

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "B", CHANDIGARH

BEFORE
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
& SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 574/CHD/2018
निर्धारणवर्ष / Assessment Year :2013-14

Sh. Tejinder Singh, House No. 6, Sector 10, Chandigarh	बनाम	The DCIT, Circle-1(1), Chandigarh
स्थायी लेखा सं./PAN NO: AGXPS3871N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None (Adj. Application)
राजस्व की ओर से/ Revenue by : Sh. Amanpreet Kaur, Sr.DR

सुनवाई की तारीख/Date of Hearing : 15.09.2022
उद्घोषणा की तारीख/Date of Pronouncement : 28.09.2022

आदेश/Order

Per Sudhanshu Srivastava, Judicial Member:

This appeal is preferred by the assessee against order dated 23.03.2018 passed by the Ld. Commissioner of Income Tax-1, Chandigarh [hereinafter referred to as 'CIT(A)'] for assessment year 2013-14.

2.0 The brief facts of the case are that the assessee is a salaried employee of M/s Medel India Pvt. Ltd. as a Director since 2006. The return of income was filed declaring total income of Rs. 63,10,470/-, which included income from

salary, income from house property and income from other sources. The assessee's case was selected for scrutiny under the CASS guidelines and during the course of assessment proceedings, the Assessing Officer (AO) noted that the assessee had given his car on lease to the employer company and had received a lease rent of Rs. 4,08,000/- as 'income from other sources'. The AO further noted that the assessee had shown a net loss on account of lease to the tune of Rs. 4,33,020/ after claiming depreciation of Rs. 4,39,662/-, interest on loan amounting to Rs. 3,19,572/- repairs and maintenance amounting to Rs. 41,970/- and insurance amounting to Rs. 39,816/-. The assessee was required by the AO to justify the allowability of expenditure relating to depreciation, interest, repairs and maintenance and insurance. The assessee submitted a detailed reply. However, after considering the reply of the assessee, the AO noted that depreciation was allowable only if the asset had been used for the purpose of business whereas, the assessee was not in the business of car leasing and furthermore the said car was not registered as a Taxi. The AO also noted that there was no agreement or contract with the employer company against which the car had been given on lease. Based on this observation, the AO proceeded to disallow such entire expenses claimed u/s 57 of the Income Tax Act,

1961 [in short 'the Act'] by the assessee which were to the tune of Rs. 8,41,020/-.

2.1 In addition to the above, the AO also made an addition of Rs. 6,10,443/- on account of payment made by the employer company to meet the credit card bill of the assessee on the ground that the same was a perquisite in the hands of the assessee. The assessment was completed at an income of Rs. 77,61,933/-.

2.2 Aggrieved, the assessee approached the Ld. First Appellate Authority who deleted the addition pertaining to the payment made by the employer towards the credit card expenses and also partly upheld the disallowance of car related expenditure by restricting it to the lease rent earned by the assessee and confirmed the disallowance of balance expenditure of Rs. 4,33,020/-

2.3 Now, the assessee has approached this Tribunal challenging the order of the Ld. CIT(A) by raising the following grounds of appeal:

1. *The order of the Ld. CIT(A) is bad in law and on facts.*
2. *The Ld. CIT(A) has erred in restricting the expenses, to lease income of assessee from vehicles of Rs. 4,08,000/- and disallowing balance*

*expenses of Rs. 4,33,020/- claimed u/s
57 of Income Tax Act, 1961.*

3.0 When the appeal was called out for hearing, none was present on behalf of the assessee. However, an application from Shri Sunil Kumar Bhasin, Chartered Accountant, the Ld. AR for the assessee was placed before us requesting adjournment on the ground that due to heavy rush of Tax Audit assignments, the case could not be prepared.

3.1 On perusal of the file, it is seen that this case was earlier fixed for hearing on 19.07.2022 and on that date, the Ld. AR had sought an adjournment on the ground that due to heavy rush of Income Tax Returns, it was not possible for him to attend the hearing. Still earlier, the hearing was fixed for hearing on 24.05.2022 and on that date the Ld. AR had sought adjournment on the ground that due to engagement in other assignments, he could not prepare his submissions. It is also seen from the file that this appeal had earlier been heard ex.parte qua the assessee on 06.08.2018 and had been dismissed on the ground that there was non-prosecution of the appeal on behalf of the assessee. Thereafter, on assessee's application for restoration of the appeal in M.A. No. 27/Chd/2019, the said

order of the Tribunal was recalled vide order dated 08.02.2022. However, in spite of the appeal having been dismissed once for the reason of non-prosecution, the assessee / the Ld. AR has again sought adjournment thrice by citing some reason or the other which makes it apparent that neither the assessee, nor the Ld. AR is interested in pursuing this appeal. Therefore, looking into the casual and non-serious attitude of the assessee Ld. AR, we are constrained to hear this appeal ex. parte qua the assessee.

4.0 The Ld. Sr. DR submitted that the Ld. CIT(A) had been more than reasonable in allowing relief to the assessee by restricting the disallowance to the tune of Lease Rental earned by the assessee. It was submitted by the Ld. Sr. DR that the assessee had given his vehicle on hire to the employer company and was using the same and the entire usage was being shown as official, whereas, the assessee was using the vehicle both for official as well as personal purposes and, therefore, the Ld. CIT(A) had rightly upheld a disallowance of Rs. 4,33,020/-. It was prayed that the appeal of the assessee be dismissed and the order of the Ld. CIT(A) be upheld.

5.0 We have heard the Ld. Sr. DR and have also perused the material on record. It is seen that the facts are not in

dispute. The assessee had leased out his vehicle to his employer company and had shown lease rent of Rs. 4,08,000/- under the head 'income from other sources' and had claimed an expenditure of Rs.8,41,020/- against the said lease rental. No doubt, the assessee is not in the business of leasing out cars on rent and that is the reason he has shown the income under the head 'income from other sources' rather than showing the same as income from business. The quantum of lease rent received or the quantum of expenditure claimed has not been doubted either by the AO or by the Ld. CIT(A) and the AO had made the impugned disallowance on the ground that the assessee was not engaged in the business of car leasing and that the assessee did not have any agreement or contract with the employer company for giving the vehicle on hire. It was also observed by the AO that the vehicle was not registered as a taxi and further no detail regarding the kind of vehicle given on lease had been submitted by the assessee. However, these observations of the AO were refuted by the assessee before the Ld. CIT(A) wherein, it was submitted that, although, the assessee was not engaged in the business of car leasing, the assessee had in fact entered into an agreement with the employer company and a copy of the same had been furnished before the AO. The assessee had also submitted

before the Ld. CIT(A) that another observation of the AO that no details regarding the kind of vehicle given on lease had been submitted by the assessee was also incorrect in as much as a copy of the invoice and copy of certificate of registration of the vehicle had also been produced before the AO along with the insurance related documents. It was also the contention of the assessee before the AO that as far as the AO's observation that the vehicle was not registered as taxi was concerned, the same was irrelevant in as much as the vehicle was given on lease to the employer company for official use and not for the use by public at large.

5.1 A perusal of the impugned order shows that the Ld. CIT(A) did not consider any of these submissions made before him but simply proceeded to restrict the disallowance tune of to the income received from lease i.e. Rs. 4,08,000/- by holding that the assessee was using the vehicle both for official as well as personal use. This reasoning for upholding part of the disallowance cannot be upheld for the simple reason that depreciation (Rs. 4,39,662/- in this case) has been held to be an allowable deduction even against income shown under the head 'income from other sources'. Likewise, interest paid on loans, repairs and maintenance as well as insurance related expenses are all allowable

expenses while computing the net income under the head 'income from other sources'. There is plethora of judicial precedents in this regard. Although, the assessee had cited the order of the Ahmedabad Bench of the ITAT in the case of M/s Serendipity Apparels Pvt. Ltd Vs. CIT in ITA No. 1244/Ahd/2014 before the Ld. CIT(A) wherein, vide order dated 21.10.2015, the Ahmedabad Bench of the ITAT had held that depreciation was an allowable expenditure u/s 57(iii) of the Act, the Ld. CIT(A) did not comment on the same.

5.2 It is seen that clauses (i), (ia), (ii) and (iia) of section 57 of the Act specifically mention the deductions available while computing the income chargeable under the head 'income from other sources' whereas clause (iii) to section 57 allows admissibility of deduction of any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income i.e. income chargeable under the head 'income from other sources'. Section 57(iii) of the Act is in line with section 37 (1) of the Act which in general (subject to its Explanation) makes available deduction of any expenditure, not being expenditure of the nature described in sections 30 to 37 of the Act and not being in the nature of

capital expenditure or personal expenses of the assessee, expended wholly and exclusively for the purposes of the business or profession while computing the income chargeable under the head 'profit and gains of business or profession'. Thus, as per the mandate of section 57 (iii) of the Act, it is necessary that the primary motive of incurring such expenditure should be directly relatable to the earning of income falling under the head 'income from other sources'. In the present case it is beyond doubt that depreciation, interest on loan, repairs and maintenance expenses as well as insurance expenses were directly relatable to the earning of lease rental which was shown by the assessee under 'income from other sources'. Further, a plain reading of section 57 (iii) of the Act would lead one to the conclusion that it does not say that the expenditure shall be deductible only if any net positive income is made or earned. Therefore, there can even be a negative income / loss u/s 57(iii) of the Act. Therefore, by this reasoning also, the Ld. CIT(A) was incorrect in directing that the amount of deduction should be restricted to the income earned.

5.3 Accordingly, on an overall view of the facts of the case and in view of our discussion in the preceding paragraphs,

we are of the considered view that the Ld. CIT(A) was legally wrong in restricting the disallowance to the quantum of lease rental earned. While allowing the appeal of the assessee, we direct the AO to allow the impugned expenditure claimed in full.

6.0 In the final result, the appeal of the assessee stands allowed.

Order pronounced on 28.09.2022.

sd/-
(**VIKRAM SINGH YADAV**)
Accountant Member
Dated : 28.09.2022

“आर.के.”

sd/-
(**SUDHANSHU SRIVASTAVA**)
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar