

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 194/Rjt/2018  
Assessment Year: 2014-15**

The Assistant Commissioner of Income Tax, Gandhidham Circle, Gandhidham, Kutch  (Appellant)	Vs	M/s. P C Patel & Co. 1 <sup>st</sup> Floor, Bhoomi Complex, Mundra Road, Plot No. 4, S. No. 242, Alya Nagar, Bhuj-Kutch  PAN No: AACFP5417A (Respondent)
--	----	---

**Assessee Represented: None**  
**Revenue Represented: Shri Shramdeep Sinha, CIT-DR**

Date of hearing : 03-07-2023  
Date of pronouncement : 05-07-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Revenue as against the Appellate order dated 14.03.2018 passed by the Commissioner of Income Tax (Appeals)-3, Rajkot arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2014-15.

2. The brief facts of the case is that the assessee is a Partnership Firm engaged in the business of Earth Moving Equipments on hire basis and Mining Contractor, Cargo Handlers and Transporters. For the Assessment Year 2014-15, the assessee filed its original Return of Income on 30-09-2014 declaring total income of Rs.15,20,73,460/-. The case was selected for scrutiny assessment and made disallowance of Rs. 10,00,000/- on various expenses claimed by the assessee and also disallowed higher rate of depreciation on Dumper, Tipper etc. @ 30% instead of 15% of depreciation.

3. Aggrieved against the same, the assessee filed an appeal before Commissioner of Income Tax (Appeals). The Ld. CIT(A) allowed the benefit of higher rate of depreciation @ 30% by following decision of the ITAT in assessee's own case for the earlier assessment years 2011-12 to 2013-14.

4. Aggrieved against the same, the Revenue is in appeal before us raising the following Grounds of Appeal:

*A. The Ld.CIT(A) has erred on facts and in law in defining the nature of business of the assessee as transporter and in holding that the assessee is entitled to higher rate of depreciation @30% on dumpers as against depreciation @15% allowed by the AO.*

*B. The Ld.CIT(A) has erred on facts and in law to appreciate that if the vehicle/dumpers were given on hire, then the assessee must have earned income from hiring out of the these equipment.*

*C. In the alternative and without prejudice to above, the Id.CIT(A) has also failed to appreciate that if the assessee has taken the equipment on hire, then there would be no question of claiming depreciation thereon.*

*It is therefore, prayed that the order of Ld. CIT(A) be set aside and that of AO be restored to the above extent.*

4.1. None appeared on behalf of the assessee in spite of service of notices.

5. Ld. CIT-D.R. Shri Shramdeep Sinha appearing for the Revenue fairly admitted that the issue of higher rate of depreciation is squarely covered against the Revenue in assessee's own case for the earlier assessment years. Respectfully following the same, the appeal is to be decided against the Revenue.

6. We have given our thoughtful consideration and perused the materials available on record. The Ld. CIT(A) extracted the order of the ITAT in assessee's own case for Assessment Years 2011-12 to 2013-14 as follows:

*"...We have noticed that the tenders invited for hiring of equipments relate to the following kind of work*

*I. 7 Excavation of over burden;*

*II. Transportation of such excavated O.B./ mineral;*

*III. Excavation of mineral*

*IV. Transportation of mineral from mines to pit head, stock piles of any other place.*

*V. The transportation of over burden mineral and extracted minerals were done by running motor vehicles such as tippers, dumper etc.*

*Further Circular no.652 of the Board makes it clear that motor/lorries must be hired to some other persons whether the use of the same in the assessee's business of transportation of goods on hire would suffice then Circular no.609 clarifies that higher depreciation will also be admissible on motor lorries used in the assessee's/business of transportation of goods on hire. We also find that the assessee was not having any ownership of mines and materials excavated or transported. We observe that the equipment / vehicles were given on hire by the assessee during the course of the year under consideration in pursuance of fender to principal for intended use which includes transportation Assessee-firm was required to provide stipulated equipments and vehicles for hiring work. They were not allowed to remove any equipments, vehicles provided under hiring contract without prior permission of the Principal/Principal Contractor, flic business of the assessee firm itself was equipment & motor vehicles owners and providing them on hire Assessee has received income from contract which includes various*

operations including transportation. We observe that facts and issue in the case of *Balani Ores Ltd. etc. vs. State of Orissa AIR 17, 1975 SCR (2)* dumpers and rokers though registrable under the Motor Vehicle Act are not taxable under the Taxation Act of the Orissa Govt. as long as they are working solely within the premises of the respective owner are distinguishable from the case of the assessee wherein the issue is that higher rate of depreciation to be available on giving the motor vehicle on hire. We find the fact of the case of the assessee are distinguishable from the fact of the case of *Gupta Global Exim P. Ltd.* which pertained to the test of user when facts point out that the assets were used in assessee's own business, whereas in the case of the assessee the vehicles were given on hire in response to an open tender. We observe that the decision of the Hon'ble High Court of Andhra Pradesh High Court in case of *CIT VS. Progressive Engg. Co* that JCB, earth Moving machineries are though registered as Motor Lorries in Motor vehicles Act, same are not road transport vehicles is applicable to JCB only and cannot be stretched to its applicability to dumpers, tippers etc. motor vehicles. The referred case law is completely le in respect of fact, circumstances and subject matter of the case. We find that the Punjab and Haryana High Court in the case of *CIT-IH VS Rakesh Jain 20 taxmann.com 404* lies held that tippers, vibrator and vibrator soil compactor arc commercial vehicle. In this case it was also stated whether Tippers, Vibrator and Vibrator Soil Compactor would be covered by the expression 'commercial vehicle' or such vehicles have to be regarded as plant and machinery to attract less percentage of depreciation. It was stated that the reasoning adopted by the Tribunal would not suffer from any legal infirmity because the Tippers are registered under the Motor Vehicles Act, 1988 (for brevity the 1988 Act') as road transport vehicle as would be vibrator and vibrator soil compactor. Gujarat High Court had held in *Commissioner v. Shiv Constructions (1987) 165 1TR 159 (Guj.)* that dumpers were road transport vehicles. The High Court held in the decision at page 160 that the Department could not take contradictory stands. The decision of Bombay High Court in the case of *Shall Construction Ltd. Bombay High Court in Shah Construction Co. Ltd. v. Commissioner (1991) 188 ITR 537 (Bom.)* relates to development rebate in the case of dumpers. It has been specifically observed in the aforesaid decision that it was the assessee's case that dumpers had been purchased to secure an "efficient system of transport". It was found in said decision as a fact, that dumpers were identical to trucks except for some minor variation. It was because of these findings that the dumpers were held to be road transport vehicles in said decision and development rebate was denied. The judgment of the Supreme Court in *CIT v. Gupta Global Exim (P.) Ltd. [2008] 171 Taxmann 474* pertain to the correct test which the authorities below had to apply pertain to whether the appellant was in the business of transportation and whether the vehicles were used in the said business. It may please be noted that as per circular no. 652, in order to derive the benefit of higher depreciation, motor lorries must be hired out to some other person and whether the use of the same in the assessee's business of transportation of goods on hire would suffice in this regard Board's Circular No. 609, dated 29-7-1991 [SI No 272], it was clarified that where a tour operator or travel agent uses motor buses or motor taxis owned by him in providing transportation services to tourists, higher rate of depreciation would he allowed on such vehicles. It is further clarified that higher depreciation will also be admissible on motor lorries used in the assessee's business of spoliation of goods on hire. The higher rate of depreciation, however, to apply if the motor buses, motor lorries, etc. are used in some other non- hiring business of the assessee."

*It is demonstrated from the above facts and findings that assessee has received income from contracts which includes various operation including transportation. We observe that to claim higher depreciation it is required that goods transported must belong to someone else and use of motor vehicles for transportation is a key to claim higher depreciation. After perusal of material on record we find that the assessee is engaged in providing equipment and motor vehicle on hire. After considering the above facts, judicial pronouncements, elaborate findings of the Ld. CIT(A) we do not find any reason to interfere in the findings of the Ld. CIT(A). Therefore, the appeal of the revenue is dismissed.*

6.1. Respectfully following the Co-ordinate Bench of this Tribunal, we have no hesitation in following the same, and allow the benefit of higher rate of depreciation @ 30% on Dumper, Tipper etc. Thus the grounds raised by the Revenue is devoid of merits.

7. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 05-07-2023

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 05/07/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
राजकोट