehicles were let out on hire on regular basis, with details of parties to whom vehicle were given on hire, duration for which vehicles were let out for hire i.e. whether vehicles were being let out on hire on a regular basis throughout the year, the

purpose for which the vehicles were being used when let out on hire, the details of rental income earned from such vehicle etc. Therefore, in the interests of justice, we are restoring the file to Ld. CIT(A) to re-examine the matter afresh in light of observations made above, after giving the assessee due opportunity. The Ld. Assessing Officer may also be provided due opportunity of verification of details submitted by the assessee. The Ld. CIT(A) may also examine the statutory provisions and judicial authorities on which reliance is being placed by the assessee, while deciding the issue.

7. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 20-04-2022

Sd-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 20/04/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद