

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Shri Anubhav Sharma, Judicial Member

ITA No. 1683/Del/2020 : Asstt. Year : 2017-18

Vcare Call Centers India Pvt. Ltd. , E-25, Sector-63, Noida, Gautam Budh Nagar, Uttar Pradesh	Vs.	JCIT, Range-27, New Delhi
(APPELLANT)		(RESPONDENT)
PAN NO. AAACG9394A		

**Assessee by : Shri Manish Kumar, Adv.
Revenue by : Shri M. Barnwal, Sr. DR**

Date of Hearing: 20.07.2022	Date of Pronouncement: 12.08.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

This appeal is filed by the Assessee against the order of the Id. CIT(A)-9, New Delhi dated 28.08.2021 for the Assessment Year 2017-18.

2. The Assessee has raised the following grounds of appeal:

"1. The CIT (A) erred in upholding the addition of Rs.1,03,008/-without appreciating that the assessee being the beneficial owner and vehicle being exclusively used for the purpose of business, Purchase Money for vehicle as well as the insurance premium has been paid by the assessee, therefore, the claim of depreciation along with insurance Premium in respect of vehicle registered in the name of Director is allowable as per the Provision of the Act.

2. *The CIT(A) failed to appreciate that for claiming depreciation u/s 32 of the Act an owner of the asset should be taken to mean a person in possession of the asset capable of exercising the right of ownership not on behalf of the person in whom the title vests but in his own right.*

3. *The CIT(A) failed to appreciate that the requirement of Section 32 is that the vehicle must be owned by the tax payer and not that the tax payer must be a registered owner of the same under Motor Vehicle Act.*

4. *The disallowance of depreciation in the facts of the case is against the rule of consistency as the same claim of depreciation has been allowed in respect of earlier assessment proceedings u/s 143(3) of the act without being any iota of change in the facts of the case.*

5. *The CIT(A) while upholding the disallowance of late deposit of PF of Rs 16.44,679/- failed to appreciate that the Hon'ble supreme court vide the case of CIT v/s Alotn Extrusions Ltd 319 ITR 306 set at rest the issue of Late deposit of PF & ESI after the due date as per the respective Act but before the due date of return u/s 139(1) in view of the omission of the second Proviso to section 43-B of the income Tax Act by the Finance Act 2003.*

6. *The CIT(A) failed to appreciate that the revenue in the case of CIT v/s Lakhani Rubber Work's 326 ITR 415 (P& H) did not press the question relating to late deposit of PF & ESI of/Employee's Contribution as the issue was no more res integra in view of Judgment of CIT v/s Alom Extrusions Ltd 319 ITR 306 (SC).*

7. *The CIT(A) failed to appreciate that Section 43-B is non obstante Clause as it begins with Notwithstanding anything contained in any other provision of this Act which makes it clear that the Provision of Clause (b) of section 43B overrides the explanation (va) of sub-section (1) of section 36.*

8. *The CIT(A) failed to appreciate that the word "Contribution" used in clause (b) of section 43-B of the Act means the Contribution of the employee & employer and thus being so if the contribution is made on or before the due date of furnishing return of income under Section 139(1) the employer is entitled to deduction.*

9. *The CIT(A) failed to appreciate that if on any issue there is bifurcation of Opinion between courts or in other words on any issue if two views are available then view which is favorable to assessee should be adopted in view of the settled legal position by the Hon'ble Supreme court vide the case of CIT v/s Vegetable Products Limited 88 ITR 192."*

3. The issue of late deposit of ESI & PF stands covered by the order of this Tribunal in ITA Nos. 1265, 1266, 1267, 1383, 1384 & 1392/Del/2021 & Others vide order dated 28.02.2022, hence the grounds of the assessee on this issue are treated as allowed.

4. With regard to the depreciation & insurance on the car of Rs.1,03,008/-, we find that the same has been allowed for the earlier Assessment Years which has been the subject matter of orders u/s 143(3). Reliance is being placed on the judicial precedent in the case of MM Fisheries P. Ltd Vs. CIT 152 taxmann 247 (Delhi) wherein Hon'ble Delhi High Courts held that.....,

"Section 32 of the Income-tax Act, 1961 - Depreciation - Allowance/rate of - Assessment year 2001-02 - Assessee-company had purchased a vehicle and claimed depreciation on it - Assessing Officer disallowed claim of assessee on ground that vehicle was registered in name of director of assessee - Whether ownership of an asset by director of company in his personal capacity, cannot be an asset deemed to be invested ownership or beneficial utility of company - Held, yes - Whether since there was nothing to show that assessee-company had dominion over vehicle and that utility

of vehicle was in normal course for benefit of company, assessee would not be entitled for depreciation under section 32 - Held, yes"

5. Hence, we find no reason to disallow the same in the absence of any change in the facts of the case. The grounds of the assessee on this issue are treated as allowed.

6. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 12/08/2022.

Sd/-

(Anubhav Sharma)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 12/08/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR