

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER S RIFAUR

ITA No. 2745/Mum/2017
(A.Y: 2012-13)

M/s Sunshine Communication Pvt Ltd, Thar & Co, 203, Capri Bldg, Opp HDIL Towers Anant Kanekar Marg, Bandra (E) Mumbai - 400051.	Vs.	ACIT, CC-5(4), Parimal Chambers, Lalbaug, Mumbai-400012.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCS4276L		
Appellant	..	Respondent

Appellant by :	Shri Nimesh Thar.AR
Respondent by :	Shri S.Anbuselvam.DR

Date of Hearing	14.07.2022
Date of Pronouncement	25.07.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-53, Mumbai passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. The Learned CIT (A) has erred in law & on facts in upholding the following actions of the assessing officer, which is invalid and bad in Law.*

2. The Learned CIT (A) has erred in upholding the action of the learned assessing officer in disallowing loss claimed on sale of TDR of Rs. 2,61,32,476/-

3. The Learned. CIT (A) has erred in upholding the action of the learned assessing officer in disallowing depreciation on vehicle to the extent of Rs.2,76,263/-.

4. The Learned CIT (A) has erred in upholding the action of the learned assessing officer in demanding interest paid to the Appellant under section 244A of the Act.

5. The Learned CIT (A) has erred in upholding the action of the learned assessing officer in levying interest on the Appellant under Sections 234D of the Act

6. The Appellant craves leave to add to and/ or amend and/ or delete and / or modify and/ or alter the aforesaid grounds of appeal as and when the occasion demands.

7. All the aforesaid grounds of appeal are independent, in the alternative and without prejudice to one another.

1.1 At the time of hearing, the Ld.AR submitted that the ground of appeal No. 1 is general in nature and the Ld.AR is not pressing the ground of appeal No. 2,

whereas the ground of appeal Nos 4 & 5 are consequential in nature and the effective ground of appeal is No. 3. We considering the fact that the Ld.AR is not pressing the ground of appeal No.2.Hence, the ground of appeal is treated as withdrawn and is dismissed.

2. The brief facts of the case are that, the assessee company is engaged in the business of advertising. The assessee has filed the return of income for the A.Y 2012-13 on 27.09.2012 disclosing a total income of Rs. Nil. The assessee has filed the revised return of income on 19.02.2013 disclosing a total income of Rs. Nil and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with questionnaire are issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. (i) the Assessing Officer (A.O.) found that the assessee has investments in the Balance Sheet and no expenses attributable to earning exempt income was disallowed and hence invoked the provisions of Sec.14A r.w.r 8D2(iii) of the IT Rules and worked out the

disallowance of Rs. 11,37,173/-.(ii) the assessee's claim of loss on sale of TDR was disallowed of Rs. 2,61,32,476/-.(iii) Whereas on the other disputed issue with respect to amounts which are not paid during the year u/s 43B of the Act Rs. 17,610 was added to the total income.(iv) the Last disputed issue is with respect to disallowance of depreciation, the A.O. found that the assessee has purchased the vehicle during the year on which the depreciation of Rs.2,76,263/- was claimed and the same disallowed as the vehicle was not registered in the company name. Finally the A.O. has assessed the total income of Rs.33,84,140/- and passed the order u/s 143(3) of the Act dated 21.03.2015.

3. Aggrieved by the order the assessee has filed an appeal before the CIT(A). The CIT(A) has considered the grounds of appeal, submissions of the assessee and findings of the A.O. Whereas on the disputed issue with respect to disallowance of depreciation, the CIT(A) was not convinced with the facts that the depreciation has to be allowed though the vehicle is registered in the name of the director of the company and confirmed the disallowance of depreciation and whereas, in other

grounds of appeal the CIT(A) has granted the partial relief and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in not considering the fact that vehicle was purchased in the name of the director of the company in the current year and was used for less than six months and proportionate depreciation was claimed. The Ld.AR emphasizes that there cannot be any basis for disallowance as the vehicle was used wholly and exclusively for the business. The Ld.AR submitted that the depreciation cannot be disallowed as the A.O. has not disputed the expenditure incurred on the vehicle and whereas the A.O did not accept the fact that it was registered in the name of the director of the company. The Ld.AR substantiated the submissions with judicial decisions and factual paper book and prayed for allowing the assessee appeal. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The sole disputed issue as

envisaged by the Ld.AR that the CIT(A) has erred in confirming the disallowance of depreciation on the vehicle. The contentions of the Ld.AR that the depreciation has to allowed irrespective of the fact that it is in the name of the director and the vehicle was used for the purpose of business and is part of the Block of assets. We found that the assessee has disclosed the asset in the schedule of the Audited balance sheet under the Companies Act and the depreciation was claimed. Further we find on the similar/ identical issue Honble Tribunal of Ahmadabad Bench in the case of M/S Shivam Water Treaters Pvt Ltd Vs. ACIT in ITA Nos. 1320, 1447/Ahd /2014 and 187 / Ahd / 2020 dated 6-05-2022 has allowed the claim of depreciation and dealt at page 12. Para 20.5 to 20.08 of the order, which is read as under:

20.5. For the remaining 2 cars, we find that the ownership of these cars were not in dispute. It was disputed by the authorities below that the cars are registered in the name of the directors and the assessee was not maintaining the logbook. Therefore the AO was of the view that the possibility of personal use of the car cannot be ruled out. There is no dispute to the fact that all the cars were purchased in the name of the directors but the payment was made through the assessee company. Thus it is

transpired that the legal ownership though vest with the individual directors but the Dominion ownership rest with the assessee. For the reason that, the assessee has made the payment for the purchase of the car from its books of accounts. Therefore the assessee is very much eligible for depreciation on these cars. The assessee being a body corporate, there is no possibility for the directors to use the car for the personal purposes. Assuming the assessee doesn't maintain the logbook and the director of the company uses the car for the personal purposes. Then in such a situation, at the most such facility extended by the company to the directors can be treated as perquisites under the provisions of section 17(2) of the Act which can be brought to tax in India hands of the director as part of salary.

20.6 It is also interesting to note that the depreciation is an allowance and not an expenditure which has to be allowed in pursuance to the provisions of section 32 of the Act irrespective of its use by the director or the company.

20.7 It is also important to note that the assessee cannot be denied the depreciation merely on the reasoning that the cars were registered in the name of the directors. It is for the reason that there is no dispute raised by the Revenue as far as the payments for the purchase of the car is concern. Thus, we are interpreting that the payments made by the assessee, as reflected in the books of accounts, amounts to beneficial owner ship of the assessee and eligibility to claim depreciation. In this regard we find support from the judgment of the Hon'ble Gujarat High Court in the case of PCIT vs. Asian Mills (P.) Ltd reported in [2022] 135 taxmann.com 163 (Guj) where in was held as under:

16. The Revenue challenged the same before the Tribunal. It also relied on the decision of *ITO v. Electro Ferro Alloys Ltd.* [2012] 25 taxmann.com 458 (Ahd. - Trib.). According to the ITAT, the material available on record, when looked at, the assessee though was not the legal owner of the vehicle, it has made the payment for acquisition of cars and thus, it is a beneficial owner. It is, therefore, held to be entitled for depreciation on the car. It has drawn the support from the decision of *Electro Ferro Alloys Ltd.* (supra) and the decision of the Rajasthan High Court in *CIT v. Mohd. Bux Shokat Ali* [2001] 118 Taxman 712/[2002] 256 ITR 357 and the decision in the case of *CIT v. Basti Sugar Mills Co. Ltd.* [2002] 123 Taxman 693/257 ITR88 (Delhi). 17. The Tribunal has rightly distinguished the concept of dominion ownership of the car. The question raised is answered accordingly.

20.8 Thus we are of the view that there cannot be any disallowance on adhoc basis as far as depreciation is concerned. In view of the above and after considering the facts in totality, the ground of appeal of the assessee is partly allowed for the statistical purposes in the manner as indicated above.

6. We found that the facts of the present case are similar to the decision discussed in the above paragraphs. We are convinced with the Ld.AR submissions and are of the opinion that the depreciation disallowance cannot be sustained and follow the judicial precedence and direct the Assessing

officer to delete the disallowance of depreciation and allow this ground of appeal in favour of the assessee.

7. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 25.07.2022

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 25.07.2022
KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

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आदेशानुसार / BY ORDER,

(Asst. Registrar)

ITAT, Mumbai