

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1715/Del/2017
Assessment Year: 2012-13

| | | |
|--|-----------|---|
| GMS Motors Private Limited (Formerly known as Sahil Motors Pvt. Ltd.) 1E/5, Jhandewalan, Estn., New Delhi PAN No.AACCS2879L | Vs | DCIT, Circle- 10 (1) New Delhi |
| (APPELLANT) | | (RESPONDENT) |

| | |
|---------------|-----------------------|
| Appellant by | None |
| Respondent by | Sh. Anuj Garg, Sr. DR |

| | |
|------------------------|------------|
| Date of hearing: | 23/03/2023 |
| Date of Pronouncement: | 24/03/2023 |

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-35, New Delhi dated 18.01.2017 pertaining to A.Y.2012-13.

2. The grievance of the assessee read as under :-

1. *The order of the Learned CIT (A) is bad in law and on the facts of the case.*

2. *That there was no closure of business but due to non availability of business opportunities that the assessed company could not procure the business.*

3. That the assessee company has to incur certain running expenses which have to be incurred and the same are not related to any income of the assessee.

4. That it is not mandatory that in order to allow business expenses there must also be business receipt. The expenses have to be allowed if the same were incurred in the ordinary course of business irrespective of any income.

5. That the assessee company earned parking charges income amounting to Rs.10,19,945/- which was within the scope of business activities.

6. That the assessee company earned rental income of Rs. 73,92,000/- against expense of Rs.1,08,17,113/- for the same premises. As such disallowance of Rs.1,08,17,113/- was unjust and arbitrary. The said expense were claimed as per past history.

7. That the assessee company used various fixed assets installed in the premises for office purpose. The same were required to carry on day to day official activities.

8. That the issue of show cause notice by the learned CIT(A) for enhancement of income by disallowing depreciation of Rs. 17,86,175/- was unjust and arbitrary.

9. That the learned CIT(A) erred in disallowing depreciation of Rs. 17,86,175/- and enhancing the income by said amount.

3. Our record show that this appeal was first listed for hearing on 05.09.2019 on which date none appeared on behalf of the assessee. After that on each date of hearing the appeal was adjourned for non appearance on behalf of the assessee. Several opportunities were given to the assessee but the assessee chose not to attend the appellate proceedings, therefore, we are left with no choice but to proceed exparte. The DR was heard at length. Case records carefully perused.

4. Briefly stated the facts of the case are that the assessee company is engaged in the business of re-sale and service of passenger vehicles and service of Volvo buses. The business was carried out from the rented premises located in Maljipada, Mumbai. For the year under consideration the assessee has shown income earned as under ;-

| | |
|-----------------------|----------------|
| Interest Income | Rs.23,50,000/- |
| Rental Income | Rs.73,92,000/- |
| Parking Charges | Rs.10,19,945/- |
| Sundry Balances w/off | Rs.30,98,929/- |
| Miscellaneous Income | Rs. 4,596/- |

5. The assessee has claimed expenses to the tune of Rs.1,08,17,113/-. The assessee was asked to explain why the expenses should not be disallowed as it is not carrying out any business activity. The assessee replied as under :-

"The primary expenditure incurred by the assessee company was on Rent, Rates & Taxes. The assessee company was engaged in the business of resale and service of passenger vehicles and service of Volvo buses. The rented premises were located in Maljipada, Mumbai and was taken on long term lease by the assessee company where it had set up a state of the art service center for servicing of Volvo buses. During the period under consideration, the assessee company had certain commercial disputes with the principal manufacturer and as a result there was a decline in the level of operations. A decline in the business operations cannot be the premise to allow an expenditure incurred for the operations of the business. In the instant case the assessee company has a gross block of Rs. 7,02,80,945/- comprising of Building, plant & machinery, furniture & fixture and allied assets. These cannot be

setup in the absence of any leased or owned premises. The assessee company during the period under consideration was only operating from the premises in Maljipada and the payment of rent relates to the said premises."

6. The reply of the assessee did not find any favour with the AO who was of the firm belief that since the assessee is not doing any business expenses cannot be allowed and made the addition of Rs.1,08,17,113/-.

7. Assessee carried the matter before the CIT(A) but without any success.

8. Facts on record show that there was a decline in the business operation of the assessee because of some dispute with the principal manufacturer but it cannot said that the assessee was not engaged in the business activities. There may be lull in the business but by no stretch of imagination it can be said that the assessee stopped doing the business.

9. Considering the facts of the case in totality we are of the considered view that the expenses claimed as per the financial statements of accounts filed with the return of income cannot be disallowed in toto. We accordingly direct the AO to allow the expenditure as claimed by the assessee.

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

Order pronounced in the open court on 24.03.2023.

Sd/-

[ANUBHAV SHARMA]
JUDICIAL MEMBER

Dated:24 .03.2023

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER