

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

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

**ITA No. 425/Ahd/2018
Assessment Year 2014-15**

Agrawal Roadlines Pvt. Ltd. A-1004, Rose Wood Estate, Nr. Panch Tirth Bunglows, Satellite, Ahmedabad-380015, PAN AABCA667M (Appellant)	Vs	The Dy. CIT, Circle-1(1)(1), Ahmedabad (Respondent)
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**Assessee by: Shri Tushar Hemani Sr. A.R.
Revenue by: Shri S.S. Shukla, Sr. D.R.**

Date of hearing : 20-04-2022
Date of pronouncement : 08-06-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-1, Ahmedabad in Appeal no. CIT(A)-1/DCIT Circle -1(1)(1)321/2016-17 vide order dated 29/12/2017 passed for the assessment year 2014-15.

2. The assessee has taken the following grounds of appeal:-

“1. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of the AO of invoking the provisions of Rule 8D without recording any dissatisfaction to the claim of appellant.

2. The learned CIT(A) has erred both in law and on the facts of the case in confirming disallowance made by the AO U/S.14A of the Act r.w.r. 8D of the Income-tax Rules, 1962 to the extent of exempt income of Rs.3,715/-.

3. The learned CIT(A) has erred both in law and on the facts of the case in confirming the disallowance of expense incurred for increase in share capital u/s. 35D of the Act to the extent of Rs. 39,850/- (wrongly mentioned at Rs.7,970/-).

4. Alternatively and without prejudice, the expense incurred for increase in share capital should be allowed as business expense u/s. 37 of the Act.

5. The learned CIT(A) has erred both in law and on the facts of the case in limiting grant of depreciation to 15% on the opening balance comprising addition made to block of commercial vehicles in AY 2013-14 instead of 50%.

6. Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the

impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.

7. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s.234A/B/C of the Act.*

8. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s.271(i)(c) of the Act.*

The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”

3. During the course of appeal, the counsel for the assessee submitted he shall not be pressing grounds 1 to 4 and hence the same are not adjudicated. Further, grounds 6 to 8 are general in nature and do not require any specific adjudication.

4. Before us, ground number 4 was argued and the same is being decided in the following paragraphs.

5. The brief facts of the case in respect of ground number 4 are assessee company claimed depreciation of ₹ 52,63,412/- @ 50% on commercial vehicles (heavy). During the course of assessment, Ld. Assessing Officer held that excess depreciation @ 50% was not available to the assessee company in view of change in the constitution of business. The assessee submitted that it has been claiming depreciation @ 50% on the above

commercial vehicles since AY 2010-11 and hence on the principles of consistency, the claim is allowable in the present assessment year. However, the Ld. Assessing Officer disallowed the claim of the assessee with the following observations:

“4.3 The reply of the assessee company is considered but the same is not acceptable. The excess depreciation @ 50% is not available to the company, as the vehicles have not been purchased by the assessee company in the period stipulated. Therefore, the claim of depreciation on the said vehicles is liable to be restricted to 15%. Accordingly, the excess depreciation claimed worked out at Rs. 36,84,388 (Rs. 52,63,412/- minus Rs. 15,79,024/-) is liable to be disallowed and added back to the total income of the assessee company. Penalty proceedings U/s. 271(1)(c) of the Act are initiated for furnishing inaccurate particulars of income.”

6. In appeal, Ld. CIT(A) disallowed the assessee's appeal and confirmed the additions made by the Ld. Assessing Officer.

7. We observe that the issue is directly covered in favour of the assessee by order of the ITAT Ahmedabad in his own case for AY 2013-14 in ITA number 2905/Ahd/2017, wherein the ITAT made the following observations, while allowing the claim of the assessee on this issue:

3. The fact in brief is that return of income declaring income of Rs. 32,28,860/- was filed on 28th Sep, 2013. The case was subject to scrutiny and notice u/s. 143(2) of the act was issued on 4th Sep, 2014. During the course of assessment proceedings, the assessing officer noticed that assessee has claimed depreciation of Rs. 95,12,760/- @

50% on heavy goods vehicle as against allowable depreciation @ 30%. On query, the assessee explained that claim of 50% depreciation on vehicle is pertained to trucks which were originally purchased in assessment year 2009-10 and 2010-2011. The assessee has further submitted that in order to keep vehicle purchased in proper condition it has incurred expenses for renovation of drivers cabin etc. Therefore, the said amount was capitalized and depreciation was claimed at 50% as it is in the same block of asset. The assessing officer has not agreed with the submission of the assessee and restricted the claim of depreciation @ 30% and disallowed excess claim of depreciation to the amount of Rs. 13,86,331/-.

4. Aggrieved assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

5. During the course of appellate proceedings before us, the ld. counsel has filed paper book comprising copies of document and detail of information furnished before the lower authorities. After referring the pages of paper book, the ld. counsel has contended that assessee has made depreciation correctly in respect of repair carried out on commercial vehicles purchased in financial year 2009-10 and 2010-11 on which depreciation is available @ 50%. The ld. counsel has further contended that otherwise the whole amount of expenditure should be allowed as revenue expenditure as the amount of repair is not categorized to any other block of asset. On the other hand, the ld.

departmental representative has supported the order of lower authorities.

*6. We have heard both the sides and perused the material on record. During the course of assessment, the assessee has claimed depreciation @ 50% i.e. on tankers. During the course of assessment, the assessing officer has restricted the claim of depreciation @ 30% in respect of addition made to such commercial vehicles. **The commercial vehicles were purchased by the assessee during F.Y. 2008-09 and 2009-10 which were eligible to special rate of depreciation @ 50%. It is noticed that no new vehicle has been purchased by the assessee during the year under consideration. It is observed that no depreciation can be claimed for individual assets under income tax act because of concept of block of assets. Therefore, we are of the view that the depreciation in the case of the assessee is eligible as per the block of asset otherwise if such expenditure are put in the category of repair/revenue expenditure then the full claim of such expenditure are to be allowed. Since the assessing officer has treated such expenditure as capital expenditure, therefore, we consider that no new asset has been created on renovation of the commercial vehicle. Therefore, the claim of the assessee for depreciation @ 50% applicable to the particular block of assets is justified. Accordingly, we direct the assessing officer to provide the depreciation @ 50% applicable to the block of assets in the case of the assessee. Accordingly, this appeal of the assessee is allowed.***

7.1 Respectfully following the above ruling in the assessee's own case for AY 2013-14 and on the principles of consistency, we are hereby allowing the assessee's appeal.

8. In the result, the assessee's appeal is allowed.

Order pronounced in the open court on 08-06-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 08/06/2022

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