

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH: CHENNAI**

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं  
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.535/Chny/2021  
निर्धारण वर्ष /Assessment Year: 2015-16

M/s.A.R.A.P. Enterprises Pvt. Ltd.,  
New No.35-37, Old No.17-18,  
Gandhi Irwin Road,  
Egmore, Chennai-600 008.  
[PAN: AAGCA 9262 R]

(अपीलार्थी/Appellant)

v. The Asst. Commissioner of  
Income Tax (OSD),  
NCR-1, Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.R.Venkatraman, IRS &  
Mr.R.Viswanathan, CA

प्रत्यर्थी की ओर से /Respondent by

: Mr. AR.V.Sreenivasan,  
Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 07.12.2022

घोषणा की तारीख /Date of Pronouncement

: 14.12.2022

**आदेश / ORDER**

**PER G. MANJUNATHA, AM:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-1, Chennai, dated 01.09.2020 and pertains to assessment year 2015-16.

2. At the outset, we find that there is a delay of 376 days in appeal filed by the assessee. During the course of hearing, when defect was brought to the notice of the learned AR present, he has submitted that delay in filing of appeal is mainly due to lockdown imposed by the Govt. on account of spread of Covid-19 infections and which needs to be excluded for

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computing limitation in view of judgment of the Hon'ble Supreme Court in Miscellaneous Petition No.21 of 2022 in **Suo Motu** Writ Petition (C) No.3 of 2020, if the period of delay is covered within the period specified in the order of the Apex Court, then same needs to be condoned in view of specific problem faced by the public on account of Covid-19 pandemic.

**2.1** The learned DR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

**2.3** Having heard both sides and considered reasons given by the learned AR, we find that the Hon'ble Supreme Court in Miscellaneous Petition No.21 of 2022 in **Suo Motu** Writ Petition (C) No.3 of 2020, has extended limitation applicable to all proceedings in respect of Courts and Tribunals across the country on account of spread of Covid-19 infections w.e.f. 15.03.2020, till further orders and said general exemption has been extended from time to time. We further noted that delay noticed by the Registry pertains to the period of general exemption provided by the Hon'ble Supreme Court extending limitation period applicable for all proceedings before Courts and Tribunals and thus, considering facts and circumstances of the case and also in the interest of natural justice, we condone delay in filing appeal filed by the assessee.

**3.** The assessee has raised the following grounds of appeal:

*1. The order of the learned CIT(A) is contrary to Law, facts and circumstances of the case.*

*2.1. The learned CIT(A) erred in concluding that the buses were put to use for less than 6 months only, without fully considering the evidences and facts produced before him.*

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2.2 The learned CIT(A) failed to appreciate that the Diesel Expenses were incurred from August 2014 and wrongly concluded that the same was incurred from December 2014.

2.3 The learned CIT(A) failed to consider the fact that the buses started generating revenue from August 2014.

2.4 The learned CIT(A) erred in concluding that all the buses were put to use for less than 6 months based on just a couple of bills evidencing body building and related charges.

2.5 The learned CIT(A) erred in restricting the Depreciation claim on buses to 50% of the actual Depreciation claimed.

Tax Effect: 21,27,998/-

3.1 The learned CIT(A) erred in concurring with the learned AO that the buses were put to use from October 2014 and disallowed the interest on capital borrowed up to September 2014.

3.2 The learned CIT(A) ought to have considered that the buses were put to use prior to September 2014 itself.

Tax Effect: 2,56,447/-

4.1 The learned CIT(A) failed to consider that a sum of Rs.8,20,602/- was paid as property tax/other charges and also towards ROC filing expenses, which is revenue in nature. This is evident from the Assessment Order itself.

4.2 The learned CIT(A) erred in concluding that the expenses were of capital in nature giving an enduring benefit whereas the expenses are revenue in nature.

Tax Effect: 2,53,566/-

5.1 The learned CIT(A) erred in concluding that the permit fee paid is capital in nature whereas it is only a fee paid for operating the buses in a particular region, which is a revenue expenditure.

Tax Effect: 4,08,065/-

6.1 The learned CIT(A) erred in concluding the tax paid (to the Transport Department) for plying the buses as Compounding Fees paid for violation of laws.

6.2 The learned CIT(A) failed to appreciate the nature of expenditure and erred in confirming the disallowance made u/s.37(1).

Tax Effect: 15,96,093/-

7.1 The Appellant Craves leave of Honorable Tribunal to submit further grounds as may be required.

8.1 For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and the disallowances of expenses as stated above may be deleted.

Overall Tax Effect:- 46,42,169/-

**4.** The brief facts of the case are that the assessee is a Private Limited Company, engaged in the business of letting out warehouse on rent or lease

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and also in the business of passenger transport business. The assessee has filed its return of income for the AY 2015-16 on 01.10.2015 admitting 'nil' total income and current year loss of Rs.1,51,79,867/-. The assessment has been completed u/s.143(3) of the Act, on 30.11.2017 and determined total income of Rs.'NIL' after making various additions including additions towards disallowance of excess depreciation on motor buses, disallowance of interest on borrowed capital u/s.36(1)(iii) of the Act, disallowance u/s.14A of the Act r.w.r.8D of Income Tax Rules, 1962, disallowance of Pondicherry Permit Expense, and disallowance of expenditure of panel in nature u/s.37(1) of the Act. The assessee carried the matter in appeal before the First Appellate Authority and the Ld.CIT(A) for the reasons stated in their appellate order dated 01.09.2020 partly allowed the appeal filed by the assessee, where he has sustained the additions made towards disallowance of excess depreciation on motor buses, disallowance of interest on borrowed capital u/s.36(1)(iii) of the Act, disallowance of Pondicherry Permit Expense and disallowance of expenditure in panel in nature u/s.37(1) of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

**5.** The first issue that came up for our consideration from Ground Nos.2 to 2.5 of the assessee's appeal is disallowance of excess depreciation on motor vehicles amounting to Rs.68,86,722/-. The facts with regard to the impugned dispute are that during the FY relevant to the AY 2015-16, the assessee company has started new business of transportation of

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passengers, has acquired '10' buses. The assessee had acquired '8' 'Ashok Leyland' bus chassis and '2' buses from Volvo Seater Buses. The assessee has built customized body. The '8' buses were registered with Regional Transport Office on or before 30.09.2014. The remaining '2' buses were registered on 08.10.2014. The Assessee has claimed 30% of depreciation on motor buses for full year on the ground that the assets have been put to use for whole year. The AO has disallowed 50% depreciation on motor buses on the ground that the assessee has put to use motor buses for less than 182 days. According to the AO, although, the buses were ready for use, but the assessee has started using buses in the business of transportation of passengers from October, 2014 onwards. Therefore, the AO opined that the assets put to use less than 182 days are eligible for 50% of actual depreciation. Therefore, the AO allowed 50% of depreciation amounting to Rs.68,68,722/-.

**5.1** The Ld.AR for the assessee referring to various documents, including copies of invoices for purchase of buses and putting up body submitted that '8' buses were acquired and put to use before 30.09.2014 and the remaining '2' buses were also acquired before 30.09.2014. However, the same was registered only on 08.10.2014. In fact, all '10' buses were put to use for more than 182 days. The AO only on the basis of payment made for diesel bill in the month of October, 2014 opined that buses were put to use less than 182 days ignoring the fact that the assessee has purchased diesel in the month of August, 2014 and also received Revenue from

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operations being booking charges for buses from the month of August, 2014. He further submitted that as regards '2' buses, those '2' buses were ready to use, but only registration has been taken in the month of October, 2014. Therefore, he argued that as per Motor Vehicles Rules, the assessee needs to submit all documents for registration and the authority will have 30 days' time for issuing registration. Therefore, if you consider said 30 days, the buses were ready for use for more than 182 days. Therefore, the assessee is entitled for full depreciation on motor buses, but the AO has restricted the depreciation to 50% of actual depreciation.

**5.2** The Ld.DR, on the other hand, referring to Remand Report of the AO submitted that the AO not only considered payment for diesel bills but also bills for body works, as per which, the assessee has put up body to buses in the month of October, 2014. Further, the assessee claims that he has started receiving Revenue from August, 2014, but facts remain that the assessee is a contract carrier and question of booking tickets does not arise. The AO after considering relevant facts has rightly restricted depreciation to 50% for using the asset for less than 182 days and their order should be upheld.

**5.3** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The assessee has started new business of transportation of passengers by buses and in the process, has acquired '8' buses from Ashok Leyland and '2' buses from Volvo Corporation. The assessee has purchased '8' buses from Ashok

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Leyland and registered them with RTO on or before 30.09.2014. The assessee had claimed 30% depreciation on buses on the ground that buses were put to use in the business of transportation of passengers for more than 182 days. The AO disputed the period of use of asset in the business and according to the AO, the assets have been put to use less than 182 days and thus, the assessee is eligible for 50% of actual depreciation. We find that the sole basis for the AO to consider the period of holding of asset, is payments made by the assessee for diesel bills. As per ledger account copy filed by the assessee, the assessee has made first payment for diesel bill on 16.12.2014 through bank. At the same time, the assessee has furnished copies of diesel bills from various dealers which started from the month of August, 2014 itself. The assessee had also filed a ledger account copy of Revenue from operations being booking charges for buses and as per ledger copy filed by the assessee, the assessee has started Revenue generation from the month of August, 2014 itself. The AO ignored bills for purchase of diesel and Revenue generated from business, but has only considered payment made by the assessee for diesel bills and observed that the assessee has put to use the buses in the business from December, 2014 onwards. We find that the AO is grossly erred in holding the assets were put to use for less than 182 days and allowed only 50% depreciation on motor buses, because the buses were acquired and put to use before 30.09.2014 and also the assessee has generated income from the month of August, 2014 itself. Therefore, in so far as '8' buses are concerned, the

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assessee has put to use those buses for more than 182 days and eligible for 100% depreciation. Therefore, we direct the AO to allow 100% depreciation on '8' buses. In so far as remaining '2' buses, as admitted by the assessee, those buses were registered on 08.10.2014. Further, the bill for building body to buses was also in the month of October, 2014. From the above, it is very clear that the remaining '2' buses were acquired and put to use in the business in the month of October, 2014, which is less than 182 days. Therefore, the assessee is entitled for 50% of actual depreciation on remaining '2' buses. Therefore, we do not find any errors in the reasons given by the AO to allow 50% depreciation on remaining '2' buses and thus, we reject the arguments of the assessee. To sum up, the assessee is entitled for 100% depreciation on '8' buses and thus, we direct the AO to consider the claim of the assessee and for remaining '2' buses, disallowance of excess depreciation is upheld.

**6.** The next issue that came up for our consideration from Ground Nos.3.1 to 3.2 of the assessee's appeal is disallowance of interest on borrowed capital u/s.36(1)(iii) of the Act. This issue is consequential to disallowance of depreciation. The AO has disallowed interest on borrowed capital up to the date of capitalization of asset on the ground that the assessee had only put to use the buses from the month of October, 2014 onwards. Since, we already held that the assessee has acquired and put to use the buses from the month of August, 2014 itself, in so far as interest paid on borrowed capital for '8' buses are concerned, the AO is directed to

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allow interest paid on borrowed capital to banks u/s.36(1)(iii) of the Act, as claimed by the assessee. As regards remaining '2' buses, since we held that the buses were put to use for business from the month of October, 2014 onwards, the disallowance of interest on borrowed capital up to the date of capitalization of '2' buses are upheld. To sum up, the assessee gets relief towards disallowance of interest u/s.36(1)(iii) of the Act, for '8' buses and for remaining '2' buses, the additions made by the AO is upheld.

**7.** The next issue that came up for our consideration from Ground Nos.4.1 & 4.2 of the assessee's appeal is disallowance of rates & taxes amounting to Rs.8,20,602/-. The AO has disallowed payments made to Members Secretary, Pondicherry Planning Authority amounting to Rs.6,40,709/- and payment made to Mr.R.Viswanathan towards ROC fees amounting to Rs.13,100/- and payment of property taxes to Pondicherry Panchayat amounting to Rs.1,66,793/-, all totaling to Rs.8,20,602/- debited under the head 'rates & taxes' on the ground that they are in the nature of capital expenditure. It was the arguments of the assessee that the amounts debited under the head 'rates & taxes' are recurring expenses which are Revenue in nature.

**7.1** We have heard both the parties and perused the materials available on record and we find that amount paid to Member Secretary, Pondicherry Planning Authority, amounting to Rs.6,40,709/- is for taking permission to let out the premises to tenant for different purpose other than the purpose for which the planning permission has been taken from the local authority

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and said expenditure will definitely in the nature of Revenue in nature and therefore, we direct the AO to delete the additions made towards amount paid to Member Secretary. Pondicherry Planning Authority amounting to Rs.6,40,709/-. As regards payment made to Mr.R.Viswanathan towards ROC fees, it is a professional fee paid for rendering professional services in connection with filing documents with ROC and thus, same cannot be considered as capital in nature and thus, we direct the AO to delete additions made on this account amounting to Rs.13,100/-. As regards payment for property tax to Pondicherry Panchayat, it is an annual property tax levied by local municipal authorities and the same will be in the nature of Revenue expenditure and therefore, we direct the AO to delete the additions made towards disallowance of property tax paid to Pondicherry Panchayat amounting to Rs.1,66,793/-.

**8.** The next issue that came up for our consideration from Ground No.5.1 of the assessee's appeal is 'Pondicherry Permit Expense' amounting to Rs.13,20,600/-. The assessee is engaged in the business of plying motor buses has taken transport permission for a particular state and as and when the vehicles entered into different state which has to pay road taxes for other state. The assessee claimed to have paid road taxes for Pondicherry state permit amounting to Rs.13,20,600/-. The AO disallowed said expenditure on the ground that it is capital in nature.

**8.1** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The road taxes

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paid to state government for permitting vehicles to run in different states is recurring expenditures which needs to be incurred by a transporter for plying buses. In this case, the assessee being in the business of plying motor buses has paid Pondicherry permit charges to Government of Pondicherry to operate buses in the state of jurisdiction of Pondicherry and same would be in the nature of Revenue expenditure. The AO without appreciating the fact simply made disallowance towards 'Pondicherry Permit Expense' and thus, we direct the AO to delete addition made towards 'Pondicherry Permit Expense' amounting to Rs.13,20,600/-.

**9.** The next issue that came up for our consideration from Ground Nos.6.1 & 6.2 of the assessee's appeal is disallowance of expenditure of Penal in nature u/s.37(1) of the Act, amounting to Rs.51,65,350/-. The assessee has debited a sum of Rs.51,65,350/- under the head 'Vehicle Permit Tax'. The assessee claimed that said expenditure is paid towards taking permission to run vehicles for a particular period. The AO disallowed 'Vehicle Permit Tax' on the ground that it is in the nature of compounding fees for violation of law in force and hence penal in nature, cannot be allowed u/s.37(1) of the Act.

**9.1** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The assessee being a transport operator needs to pay road taxes on periodical basis to State Transport Department. The assessee has paid a sum of Rs.51,65,350/- to Transport Department to avail permit to run the vehicles

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for a particular period. The AO on the basis of sample receipt issued by the Transport Department opined that it is panel in nature for violation of law in force. We find that the assessee has paid road taxes to Transport Department for taking permit to run buses and in the sample receipt considered by the AO nowhere it has specified that the assessee has violated any law and the Department has imposed penalty to consider said payment as panel in nature. The AO without understanding the concept of road tax being paid by transport operators simply disallowed amount paid to Transport Department as compounding fee which is panel in nature. In fact, it is a tax paid by the assessee to Transport Department to take permit to run the buses. Therefore, we are of the considered view that the AO is erred in disallowing expenditure u/s.37(1) of the Act, amounting to Rs.51,65,350/- and thus, we direct the AO to delete the additions made u/s.37(1) of the Act.

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

Order pronounced on the 14<sup>th</sup> day of December, 2022, in Chennai.

**Sd/-**

(वी. दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 14<sup>th</sup> December, 2022.

**TLN**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

**Sd/-**

(जी. मंजूनाथा)

**(G. MANJUNATHA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF