

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.2925/Mum/2022
(Assessment Year :2011-12)**

M/s. Transindia Freight Services Pvt. Ltd. 5 th Floor, Allcargo House CST Road Kalina, Santacruz East Mumbai – 400 098	Vs.	Dy. Commissioner of Income Tax Central Circle- 44 Mumbai
PAN/GIR No.AAACT2514R		
(Appellant)	..	(Respondent)

Assessee by	Shri Madhur Agarwal & Shri Fenil Bhatt
Revenue by	Ms. Indira Adakil
Date of Hearing	16/02/2023
Date of Pronouncement	21/02/2023

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No. 2295/Mum/2022 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-50, Mumbai in appeal No.CIT(A)-50/10047/2014-15 dated 19/02/2020 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 19/03/2014 by the Id. Dy. Commissioner of Income Tax, Cent. Circle-44, Mumbai (hereinafter referred to as Id. AO).

2. At the outset, we find that there is a delay in filing of appeal by 170 days by the assessee for which a defect notice has been issued by the Registry. We find that this falls within the relaxation period provided by the Hon'ble Supreme Court in the light of Covid-19 pandemic. Hence, we are inclined to condone the delay and admit the appeal of the assessee for adjudication.

3. The effective issue to be decided in this appeal is as to whether the lease rent of Rs.6,00,000/- received from letting of car by the assessee would be treated as "income from other sources" instead of "business income" in the facts and circumstances of the instant case. The interconnected issue involved therein is as to whether the assessee would be entitled for claiming business expenditure of Rs.12,69,661/- as deduction.

3.1. We have heard rival submissions and perused the materials available on record. The assessee company is engaged in the business of car renting and had filed its return of income for A.Y.2011-12 on 26/09/2011 declaring total loss of Rs.4,38,363/-. The assessment was completed u/s.143(3) of the Act on 19/03/2014 determining total income at Rs.8,91,819/- by treating income from car rent as "income from other sources" instead of "income from business" and restricting the administrative expenses to Rs.23,181 (i.e. Rs.2500/- being profession tax and Rs.20,681/- being payment to auditors) and disallowed depreciation of Rs.17,23,750/-. The assessee company had entered into two agreements dated 28/12/2009 and 03/01/2011 with M/s. Allcargo Global Logistics Ltd. for giving 2 cars of the assessee company on hire for the period 01/01/2010 to 31/12/2010 and 01/01/2011 to 31/03/2012. The car hire charges received thereon was offered by the assessee under the head "income from business" in the return of income and business

expenditure together with depreciation on car claimed thereon. These car charges income of Rs.6,00,000/- was treated as "income from other sources" by the Id. AO consequently disallowing the entire business expenditure by the assessee including depreciation except payment to auditors and profession tax as stated supra.

3.2. We find that similar claim of deduction was made by the assessee in A.Yrs. 2008-09 and 2009-10 which was allowed by the Id. AO in 143(3) proceedings dated 29/12/2009 after having given a categorical finding that assessee had started a new source of business income in the form of car rental income. Once the car rental income in earlier years has been accepted as "income from business" after due examination of the facts and documents placed before the Id.AO in scrutiny assessment proceedings, the Id. AO would not be justified in taking a divergent stand during the year under consideration. The assessee had also placed on record the Memorandum of Association of the assessee company wherein the business of renting out of cars on hire is also considered as one of the main objects of the assessee company.

3.3. However, for A.Y.2010-11 in the scrutiny assessment completed u/s.143(3) of the Act dated 29/12/2009, the car rental income was taxed under the head "income from other sources" by the Id. AO and depreciation allowed thereon to the extent of rental income and all other business expenses were restricted to Rs.50,000/- by the Id. AO. The assessee preferred appeal before the Id. CIT(A) and the Id. CIT(A) held that car rental income would become taxable under the head "income from other sources" and directed the Id. AO to allow depreciation on car as per the Act. After the grant of depreciation of car, it only resulted in loss. Since there was no tax impact, the assessee did not prefer any further appeal to this Tribunal.

3.4. During the year under consideration i.e. A.Y.2011-12 both the Id. AO as well as the Id. CIT(A) did not even grant depreciation on motor car despite the fact that the same would be allowable either u/s.32 or u/s.57(ii) of the Act. Further, we find that in A.Y.2012-13, the assessee's claim of business income towards car rental charges was accepted by the department u/s.143(1) of the Act. For A.Y.2013-14, the claim of assessee was accepted in scrutiny assessment proceedings u/s.143(3) of the Act dated 04/03/2016. We find that the Id. CIT(A) primarily relies on the findings given by him for A.Y.2010-11 and this fact has already been addressed by us hereinabove that assessee had not preferred any appeal against this order in view of the fact that since depreciation was directed to be granted to the assessee, net result was only a loss and hence, there was no tax impact involved for the assessee.

3.5. Yet another finding given by the Id. CIT(A) was that the Memorandum of Association only permits hiring of plant and machinery and that the vehicle does not get included in that, accordingly, the hiring of vehicle would not constitute a business activity for the assessee. We are unable to persuade ourselves to accept to this proposition of the Id. CIT(A) as it is very well settled that 'plant' includes 'vehicles', which fact is evident from depreciation rate chart provided in the Income Tax Rules as vehicles are forming part of the block of assets of plant and machinery. In any case, even if the rental income is treated as income from other sources, still the assessee would be eligible for depreciation on those vehicles in terms of Section 57(ii) of the Act which has been ignored completely by the lower authorities in the instant case, though the same was granted to the assessee in earlier years by the Id. CIT(A).

3.6. In view of the aforesaid observations, we hold that going by the principle of consistency in the stand taken by the Revenue in earlier as well as subsequent assessment years in scrutiny assessment proceedings, we hold that the income received from car rental of Rs.6,00,000/- is to be assessed as "income from business" and consequently, the assessee would be eligible for deduction of all expenses including depreciation as deduction under the head "business". Accordingly, the grounds raised by the assessee are allowed.

4. In the result, appeal of the assessee is allowed.

Order pronounced on 21/02/2023 by way of proper mentioning in the notice board.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai; Dated 21/02/2023
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai