

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 1294/MUM/2022
Assessment Year: 2013-14**

M/s Sunshine Communication
Pvt. Ltd.,
1st floor, Capri, Anant Kanekar
Marg, Bandra (E),
Mumbai-400051.

PAN No. AADCS 4276 L

Appellant

Asst. CIT, Central Circle-5(4),
Room No. 1927, 19th floor, Air
India Building, Nariman Point,
Mumbai-400021.

Vs.

Respondent

Assessee by : Mr. Nimesh Thar, AR
Revenue by : Mr. Chetan M. Kacha, DR

Date of Hearing : 08/09/2022
Date of pronouncement : 17/10/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against the order dated 25.03.2022 passed by the Ld. Commissioner of Income-tax (Appeals)-53, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2013-14, raising following grounds:



1. *The Ld. CIT(A) has erred in law & on facts in upholding the Ld. AO's action of disallowing loss claimed on sale of TDR of ₹4,40,966/-.*
2. *The Ld. CIT(A) has erred in law & on facts in upholding the Ld. AO's action of disallowing excess claim of depreciation on vehicle to the extent of ₹12,28,993/-*

2. Briefly stated, facts of the case are that the assessee filed its return of income on 30.09.2013 declaring Nil income. In the assessment completed u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act') on 30.03.2016, the Assessing Officer disallowed claim of loss on account of sale of TDS and also disallowed the claim of depreciation on vehicle.

3. On further appeal, the Ld. CIT(A) upheld the additions/disallowances. Aggrieved, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

4. Before us, the Ld. Counsel of the assessee has filed a Paper Book containing pages 1 to 68.



5. The ground No. 1 of the appeal was not pressed, therefore, same is dismissed as infructuous.

5.1 The ground No. 2 of the appeal relates to disallowance of depreciation of ₹12,28,993/- on vehicle, which was registered in the name of the Director of the Company, Shri Hetin R. Sakhuja, who purchase the vehicle by way of loan from ICICI Bank. According to the Assessing Officer, the assessee-company was neither a registered owner nor a beneficial owner and therefore, he declined the claim of the depreciation of the assessee. The Ld. CIT(A) also upheld the disallowance on the ground that EMI payment was also made by the Director Shri Hetin R. Sakhuja.

5.2 However, we find that the Tribunal in the case of the assessee in ITA No. 2754/M/2017, in the immediate preceding assessment year i.e. AY 2012-13, has allowed the claim of the depreciation of



very same vehicle. The relevant finding of the Tribunal is reproduced as under:

“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 ownership 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 fallow 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."

5.3 As the issue-in-dispute is covered by the decision of the Hon'ble Tribunal (supra), therefore, respectfully following the same,



the disallowance of depreciation made by the Assessing Officer and sustained by the Ld. CIT(A) in the year under consideration is deleted. The ground No. 2 of the appeal of the assessee is accordingly allowed.

6. In the result, the appeal of the assessee is allowed partly.

Order pronounced in the open Court in 17/10/2022.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 17/10/2022

Dragon Legal/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai