IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकर अपील सं./**ITA No.499/SRT/2023**

(निर्धारणवर्ष / **Assessment Year: (2013-14)**

(Hybrid Hearing)

Assistant Commissioner of Income-tax, Circle-2(1)(1), Surat Room No.612, 6th Floor, Aayakar Bhavan, Near Majura Gate, Surat-395001	**Vs.**	M/s S D Material Handlers Pvt. Ltd. 405-408, Shivalik Western, L.P. Savani Road, Adajan Adajan BO, Surat-395009
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AACCD 3481B**		
(अपीलार्थी /**Assessee)**		**(**प्रत्यर्थी/**Respondent)**

निर्धारिती की ओर से /Assessee by : Shri Sapnesh R Sheth, CA

राजस्व की ओर से /Respondent by : Shri Vinod Kumar, Sr-DR

सुनवाई की तारीख/ **Date of Hearing : 11/12/2023**

घोषणा की तारीख/**Date of Pronouncement : 21/12/2023**

आदेश / **O R D E R**

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the Revenue, pertaining to assessment year 2013-14, is directed against the order passed by the National Faceless Appeal Centre, Delhi, ['NFAC/Ld.CIT(A)' for short] dated 24.05.2023, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) r.w.s. 263 of the Income Tax Act, 1961 (in short 'the Act'), dated 28.08.2018.

2. The grounds of appeal raised by the Revenue are as follows:

"1. On the facts and circumstances of the case and in law, ld. Learned CIT(A) has erred in directing the Assessing Officer to allow depreciation @ 30% on machineries instead of eligible rate of 15%.

2. On the facts and circumstances of the case and in law, the learned CIT(A) has erred by allowing the depreciation @ 30% on crawler cranes amounting to Rs.1,32,63,680/- instead of eligible depreciation @ 15%, as the cranes are do not fall under the category of Heavy Motor Vehicles.

3. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing the claim of the higher depreciation of the assessee ignoring the fact that it is nowhere provided in the Income Tax Act as well as in the Income Tax Rules that the cranes are motor vehicles and these are eligible for the higher depreciation.

4. On the basis of the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

5. It is therefore prayed that the order of the Ld. CIT(A) may kindly be set aside that of the Assessing Officer be restored.

6. The assessee craves leave to add, alter, amend and/or withdraw any grounds of appeal either before or during the course of hearing of the appeal."

3. Succinctly, the factual panorama of the case is that assessee before us is a Private Limited Company. The assessee–company is engaged in the business of material handling and erection of heavy equipment on contract basis and providing equipment on hire during the year under consideration. The assessee filed its e-return of income for assessment year (A.Y.) 2013-14 showing total income at Rs.Nil and current year loss of Rs.38,98,418/- on 26.08.2013. The return of income was processed u/s 143(1) of the Act. In this case order u/s 143(3) was passed on 04.03.2016, determining the total loss at Rs.37,52,614/- by making addition on account of disallowance u/s 36(1)(va) of the Act at Rs.1,46,271/-. The Ld.PCIT-2, Surat vide his order dated 19.03.2018, has set aside the case u/s 263 to the file of Assessing Office for making fresh enquiry. Therefore, a notice u/s 142(1) was issued on 19.07.2018, with a specific questionnaire and asked the assessee to submit its reply on 27.07.2018. In response to the notices issued, assessee furnished documents and its reply. The assessee, vide its letter dated 01.08.2018, submitted its reply. The relevant portion of the submission is reproduced below:

"Further in contention of our earlier submission to the Pr.CIT-2, Surat and as desired by you, we enclosed herewith the following details/documents for your kind consideration. During the year under consideration the assessee-company has purchased the following two cranes, the details of which are as under:

01. ABG Make Model-1080 Hydraulic Crawler Crane:

This crane was purchased for Rs.2,56,60,216/- on 18.06.2012 and was capitalized for Rs.2,31,51,135/- after availing input credit of Rs.25,09,080/-. Though this crane is Crawler crane and is not being mounted on truck the RTO tax is being paid for the same. A copy of purchase bill as well as receipt for payment of RTO tax is enclosed herewith for your reference and record.

02. Grove GMK 3050-50 MT Crane.
This old crane was purchased for Rs.1,25,00,000/- on 07.08.2012 and was capitalized for Rs.1,25,00,000/-. Further please note that this crane is not a crawler crane but the same is mounted on a truck and a recurring amount RTO tax is being paid every year and the same is debited to Crane Running Expenses in the books of account. A copy of purchase bill and a copy of receipt for payment made to RTO are enclosed herewith for your reference and record. A photo of the crane is also enclosed for your ready reference please.
Sir, we hope the above will clear all doubts at or end. We hope you will consider the matter and will do the needful."

4. However, the Assessing Officer rejected the claim of the assessee and stated that the assessee was eligible for depreciation @15% and not @30% on these cranes. Therefore, Assessing Officer disallowed the excess depreciation claimed by the assessee on above two cranes *i.e*. Rs.1,32,63,580/- and made the addition.

5. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before NFAC/Ld. CIT(A), who has deleted the addition. The ld CIT(A) noted that the basic question here is whether the cranes are to be considered as 'Motor lorries' and be allowed depreciation @ 30% or be treated as machinery and allowed depreciation @ 15%. This question was clearly answered by jurisdictional HIGH COURT OF GUJARAT in the case of Prasad Multi Services (P.) Ltd Vs. Deputy Commissioner of Income Tax, [2020] 122 taxmann.com 73 (Gujarat), wherein it was held as under:

"Section 32 of the Income-tax Act, 1961 - Depreciation - Allowance/Rate of (Higher depreciation) - Assessment year 2011-12 - Assessee-company was engaged in business of hiring, operation and maintenance of construction equipments - It claimed depreciation at rate of 30 per cent on various types of

cranes- Whether RTO registration under provision of Motor Vehicles Act was not a sine qua non for claiming depreciation - Held, yes - Whether since there were evidences on record indicating that assessee was involved in business of hiring out of cranes, merely because cranes were also used for personal construction business, same would not disentitle assessee to claim higher depreciation - Held, ***yes*** *[Paras 37, 40 and 42] [In favour of assessee]*

Therefore, respectfully following the above-mentioned judgement of Hon'ble jurisdictional High Court, the ld CIT(A) allowed depreciation at the rate of 30%.

