

IN THE INCOME TAX APPELLATE TRIBUNAL  
“DB” BENCH, JABALPUR  
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 46/JAB/2023

(A.Y: 2010-11)

Ashwani Kumar Sehgal M/s. Sehgal Industries, Madhav Nagar Gate, Katni-483501, MadhyaPradesh.	Vs.	ITO-1. Katni-483501, MadhyaPradesh.
PAN/GIR No. : AJGPS0132E		
Appellant	..	Respondent

Appellant by :	Shri.SapanUsrethe, Advocate.AR
Respondentby :	Shri.ShivKumar. Sr. DR

Date of Hearing	18.09.2023
Date of Pronouncement	21.09.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC) Delhi /CIT(A) a passed u/sec 154 and 250 of the Act. The assessee has raised the following grounds of appeal.

- 1. The learned Commissioner of Income tax (Appeal) was not justified in not quashing the assessment proceeding as order passed under section 154 by the AO is not the mistake apparent from the record.*

2. *The learned Commissioner of Income tax (Appeal) was not justified in not quashing the assessment proceeding as order passed under section 154 by the AO as the issue raised in proceeding under section 154 is debatable issue and cannot be adjudicated in proceeding under section 154.*

3. *The learned Commissioner of Income tax (Appeal) was not justified in confirming the addition of Rs.89,108 on account of depreciation claimed by the appellant at the rate of 30% on Higher vehicle as it was rightly been claimed and addition was confirmed without properly appreciating the facts of the case.*

4. *The learned Commissioner of Income tax (Appeal) was not justified in confirming the addition of Rs.89,108 on account of depreciation claimed by the appellant at the rate of 30% without appreciating that in earlier and subsequent years deprecation was duly allowed as a part of Block of asset and merely on presumption it cannot be disallowed*

5. *The learned Commissioner of Income tax (Appeal) was not justified in upholding the order of learned AO without giving proper reasons on the reply given by the appellant in appellate proceedings.*

6. *The learned Commissioner of Income tax (Appeal) was not justified in upholding the order of learned AO as it is barred by limitation.*

*7. The craves for leave to amend, add to or omit any ground up to the time of hearing of the appeal.*

2. At the time of hearing, the Ld. AR has not pressed the ground of appeal No. 6 and is treated as withdrawn and is dismissed.

3. The brief facts of the case are that, the assessee is engaged in the business of manufacturing and trading of lime. The assessee has filed the return of income for the A.Y 2010-11 on 12.10.2010 disclosing a total income of Rs. 9,03,130/- and the agricultural income of Rs.95,000/-. Subsequently the case was selected for scrutiny under CASS and the assessment was completed U/sec143(3)of the Act dated 31-12-2012 determining the total income of Rs.9,06,554/-.Whereas the Assessing Officer (AO) has passed rectification order u/s 154 of the Act with addition of income from LIC of Rs. 17,314/- and assessed the total income of Rs.9,23,864/-. Subsequently, the AO on examination of records found that the assessee has claimed depreciation @30% on Motor Buses, Lorries of Rs. 1,78,216/- on the written down value(WDV) of Rs.5,94,054 and whereas the rate of depreciation @ 30% is applicable on the vehicles used in the business running on Hire. The AO dealt on the facts and CBDT circular and observed that

the assessee is entitled for the depreciation@15% on the WDV. Whereas the assessee has claimed the higher rate of depreciation and made disallowance of excess claim of depreciation of Rs. 89,108/- and assessed the total income of Rs. 10,12,970/- and passed the order u/s 154 of the Act dated 30.01.2017.

4. Aggrieved by the rectification order, the assessee has filed an appeal before the CIT(A). The assessee has raised the grounds of appeal on the validity of passing of order u/s 154 of the Act and also with respect to the claim of depreciation@30% on the vehicle used for hire is a debatable issue. Whereas the CIT(A) has dealt on the facts, submissions and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing the Ld. AR submitted that the CIT(A) has erred in confirming the disallowance of excess depreciation of Rs.89,108/- claimed by the assessee applying the depreciation rate @ 30%. Further the assessee has utilized the vehicles for the purpose of business and therefore entitled for higher depreciation and the Asset is merged with block of assets and cannot be disturbed. The

Ld.AR substantiated the submissions with the paper book and prayed for allowing the appeal. Per Contra, the Ld. DR relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld. AR that the CIT(A) has erred in confirming the disallowance of excess depreciation of Rs. 89,108/- where the assessee has claimed the depreciation @ 30% on the WDV of gross block of assets being carry forward from the earlier years and no adjustments are permitted. We find as per the Audited profit and loss account placed at page 18 of the paper book, the assessee has disclosed on the credit side “(i) Lime Manufacturing cum trading A/C and (ii) Coal A/c” and there is no specific head of source of income/receipts that the vehicles have been used in a business of running them on hire and the hire charges/income is received and credited to the Profit & Loss account. The Ld. AR emphasized that the assessee has been using the vehicles for the purpose of transportation of lime and therefore entitled for higher depreciation. We find as per Fixed Assets & deprecation chart placed at Page 17 of the paper book, the WDV/ gross block of assets of vehicles was utilized for the business

purpose and there is no specific mention with respect to utilization was for the purpose of hiring. Hence, considering the facts and circumstances, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the assessee.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 21.09.2023

Sd/-  
(OM PRAKASH KANT)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Jabalpur, Dated 21.09.2023

KRK, PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

( Asst. Registrar)  
ITAT, Jabalpur