

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
(Conducted through E-Court, Rajkot)

BEFORE Ms SUCHITRA KAMBLE, JUDICIAL MEMBER,
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 57/Rjt/2018
निर्धारण वर्ष/Asstt. Year: 2011-2012

M/s. Jay Ambica Exim, c/o Kalpesh S. Doshi & Co, Chartered Accountants, 411, Cosmo Complex Mahila College Circle, Rajkot-360001. PAN: AAEFJ5677J	Vs.	A.C.I.T, Central Circle-2, Rajkot.
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Assessee by :	Shri Kalpesh S. Doshi, A.R
Revenue by :	Shri B.D. Gupta, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **23/01/2023**
घोषणा की तारीख /**Date of Pronouncement**: **19/04/2023**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad, dated 12/07/2017 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-12.

2. The assessee has raised the following grounds of appeal:

1. *That, the learned CIT (A) has wrongly passed the order without giving proper opportunity of being heard.*

2. That, the learned CIT(A) has wrongly confirmed the addition amounting to Rs. 9,42,269/- u/s 40(A)(2)(b) of the I.T. Act, 1961.

3. That, the learned CIT(A) has failed to adjudicate the addition amounting to Rs. 75,625/- made by the AO u/s 36(1)(va) of the I.T. Act, 1961.

4. That, the learned CIT(A) has wrongly confirmed the addition amounting to Rs. 1,98,468/- being the disallowance out of depreciation.

5. That, the findings of the learned AO and CIT (A) are not justified and are bad-in-law.

The appellant craves to add, alter, amend or delete any of the above grounds of appeal.

3. At the outset, the Ld. AR appearing on behalf of the assessee before us submitted that he has been instructed by the assessee not to press ground no. 3 raised in the memo of appeal. Accordingly, we dismiss the same as not pressed.

4. The necessary facts are that the assessee in the present case is a partnership firm and engaged in business of Cargo handling & transportation and provides various kinds of machinery on hire basis. The AO during the assessment proceedings found that the assessee has made purchases from the sister concern at a price higher than the prevailing market price, therefore, the AO has worked out the purchase price at Rs. 9,42,269/- as excessive within the meaning of provision u/s 40A(2)(b) of the Act and added to the total income of the assessee.

5. Likewise, the AO also found that the assessee has purchased vehicles from sister concern at a price higher than the WDA and thus worked out excess depreciation amounting to Rs. 1,98,468/- only. Thus, the AO disallowed such excess depreciation and added to the total income of the assessee.

6. Aggrieved assessee preferred an appeal to the Ld.CIT(A), who confirmed the order of the AO.

7. Being aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

8. The Ld. AR before us filed a paper book running from pages 1 to 127 and contended that the Ld.CIT(A) erred in confirming the order of the AO without considering the documents filed before him.

9. On the other hand, the Ld. DR before us vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available with us. At the outset, we note that the Ld. CIT(A) has confirmed the order of the AO by holding that the assessee has not made any submission against the finding of the assessment order. However, on perusal of the paper book filed by the assessee particularly from pages 42 to 94, we note that the assessee has made detailed reply before the Ld. CIT-A. The necessary details filed by the assessee are enclosed as per annexure A (page 43 and 44) of the Paper Book. Thus, from the above it appears that the Ld.CIT(A), while deciding of the appeal filed by the assessee has not considered the written submission filed by the assessee inadvertently. Thus, in the interest of justice and fair play, we restore the issue to the file of the Ld.CIT(A), for fresh adjudication as per the provisions of law. Hence, the grounds of appeal of the assessee are partly allowed for statistical purposes.

11. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the Court on 19/04/2023 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 19/04/2023

Manish/Tanmay

आदेश की प्रतिलिपि ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण /
DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad