

आयकरअपीलीयअधिकरण, इन्दौरन्यायपीठ, इन्दौर**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE SMC BENCH, INDORE****BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER****ITA No.961/Ind/2019
A.Y. 2010-11**

DCIT 1(1) Indore	<u>बनाम/</u> Vs.	M/s. PSC INFRATECH Indore
(Revenue)		(Respondent)
P.A. N. – AAKFP1890K		
Revenue by	None	
Respondent by	Shri Ashish Porwal Sr. DR	
Date of Hearing:	28.02.2023	
Date of Pronouncement:	02.03.2023	

आदेश / O R D E R

This appeal by the Department is directed against the order dated 24.09.2019 of Ld. Commissioner of Income (Appeals)-1, Indore (in short Ld. CIT(A) for A.Y. 2010-11. The revenue has raised solitary grounds as under:

“ Whether on the facts and in the circumstance of the case and in the law, the Ld. CIT(A) was justified in deleting the addition of Rs.4,18,104/- made on account of excess depreciation on dumper claimed by assessee without appreciating the findings of the AO during the assessment proceedings.”

2. None has appeared on behalf of the respondent-assessee despite repeated notices sent through registered Post as well as e-mail. Accordingly, the Bench proposes to hear and dispose of this appeal *ex-parte*.

3. I have heard the ld. DR and carefully perused the impugned order of Ld. CIT(A). ld. DR has relied upon the order of the Ld. AO. Having considered this submission of Ld. DR it is noted that the assessee has claimed depreciation @ 30% on the dumper which is not eligible for the higher depreciation and accordingly the Ld. AO has disallowed 50% of the same. The Ld. CIT(A) has considered this issue and allowed the claim of the depreciation @ 30% in para 4.1 as under:

4.1 During the course of appeal proceedings as well as the assessment proceedings, the appellant has contended that the total receipts shown in the P & L account included an amount of Rs.97,70,446/- on account of dumper hire charges which was separately accounted for. The dumper hiring account in the books along with the bills and vouchers pertaining to same were shown to the AO during the course of assessment proceedings. Similarly, during appeal proceedings, the appellant has filed the copy of account of M/s Sai India Construction Pvt. Ltd. at paper book page nos. 25 to 33 wherein the dumper hiring charges have been found duly accounted for separately. I have gone through the written submissions and various documents filed during the course of appeal proceedings and assessment proceedings. It is found that the AO has simply proceeded from the nature of business and nature of receipt specified in Form No. 3CD, but on factual matrix, on examination of documents it has been found that the appellant was civil contractor and also in the business of plying the dumper on hire. But, while accounting for the receipts, both have been shown as combined receipt. Therefore, in my considered opinion, the appellant is eligible for depreciation @ 30% and the circular of CBDT is not applicable on the facts of the appellant's case. Accordingly, AO is directed to delete the addition of Rs.4,18,104/-. This ground of appeal is allowed.

4. The Ld. CIT(A) has considered this fact that the assessee has shown sum of Rs.97,70,446/- on account of dumper hire charges which was separately accounted for. The ld. CIT(A) has recorded the fact that the assessee was civil contractor as well as in the business of plying dumpers on hire. Ld. AO has not disputed these facts recorded by the Ld. CIT(A) that the assessee is also in the business of leasing out the dumper and separately accounted the dumper hire charges which is also specifically mentioned in the audit report in form- 3CD. Accordingly, in the facts and circumstances of the case, I do not find any error or illegal in the impugned order of the Ld. CIT(A) same is upheld.

5. In result, the appeal filed by the Revenue is dismissed.

Order was pronounced in the open court on 02.03.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Indore; दिनांक Dated : 02/03/2023

Patel/Sr. P.S.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Sr. Private Secretary

ITAT, Indore