6. Aggrieved by the order of Ld. CIT(A), the Revenue is in appeal before us.

7. The Ld. DR for the Revenue, argued that during the assessment proceedings, Assessing Officer has noticed that the assessee has purchased two cranes during the year under consideration namely: (i) Hydraulic Crawler Crane and MT Crane for Rs.2,31,51,135/- and 1,25,00,000/- respectively. On verification of the depreciation chart, claimed by the assessee, the assessing officer has noticed that assessee has claimed 30% depreciation under the head “Machineries” instead of actual available @ 15% as per the section 32, section 143(3) rule 5 & Appendix-I. According to Assessing Officer, as per BMV (Bombay Motor Vehicle) Act, as applicable to Gujarat also. Crane owner has two options to pay RTO tax which are: (i) one time lump sum tax @ 12% of cost price (ii) Recuring annual tax @ 200 + Rs.400/- per every 1000 kgs or part thereof exceeding 2000 kgs. Further, assessing officer has also noticed that the assessee has not debited any amount against RTO tax in its Profit & Loss account for the year under consideration though following capitalization method for sale value of cranes. The assessee-company has not submitted anything in its reply against the show cause notice issued by the assessing officer. Hence, addition made by the Assessing Officer may be confirmed.

8. On the other hand, Ld. Counsel for the assessee defended the order passed by NFAC/Ld. CIT(A). The Ld. Counsel submitted that assessee is entitled to claim the higher depreciation where assessee was in business of hiring out of cranes, even if, such cranes were also used for personal construction business, same would not disentitle the assessee to claim higher depreciation. The Ld. Counsel also stated that where mobile crane may be registered on motor truck, used in business of running on hire, and registered as on heavy motor vehicle, would fall within expression "motor lorries" and hence, the assessee is entitled to claim depreciation at a higher rate.

9. After giving our thoughtful consideration to the submission of the parties and perusing the judicial decisions relied upon by the Ld. Counsel, we find that the issue involved in the present appeal is no longer *res integra*. The question as to whether where assessee was in business of hiring out cranes, even if, such cranes were also used for personal construction business, same would not disentitle assessee to claim higher depreciation, that is, the assessee is entitled to claim higher depreciation, and the issue was considered by various judicial forums across India. The Hon'ble jurisdictional High Court of Gujarat in the case of Prasad Multi Services (P.) Ltd. vs. DCIT [2020] 122 taxmann.com 73 (Guj)/[2020] 423 ITR 542 (Guj)[16-07-2019], held as follows:

> ***"24.*** *It is not in dispute that similar issued had cropped up in the Assessment Year 2007-08, and after due consideration of all the relevant aspects of the matter, the Assessing Officer had granted depreciation at the rate of 30%. The very same cranes are involved in the present Tax Appeal which were the subject matter of consideration in the Assessment Year 2007-08. However, according to the Revenue, it was a mistake committed by the Assessing Officer at the relevant point of time and such a mistake can always be corrected at a later stage.*
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> ***25.*** *This is where the principle of rule of consistency comes into play. What is the rule of consistency? It has been explained by the Supreme Court in the case of Radhasoami Satsang v. CIT [1992] 60 Taxman 248/193 ITR 321, and the following passage should be noticed:*
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> *"13. One of the contentions which the learned senior counsel, for the assessee-assessee raised at the hearing was that in the absence of any change in the circumstances, the*

Revenue should have felt bound by the previous decisions and no attempt should have been made to reopen the question. He relied upon some authorities in support of his stand. A full Bench of the Madras High Court considered this question in T.M.M Sankaralinga Nadar & Bros. & Ors. v. Commissioner of Income-Tax, Madras 4 ITC 226. After dealing with the con- cession the Full Bench expressed the following opinion:"

> *"The principle to be deducted from these two cases is that where the question relating to assessment does not vary with the income every year but depends on the nature of the property or any other question on which the rights of the parties to be taxed are based, e.g., whether a certain property is trust property or not, it has nothing to do with the fluctuations in the income; such questions if decided by a Court on a reference made to it would be res judicata in that the same question cannot be subsequently agitated."*

14. One of the decisions referred to by the Full Bench was the case of Hoystead & Ors. v. Commissioner of Taxation 1926 AC 155. Speaking for the Judicial Committee Lord Shaw stated:

> *"Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be proper apprehension by the Court of the legal result either of the construction of the document or the weight of certain circumstances. If this were permitted litigation would have no end, except when legal ingenuity is exhausted. It is a principal of law that this cannot be permitted, and there is abundant authority reiterating that principle. Thirdly, the same principle - namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the plaintiff and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."*
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> *These observation were made in a case where taxation was in issue.*

15. This Court in Parashuram Pottery Works Co. Ltd. v. ITO (106 ITR 1 at p.10 : 1977 SC 429 at p.435) stated :

"At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity."

Assessments are certainly quasi-judicial and these observations equally apply.

16. We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year, but where a fundamental aspect permeating through the different assessment years has been found as a fact, one way or the other, and the parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

17. On these reasonings, in the absence of any material change justifying the Revenue to take a different view of the matter - and if there was no change, it was in support of the assessee - we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-tax in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income derived by

the Radhasoami Satsang was entitled to exemption under Ss. 11 and 12 of the Income-tax Act of 1961."

26. *The aforesaid principle has been applied by the Delhi High Court in the following judgments :*

(1) DIT (Exemption) v. Apparel Exports Promotion Council [2000] 112 Taxman 390/244 ITR 734;

(2) CIT v. Neo Poly Pack (P.) Ltd. [2000] 112 Taxman 363/245 ITR 492;

(3) CIT v. Allied Finance (P.) Ltd. [2007] 289 ITR 318.

27. *In the first of the above judgements, it was held that although the doctrine of res judicata did not strictly apply to the income-tax proceedings, yet in order to maintain consistency, the Revenue cannot be permitted to rake up stale issues all over again merely because the scope of appeal is wider than the scope of reference. In this case, the assessee had been granted exemption under section 11 for a long period of years and without there being any change in the objects or activities of the assessee, the income-tax authorities sought to deny the exemption in a later year. In the case of Neo Polypack (P.) Ltd. (supra), it was held that although the doctrine of res judicata is not applicable to the income-tax proceedings since each assessment year is independent of the other, yet where an issue has been considered and decided consistently in a number of earlier years in a particular manner the same view should continue to prevail in the subsequent years unless there is some material change in the facts. In the case of Allied Finance (P.) Ltd. (supra), the Tribunal had decided an issue in favour of the assessee by two orders and those two orders were followed by the Tribunal in the subsequent appeals. The department had accepted the correctness of the basic two orders and did not file any appeal against them. It, however, challenged the subsequent orders of the Tribunal, and while refusing to entertain the appeal, the Delhi High Court held that there was no reason to discard the principle of consistency which requires that when the revenue has accepted a particular view by not filing an appeal that view should be adhered to, unless there is a just cause for departure. The High Court deprecated the practice of pick and choose.*

28. *The basis of the rule of consistency seems to us, with respect, to be the classic observations of His Lordship Justice H.R. Khanna speaking for the Supreme Court in the case of Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 (SC). It was held that :*

"We have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi judicial controversies as it must in other spheres of human activity."

29. *It is significant to note that the aforesaid observations were noticed by the Supreme Court in the case of Radha Soami Satsang (supra) and it was held that they equally apply to the assessments which are certainly quasi judicial.*

30. *In the case of Berger Paints India Ltd. v. CIT [2004] 135 Taxman 586/266 ITR 99 (SC), it was again held by the Supreme Court that if the Revenue has not challenged the correctness of the law laid down by the High Court and has accepted it in the case of one assessee, then it is not open to the Revenue to challenge its correctness in the case of other assessee without just cause. Similar observations have been made by the Supreme Court in the following cases :*

(1) Union of India v. Kaumudini Narayan Dalal [2001] 117 Taxman 375/249 ITR 219 (SC)

(2) CIT v. Narendra Doshi [2002] 122 Taxman 717/254 ITR 606 (SC)

(3) CIT v. Shivsagar Estate [2002] 124 Taxman 606/257 ITR 59 (SC)

***31.** The above judgements of the Supreme Court show the anxiety to prevent the income-tax authorities from taking different stand in the case of different assessee in respect of the same issue or taking different stands in the case of the same assessee for different assessment years in respect of the same issue.*

***32.** The Supreme Court in the case of Excel Industries Ltd. (supra) observed as under :*

"28. Secondly, as noted by the Tribunal, a consistent view has been taken in favour of the assessee on the question raised, starting with the assessment year 1992-93, that the benefits under the advance licences or under the duty entitlement pass book do not represent the real income of the assessee. Consequently, there is no reason for us to take a different view unless there are very convincing reasons, none of which have been pointed out by the learned counsel for the Revenue.

29. In Radhasoami Satsang v. CIT [1992] 193 ITR 321 (SC) this court did not think it appropriate to allow the reconsideration of an issue for a subsequent assessment year if the same "fundamental aspect" permeates in different assessment years. In arriving at this conclusion, this court referred to an interesting passage from Hoystead v. Commissioner of Taxation [1926] AC 155 (PC) wherein it was said (page 328 of 193 ITR) :

"Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be proper apprehension by the Court of the legal result either of the construction of the document or the weight of certain circumstances. If this were permitted litigation would have no end, except when legal ingenuity is exhausted. It is a principal of law that this cannot be permitted, and there is abundant authority reiterating that principle. Thirdly, the same principle - namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the plaintiff and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."

30. Reference was also made to Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 (SC) and then it was held (page 329 of 193 ITR) :

"We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter- and if there was not change it was in support of the assessee - we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-Tax in the earlier proceedings, a different and contradictory stand should have been taken."

31. It appears from the record that in several assessment years, the Revenue accepted the order of the Tribunal in favour of the assessee and did not pursue the matter any further but in respect of some assessment years the matter was taken up in appeal before the Bombay

High Court but without any success. That being so, the Revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather than spend the taxpayers' money in pursuing litigation for the sale of it.

32. Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the sane in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers."

33. *Thus, in view of the above, in our opinion, the disallowance is not sustainable. The Revenue has tried to dismiss the entire issue in the name of a mistake but it does not appear to be a mistake. We are saying so, because even independent of the principle of consistency, the assessee has a good case on merits.*

34. *We fail to understand as to on what basis the Revenue authorities have come to the conclusion that the assessee is not in the business of hiring and that the main business of the assessee is construction. According to the Revenue authorities, the cranes are used by the assessee for his own business of construction. There is thumping documentary evidence on record to indicate that the assessee is very much in the business of hiring. The depreciation at the higher rate could not have been declined merely on the assumption that the cranes might have been used by the assessee for his own business of construction. In fact, it would be an error to take the view that for the purpose of claiming depreciation at the rate of 30% the assessee is obliged to establish that the cranes are used exclusively for the hiring business and that they are not used for any other purpose.*

35. *We may refer to a decision of this Court in the case of Gujco Carriers (supra), on which the assessee has placed strong reliance. The issue before this Court in Gujco Carriers (supra) was that the assessee had purchased a mobile crane and claimed depreciation at 40% thereon stating that it was being used in the business of running it on hire and so it will fall under entry No. IIIE(1A) of Part I of Appendix I to the Income-tax Rules, 1962. This Court, after due consideration of all the relevant aspects of the matter, ultimately held that the mobile crane of the assessee which was registered as a heavy motor vehicle would clearly fall within the expression "Motor Lorries" in entry No. IIIE(1A) of the Table in Appendix I under rule 5 of the said Rules, since it was used by the assessee in its business of running the crane on hire. This Court, ultimately, ruled that the assessee was entitled to depreciation at the rate of 40% on the crane mounted on a motor-truck.*

36. *This Court, in the case of Gujco Carriers (supra), had the occasion to consider the question with regard to the rate of depreciation and the meaning of "Motor Lorry". We may quote the relevant observations made by this Court thus :*

"The controversy centres around the question whether mobile crane registered as a heavy motor vehicle under the Motor Vehicles Act and the Rules made thereunder with the R.T.O. would fall within the expression 'motor lorries' contained in item III E(1A) of Appendix 1 of the said Rules. The Tribunal has confirmed the orders of the Income-tax Authorities holding that since 'cranes' are not mentioned as independent item in Appendix 1, depreciation at the rate of 40% was not admissible to cranes, and that only the rate of 10% was admissible being the general rate applicable to machinery. The Tribunal, rejected the plea of the assessee that crane was an integral part of the motor lorry on which it was mounted and was worked by the same machine which provided traction to the lorry, on the ground that this required ascertainment of facts and fresh investigation. The Tribunal also rejected the

assessee's contention that benefit of depreciation at 30% should be given to it since it was given to 'fork-lift trucks' under Instructions No. 617 issued on 13-9-1973 by the C.B.D.T. classifying 'fork-lift trucks' under item III (ii-D 9) of Appendix 1.

Under the heading 'Machinery and plant' of item III of Appendix 1, Part I of the Table of Rates at which depreciation is admissible, read with Rule 5 of the Income-tax Rules, various items of machinery and plant are specified with the rates at which depreciation is to be allowed as are mentioned against them.

The assessee claimed depreciation at 40% on its crane under Item III E(1A) of Appendix 1, which reads as follows :

"E. (1A) Motor buses, motor lorries and motor taxis used in a business running them on hire."

In the alternative, the assessee claimed depreciation before the Tribunal on the basis of the C.B.D.T. Instruction No. 617 dated 13-9-1973, which has been reproduced in the order of the Tribunal, as under:

"132. Fork lift trucks - Rate of depreciation prescribed in Part 1 of Appendix 1 to Income-tax rules.

Fork lift trucks would be classified under item III (ii) -D(9) of Appendix I to the Income-tax Rules, 1962 and would be entitled to depreciation at the rate of 30 per cent."

Item III (ii) - D(9) which is referred to in the aforesaid Instruction No. 617 which relates to fork lift trucks, reads as under :

"Motor buses and motor lorries other than those used in a business of running them on hire."

In the year 1973, the entry D(9) read as under :

"Motor buses, motor lorries, motor taxis, motor tractors"

The origin of word 'lorry' is uncertain. 'Lorry' means, (i) "a large strong motor vehicle for transporting goods etc.", (ii) "a long flat low wagon, or, (iii) "a truck used on railways or tramways", as per the Concise Oxford Dictionary. As per Webster's II New River Side University Dictionary, the word 'lorry', in the meaning relevant to the present context, would mean, 'a motor truck'. As per the Encyclopedia Britannica, truck is "also called lorry". Thus, the expression "motor lorries" in Entry III E (1A) of Appendix 1 would mean "motor trucks".

"Truck" is introduced in following terms in the Encyclopedia Britannica :

"Truck also called lorry any motor vehicle designed to carry freight or goods or to perform special services such as fire fighting. The truck was derived from horse-driven wagon technology, and some of the pioneer manufacturers came from the wagon business. Because of their speed and flexibility, trucks have come to carry a quarter of the intercity freight in the United States, and they enjoy an almost total monopoly in intracity freight delivery.

In 1896 Gottlieb Daimler of Germany built the first motor truck. It was equipped with a four-horsepower engine and a belt drive with two speeds forward and one in reverse. In 1898 the Winton Company of the United States produced a gasoline-powered delivery wagon with a single-cylinder six-horsepower engine.

In World War I motor trucks were widely used, and in World War II they largely replaced horse-drawn equipment. A notable vehicle was the four-wheel-drive, quarter-ton-capacity, short-wheelbase jeep, capable of performing a variety of military tasks."

Lorry or truck would, therefore, mean not only any motor vehicle designed to carry freight or goods but also to perform special services like fire fighting. Fire engine also called fire

truck is a self propelled mobile piece of equipment used in fire fighting. There can be other special services to be performed by motor vehicles designed for such services. Thus, a lorry i.e. truck adapted or designed to carry a crane is meant for special services of lifting load, moving it side by side, rotating it or moving it horizontally. Most industrial trucks permit mechanized pickup and deposit of the loads, eliminating manual work in lifting as well as transporting. The crane truck is a portable boom crane mounted on an industrial truck. It may be used with hooks, grabs, and slings for bundled or coiled material. Industrial trucks which would also come within the expression 'motor lorries' are described as follows in the Encyclopedia Britannica :

"Industrial truck carrier designed to transport materials within a factory area with maximum flexibility in making moves. Most industrial trucks permit mechanized pickup and deposit of the loads, eliminating manual work in lifting as well as transporting. Depending on their means of locomotion, industrial trucks may be classified as hand trucks or power trucks.

Hand trucks with two wheels permit most of the load to be carried on the wheels, but some of the load must be assumed by the operator to balance the truck during movement. Common two-wheel hand trucks include the barrel, box, drum, hopper, refrigerator, paper-roll, and tote-box trucks. Four-wheel hand trucks are found in many more varieties, including dollies, high and low-bed flat trucks, carts, rack carriers, wagons, and various hand-lift trucks having mechanical or hydraulic lifting mechanisms for raising and lowering a load.

Power trucks are propelled by batteries and an electric-motor or by an internal - combustion engine with either a mechanical drive or a generator and electric - motor drive. Propane and diesel engines are used in place of gasoline engines on some types. The non-lift platform truck is used simply for hauling, but other power trucks are provided with mechanisms, usually hydraulic, for lifting the loads. Forklift trucks are quipped with a forklike mechanism on the front end designed to pick up loads on specially designed platforms, called pallets, elevate the load to the desired height, transport it, and deposit it at the desired location and height. Ram trucks have a single protruding ram for handling coiled material. The crane truck is a portable boom crane mounted on an industrial truck; it may be used with hooks, grabs, and slings for bundled or coiled material. The straddle truck resembles a gantry crane on four pneumatic -tired wheels; the operator rides above the inverted U-frame, within which the load - lumber, bar steel, or pipe is carried on elevating bolsters. Other common types include high and low lift platform trucks, motorized pedestrian led, side-clamp, tractor, and side-loading trucks."

It will, thus, be clear that motor vehicles like fire trucks, fork lift trucks and crane trucks which are designed for special services fall within the category of 'motor trucks' (also called 'motor lorries').

The word 'crane' when used for an inanimate object means a machine for moving heavy objects usually by suspending them from a projecting arm or beam. Crane is any of a diverse group of machines that not only lift heavy objects but also shift them horizontally. Movable cranes are mounted on railway cars, motor trucks or chassis equipped with caterpillar treads and the hoisting machinery is mounted so as to counterpoise part of the load on the boom and thereby, preventing the entire crane from overturning while carrying the load. The fork lift truck, widely used for moving goods between warehouse storages and shipping vehicles, "is a highly manoeuvrable crane adaptable to handling drums, crates, or loaded skids or pallets." (See Encyclopedia Britannica under the heading `crane').

Thus, a 'fork-lift truck' is also a type of crane. The expression 'truck crane' is well known in the truck industry. "The truck crane is a unit consisting of a crane house and boom mounted on a truck chassis,.....Originally assembled by contractors from crawler cranes and truck parts, the truck crane for years been manufactured and sold as a unit. Although the truck

crane is difficult to move on soft or slippery ground, it is highly mobile on a firm footing and is easily moved over roads and highways. (See "Crane Hoist" - McGraw Hill - 'Encyclopedia of Science and Technology').

A crane is usually typed according to its undercarriage. Some of the cranes which undercarriage is not a truck are, 'crawler cranes' mounted on continuous tracks, the 'rail or locomotive crane' on special chasis with flanged wheels for use on railway tracks and 'floating crane' on a barge or scow. Therefore, search for the item 'cranes' in the Entries in Appendix 1 without keeping in mind the nature of equipment, was based on an erroneous premise. A crane mounted on a truck is a truck crane which is a well known machinery which can easily move over roads and highways and is not a stationary equipment.

Truck crane is described under the heading 'crane' in Encyclopaedia Britannica, as under :

"A commonly used type of small movable crane is the truck crane, which is a crane mounted on a heavy, modified truck. Such cranes frequently use unsupported telescoping booms; these are made up of collapsible sections that can be extended outward like the sections of an old nautical telescope or spyglass. The extension of the boom is usually managed hydraulically. Truck cranes make up in mobility and ease of transport what they lack in hoisting capacity."

Thus, a mobile crane mounted on a truck constitutes a single unit known as a 'truck crane' which is adapted for use upon roads for special services. The truck on which the crane is mounted is constructed and adapted specially to carry the crane.

'Goods carriage' as defined in section 2(14) of the Motor Vehicles Act, 1988 means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. This definition is not confined only to carriage of freight which is narrower than the expression 'carriage of goods'. In the instant case, truck is adapted for use solely for carriage of the crane mounted on it. The mounted crane is attached to the truck which carries it. The test of carrying goods such as potatoes and tomatoes that require loading and unloading in context of carriage of freight when transported, as was suggested on behalf of the Revenue, will not be decisive. Unloading, in the context of truck crane where the crane remains mounted and attached to the truck when carried and even at the destination where it is put to use is not a relevant factor at all. Though not required to be loaded or unloaded like other goods transported in carriage of freight, the crane remains fixed, mounted on the truck which has been adapted for use solely for its carriage and such truck crane is used for special service of lifting and moving heavy objects. This is why such mobile crane is registered as a heavy motor vehicle which is a heavy goods vehicle as defined in section 2(16) of the Motor Vehicles Act.

The approach of the Tribunal and the authorities below it that cranes are not mentioned specifically as an independent item falling in the categories for which higher depreciation allowance at the rate of 40% when used for hire and at 30% when not so used has been provided as against 10% of machinery in general, and therefore, they should be treated as falling in the general category of machinery, is an over-simplification of the matter. The approach of the Tribunal that the plea taken by the assessee that crane was an integral part of the motor vehicle on which it is mounted required ascertainment of facts and fresh investigation, amounts to imposing a burden on a person to prove something of which Court or Tribunal can take judicial notice. For example, if a witness deposes that he had seen a horse, the Court need not insist upon him for a proof of the anatomy of a horse and can take a judicial notice of horse as an animal. The Courts and Tribunals are not required to act dumb or ignorant of the facts of which judicial notice can be taken. Thus, just as a court can presume what a horse is, it can as well know what a crane is, and also that crane is an integral part of a truck-crane which is registered as a heavy motor vehicle. Lack of effort and knowledge sufficient for taking such judicial notice should not be a burden on the citizens in judicial proceedings. As provided by section 56 of the Evidence Act, no fact of

which the Court will take judicial notice, need be proved. This equally applies to the Tribunals which are not in fact strictly bound by the rules of evidence.

The mobile crane of the assessee which admittedly was registered as a heavy motor vehicle, would, for the above reasons, clearly fall within the expression 'motor lorries' (which means motor trucks) in Entry III E(1A) of the Table in Appendix 1 under rule 5 of the said Rules, since it was used by the assessee in its business of running the crane on hire."

***37.** We are not impressed by the vociferous submissions canvassed on behalf of the Revenue that the RTO registration under the provisions of the Motor Vehicles Act is a sine qua non for claiming depreciation. To put it in other words, the contention of the Revenue is that, unless the vehicle is registered in the name of the assessee under the Motor Vehicles Act, the assessee cannot be said to be its owner, and as such, he would not be entitled to depreciation allowance in respect thereof. The Revenue authorities have also proceeded on the same footing while declining depreciation at the rate of 30%.*

***38.** In the aforesaid context, we may refer to and rely upon a decision of the Bombay High Court in the case of CIT v. Dilip Singh Sardarsingh Bagga [1994] 77 Taxman 66/[1993] 201 ITR 995 (Bom.), wherein the following view has been taken :*

"4. The word "owner", as observed by the Supreme Court in R.B. Jodha Mal Kuthiala v. CIT [1971] 82 ITR 570 (at page 578) has different meanings in different contexts and in certain circumstances even a lessee may be considered as the owner of the property leased to him. It was also held to be so by the Bombay High Court in CIT v. Alpana Talkies [1983] 139 ITR 1055. It was a case of a lease of a theatre for exhibiting films. Under the lease agreement, the lessee was to keep the theatre in good condition and make all repairs and the premises were to be surrendered with the fittings and fixtures and additions and alterations on the expiry of the lease period. The assessee demolished the theatre and constructed a new one during the period January-July 1962. In respect of the assessment years 1964-65 to 1969-70, the assessee claimed depreciation in respect of the theatre building, furniture and fixtures, plant, etc. The claim was rejected by the Income-tax Officer on the ground that the lessor had not divested himself of the ownership of the land and the building. The Appellate Assistant Commissioner and the Tribunal decided in favour of the assessee and held that the assessee was entitled to depreciation. On a reference, this Court (at page 1058) held:

"What is relevant for the purposes of the present case is that during the period of the lease, the assessee was held to be the owner of the building. The Tribunal, in our view, was justified in holding that the assessee was the owner of the building, fixtures and fittings of Alpana Talkies within the meaning of section 32 of the Income-tax Act. Consequently, the assessee would be entitled to depreciation under section 32 of the Income-tax Act, 1961, on the above items."

5. The expression "owned by the assessee" also came up for interpretation before the Allahabad High Court in Addl. CIT v. U.P. State Agro Industrial Corpn. Ltd. [1981] 127 ITR 97. In this case, depreciation was claimed by the U.P. State Agro Industrial Corporation Ltd., in respect of a building which stood in the name of the State of U.P. The claim was sought to be rejected on the ground that no sale deed had been executed by the State Government in favour of the assessee. The contention of the assessee was that even though the U.P. Government had not transferred the immovable property by a registered deed, the property for all practical purposes belonged to it. It was the beneficial and equitable owner of the property and was entitled to claim depreciation on it. It was held:

" ……the expression 'building owned by the assessee' in section 32 of the Income-tax Act, 1961, has not been used in the sense of the property, complete title in which vests in the assessee. The assessee will be considered to be an owner of the building under section 32 if he is in a position to exercise the rights of the owner not on behalf of the person in whom the title vests but in his own rights."

6. Dealing with the contention of the revenue regarding non-execution of a registered sale deed by the State Government as contemplated by section 54 of the Transfer of Property Act, 1882, and the effect thereof on the ownership of the purchaser for the purpose of claiming depreciation, it was observed that

"even though in the absence of execution of a registered sale deed the ultimate title in the property had not vested in the assessee, it became the owner thereof in the sense in which the expression has been used in section 32 of the Income-tax Act".

7. In this connection, reference may be made to the decision of the Calcutta High Court in CIT v. Steelcrete (P.) Ltd [1983] 142 ITR 45. This too was a case of rejection of a claim to depreciation and development rebate under sections 32 and 33 of the Act. The controversy was whether the assets in question were "owned by the assessee and used for the purpose of business". There was no real dispute in regard to the user of the assets for the purpose of the business. The sole question for determination was whether the machinery in question could be considered to be owned by the assessee for the purpose of section 32 of the Act. Relying upon the observations of the Supreme Court in R.B. Jodha Mal Kuthiala v. CIT [1971] 82 ITR 570, the High Court observed that though the machinery in respect of which the depreciation was claimed stood in the name of the Government of India, to all real intents and purposes and also for purposes of section 32 of the Income-tax Act, 1961, it was intended that the property and the goods should pass to the assessee at the relevant time. Read in this context, it was held that the assessee owned the machinery in question and was entitled to depreciation.

8. Reference may also be made to another decision of the Calcutta High Court in CIT v. Salkia Transport Associates [1983] 143 ITR 39. The dispute in this case was somewhat similar to the dispute in the case before us. Here also depreciation was claimed by the assessee in respect of motor vehicles claimed to be owned by it though not registered under the Motor Vehicles Act in its name. The Calcutta High Court held that the provisions of the Motor Vehicles Act, 1939, do not prevent a person from becoming the owner of the motor vehicles without registration. Registration is not an essential prerequisite for the acquisition of ownership of the motor vehicle but is an obligation cast upon an owner of the vehicle for the purpose of running the vehicles in any public place. Hence, it was immaterial whether the buses were registered in the assessee's name or the original owner's name. On the facts of the case, it was held that the assessee was the owner of the vehicles though the same were not registered in its name under the Motor Vehicles Act and that it was entitled to depreciation in respect thereof.

9. To the same effect is the decision of the Kerala High Court in the case of CIT v. Nidish Transport Corporation [1990] 185 ITR 669. In this case also the sole question for determination was whether the assessees were entitled to depreciation on certain vehicles used by them in their business though the vehicles purchased by the assessees had not been transferred in their names in the certificate of registration. The contention of the revenue in this case also was that till the transfer of ownership is effected in the certificate of registration, the assessees could not be considered to be owners. Repelling this contention of the revenue, it was held that the motor vehicle being a movable property, the transfer of ownership thereof is governed by the Sale of Goods Act and not by the Motor Vehicles Act. As between the transferor and the transferee, the sale is complete even before the transfer is effected in the registration certificate. The failure to report the same to the Registering Authority may entail levy of the penalty but it does not affect the passing of the title in the vehicle. It was, therefore, held that the assessees who purchased the vehicles were owners of the vehicles and were entitled to depreciation under section 32 of the Act if the same has been used for the purpose of the business.

10. The various decisions including the decisions of the Calcutta High Court and the Kerala High Court which relate to the transfer of motor vehicles referred to above leave no scope for doubt that the transfer of ownership of a vehicle is not dependent upon the transfer of

ownership being recorded under the Motor Vehicles Act. Section 31 of the Motor Vehicles Act, 1939 (corresponding to section 50 of the Motor Vehicles Act, 1988), so far as relevant, reads:

"31. (1) Where the ownership of any motor vehicle registered under this Chapter is transferred,—

(a) the transferor shall -

(i) within fourteen days of the transfer, report the fact of transfer to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee;

(ii) within forty-five days of the transfer forward to the registering authority referred to in sub-clause (i)--

(A) a no objection certificate obtained under section 29A; or

(B) in a case where no such certificate has been obtained, —

(I) a receipt obtained under sub-section (2) of section 29A; or

(II) a postal acknowledgement received by the transferor if he has sent an application in this behalf by registered post acknowledgement due to the registering authority referred to in section 29A,

together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted;

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he resides, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration."

11. From a plain reading of this section, it is clear that this section does not deal with transfer of the ownership of any motor vehicle nor does it impose any restriction on transfer of such ownership. It simply obligates the transferor and the transferee to report within the specified time from the date of transfer the fact of transfer to the registering authority. This section, in fact, presupposes transfer of ownership of a motor vehicle. It is only after the actual transfer is effected that the obligation contemplated by this section comes into operation. Moreover, non- compliance with the requirement of this section does not in any way affect or invalidate the transfer of ownership of the vehicle - it only makes the transferor or the transferee liable to prosecution or penalty. Under the circumstances, reliance on section 32 of the Motor Vehicles Act, 1939, for determining the ownership of a vehicle is completely misplaced. This section has no bearing on the validity of the transfer of a motor vehicle which has to be decided in each case having regard to the facts and circumstances thereof."

***39.** A Division Bench of the Calcutta High Court, in the case of CIT v. Salkia Transport Associates [1983] 13 Taxman 191/143 ITR 39, speaking through Sabyasachi Mukharji, J. (as His Lordship then was), observed as under :*

"14. The argument that the assessee was not the registered owner of the vehicles under the Motor Vehicles Act is also of no consequence. It is well settled that an assessee will not be entitled to depreciation allowance if he is not the owner of the buildings, machinery, plant or furniture unless he is the owner of the same (sic). Sub-section (1A) of section 32, which came into effect from 1-4-1971 provides an exception to this rule but this sub-section is confined to buildings only and does not extend to plant, machinery or furniture. But there is no provisions under the Motor Vehicles Act which requires registration of a motor vehicle in the name of a person for the purpose of acquisition of ownership of the vehicle. Section 22(1) of the Motor Vehicles Act which requires registration of motor vehicles is in the following terms :

"(1) No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with this chapter and the certificate of registration of the vehicles has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner."

15. The provision of this section does not prevent a person from becoming an owner of a motor vehicle without registration. On the contrary, the section makes it obligatory for an owner of a motor vehicle to get the vehicle registered and to display the certificate of registration before the vehicle is driven in any public place. Registration is not an essential pre-requisite for acquisition of owner ship of a motor vehicle but is an obligation cast upon the owner of a vehicle for the purpose of running of the vehicle in any public place. Therefore, in our opinion, whether the buses were registered in the assessee's name or not is not very material for the purpose of this case. This may be a factor that has to be taken into consideration. But when under the agreement the new buses that were acquired by the assessee in replacement of the old buses became the property of the assessee- firm, there is no reason to hold that the asses see was not the owner of the buses because the buses were not registered in the name of the assessee.

16. Section 22(1) of the Motor Vehicles Act does not lay down that a person cannot be the owner of a motor vehicle unless the motor vehicle is registered in his name.

17. The Supreme Court had also occasion to consider this question in the case of K.L. Johar & Co. v. Deputy Commercial Tax Officer [1965] 16 STC 213 and observed as follows :

"So far as the dealer is concerned the whole pi ice is paid by the assessee. Agreement also shows that the assessee is the owner of the vehicle and the intending purchaser is merely a hirer thereunder. The vehicle has to be registered in the name of the assessee, though the fact of registration by itself in one name or another may not be determinative of the owner of the vehicle."

18. The question of ownership is essentially a question of fact. In this case, the agreement clearly provides that the new vehicles acquired in replacement of the old and worn out vehicle will be the property of the assessee. That the assessee has purchased five new buses is not disputed. The only argument is that the vehicles were not registered in the name of the assessee under the Motor Vehicles Act. But that is one of the factors that has to be taken into consideration for deciding the question of ownership of the buses. It cannot be said as a matter of law that unless the buses are registered in the name of the asses see, the assessee cannot be regarded as the owner of the buses. On the contrary, the essential pre-requisite for registration under section 22(1) of the Motor Vehicles Act, is ownership of a motor vehicle. Unless a per son is owner of a motor vehicle he is not entitled to get it registered in his name under section 22(1) of the Motor Vehicles Act. The Tribunal in this case has come to the conclusion on a review of the facts and also of the agreement that the assessee was the owner of the five new buses and as such was entitled to claim depreciation allowance on these buses. The Tribunal has not committed any error of law in coming to this conclusion. The requirement of section 34 of the Act, is that the vehicles must be 'owned by the assessee'.

This section does not require that the assessee must be a registered owner of the vehicles in order to claim depreciation allowance in respect of them. We are of the view that on the facts of this case the new buses were owned by the assessee within the meaning of section 32 and the assessee was entitled to claim depreciation allowance on these vehicles."

40. *At this stage, we may also look into the decision of this Court in the case of Dy. CIT v. Pradip N. Desai (HUF) [2012] 21 taxmann.com 151/341 ITR 277 (Guj.), wherein this Court took the view that if the assessee is not involved in the business of hiring the vehicle on rent, then he is not entitled to claim higher depreciation under clause (2)(ii) of Entry-III of Appendix-I. There need not be any debate on the proposition of law as explained by this Court in the said judgment. However, as discussed above, there is thumping evidence on record to indicate that the assessee is involved in the business of hiring the cranes. He might be using the cranes for his personal construction business too, but that does not disentitle him to claim higher depreciation once it is shown that the assessee is in the business of hiring the cranes.*

41. *In the overall view of the matter, we have reached to the conclusion that the Tribunal committed an error in dismissing the appeal.*

42. *In the result, this Appeal succeeds and is hereby allowed. The impugned order passed by the Income-tax Appellate Tribunal in the Prasad Multi Services (P.) Ltd. (supra) for the Assessment Year 2011-12 is hereby quashed and set-aside. The substantial question of law is answered in favour of the assessee and against the Revenue."*

10. On identical facts, the Hon'ble jurisdictional High Court of Gujarat in the case of Gujco Carriers vs. CIT [2002] 122 Taxman 206 (Guj)/[2002] held that assessee can claim higher depreciation on cranes @ 30%. The findings of the Hon`ble Court are reproduced below:

"11. *Under the heading 'Machinery and plant' of heading III of Appendix I, Part I of the Table of Rates at which depreciation is admissible, read with rule 5, various items of machinery and plant are specified with the rates at which depreciation is to be allowed as are mentioned against them.*

11.1 *The assessee claimed depreciation at 40 per cent on its crane under heading III E(1A) of Appendix I, which reads as follows :*

"(1A)Motor buses, motor lorries and motor taxis used in a business running them on hire."

11.2 *In the alternative, the assessee claimed depreciation before the Tribunal on the basis of the CBDT Instruction No. 617, dated 13-9-1973, which has been reproduced in the order of the Tribunal, as under :*

"132. Fork-lift trucks - Rate of depreciation prescribed in Part I of Appendix I to Income-tax Rules.-Fork-lift trucks would be classified under item III (ii) - D(9) of Appendix I to the Income-tax Rules, 1962 and would be entitled to depreciation at the rate of 30 per cent."

Heading III (ii) D(9) which is referred to in the aforesaid Instruction No. 617 which relates to fork-lift truck, reads as under :

"(9)Motor buses and motor lorries other than those used in a business of running them on hire."

11.3 *In the year 1973, the Group D(9) reads as under :*

"(9)Motor buses, motor lorries, motor taxis, motor tractors."

12. *The origin of word 'lorry' is uncertain. 'Lorry' means, (i) 'a large strong motor vehicle for transporting goods, etc.', (ii) 'a long flat low wagon', or, (iii) 'a truck used on railways or tramways', as per the Concise Oxford Dictionary. As per Webster's II New River Side University Dictionary, the word 'lorry', in the meaning relevant to the present context, would mean, 'a motor truck'. As per the Encyclopaedia Britannica, truck is 'also called lorry'. Thus, the expression 'motor lorries' in heading III E(1A) of Part I of Appendix I would mean 'motor trucks'.*

12.1 *'Truck' is introduced in following terms in the Encyclopaedia Britannica :*

"Truck also called LORRY is any motor vehicle designed to carry freight or goods or to perform special services such as fire fighting. The truck was derived from horse-driven wagon technology, and some of the pioneer manufacturers came from the wagon business. Because of their speed and flexibility, trucks have come to carry a quarter of the intercity freight in the United States, and they enjoy an almost total monopoly in intracity freight delivery.

In 1896 Gottlieb Daimler of Germany built the first motor truck. It was equipped with a four-horsepower engine and a belt drive with two speeds forward and one in reverse. In 1898 the Winton Company of the United States produced a gasoline-powered delivery wagon with a single-cylinder six-horsepower engine.

In World War I motor trucks were widely used, and in World War II they largely replaced horse-drawn equipment. A notable vehicle was the four-wheel-derive, quarter-ton-capacity, short-wheelbase jeep, capable of performing a variety of military tasks."

12.2 *Lorry or truck would, therefore, mean not only any motor vehicle designed to carry freight or goods but also to perform special services like fire fighting. Fire engine also called fire truck is a self-propelled mobile piece of equipment used in fire fighting. There can be other special services to be performed by motor vehicles designed for such services. Thus, a lorry, i.e., truck adapted or designed to carry a crane is meant for special services of lifting load, moving it side by side, rotating it or moving it horizontally. Most industrial trucks permit mechanized pick-up and deposit of the loads, eliminating manual work in lifting as well as transporting. The crane truck is a portable boom crane mounted on an industrial truck. It may be used with hooks, grabs and slings for bundled or coiled material. Industrial trucks which would also come within the expression 'motor lorries' are described as follows in the Encyclopaedia Britannica :*

"Industrial truck carrier is designed to transport materials within a factory area with maximum flexibility in making moves. Most industrial trucks permit mechanized pickup and deposit of the loads, eliminating manual work in lifting as well as transporting. Depending on their means of locomotion, industrial trucks may be classified as hand trucks or power trucks.

Hand trucks with two wheels permit most of the load to be carried on the wheels, but some of the load must be assumed by the operator to balance the truck during movement. Common two-wheel hand trucks include the barrel, box, drum, hopper, refrigerator, paper-roll, and tote-box trucks. Four-wheel hand trucks are found in many more varieties, including dollies, high and low-bed flat trucks, carts, rack carriers, wagons, and various hand-lift trucks having mechanical or hydraulic lifting mechanisms for raising and lowering a load.

Power trucks are propelled by batteries and an electric-motor or by an internal - combustion engine with either a mechanical drive or a generator and electric-motor

drive. Propane and diesel engines are used in place of gasoline engines on some types. The non-lift platform truck is used simply for hauling, but other power trucks are provided with mechanisms, usually hydraulic, for lifting the loads. Fork-lift trucks are quipped with a forklike mechanism on the front end designed to pick up loads on specially designed platforms, called pallets, elevate the load to the desired height, transport it, and deposit it at the desired location and height. Ram trucks have a single protruding ram for handling coiled material. The crane truck is a portable boom crane mounted on an industrial truck; it may be used with hooks, grass and slings for bundled or coiled material. The straddle truck resembles a gantry crane on four pneumatic - tired wheels; the operator rides above the inverted U-frame, within which the load - lumber, bar steel, or pipe is carried on elevating bolsters. Other common types include high and low lift platform trucks, motorized pedestrian led, side-clamp, tractor, and side-loading trucks." [Emphasis supplied]

***12.3** It will, thus, be clear that motor vehicles like fire trucks, fork-lift trucks and crane trucks which are designed for special services, fall within the category of 'motor trucks' (also called 'motor lorries').*

***13.** The word 'crane' when used for an inanimate object means a machine for moving heavy objects usually by suspending them from a projecting arm or beam. Crane is any of a diverse group of machines that not only lift heavy objects but also shift them horizontally. Movable cranes are mounted on railway cars, motor trucks or chassis equipped with caterpillar treads and the hoisting machinery is mounted so as to counterpoise part of the load on the boom and thereby preventing the entire crane from overturning while carrying the load. The fork-lift truck widely used for moving goods between warehouse storages and shipping vehicles, "is a highly maneuverable crane adaptable to handling drums, crates, or loaded skids or pallets." (See Encyclopaedia Britannica under the heading 'Crane').*

***13.1** Thus, a 'fork-lift truck' is also a type of crane. The expression 'truck crane' is well-known in the truck industry. "The truck crane is a unit consisting of a crane house and boom mounted on a truck chassis,. . . . Originally assembled by contractors from crawler cranes and truck parts, the truck crane for years has been manufactured and sold as a unit. Although the truck crane is difficult to move on soft or slippery ground, it is highly mobile on a firm footing and is easily moved over roads and highways. (See 'Crane Hoist' - McGraw Hill - 'Encyclopaedia of Science and Technology'). [Emphasis supplied]*

***13.2** A crane is usually typed according to its undercarriage. Some of the cranes in which undercarriage is not a truck are, 'crawler cranes' mounted on continuous tracks, the 'rail or locomotive crane' on special chassis with flanged wheels for use on railway tracks and 'floating crane' on a barge or scow. Therefore, search for the item 'cranes' in the entries in Appendix I without keeping in mind the nature of equipment, was based on an erroneous premise. A crane mounted on a truck is a truck crane which is a well-known machinery which can easily move over roads and highways and is not a stationary equipment.*

***13.3** Truck crane is described under the heading 'Crane' in Encyclopaedia Britannica, as under :*

"A commonly used type of small movable crane is the truck crane, which is a crane mounted on a heavy, modified truck. Such cranes frequently use unsupported telescoping booms; these are made up of collapsible sections that can be extended outward like the sections of an old nautical telescope or spyglass. The extension of the boom is usually managed hydraulically. Truck cranes make up in mobility and ease of transport what they lack in hoisting capacity." [Emphasis supplied]

14. *Thus, a mobile crane mounted on a truck constitutes a single unit known as a 'truck crane' which is adapted for use upon roads for special services. The truck on which the crane is mounted is constructed and adapted specially to carry the crane.*

14.1 *'Goods carriage' as defined in section 2(14) of the Motor Vehicles Act, 1988 means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. This definition is not confined only to carriage of freight which is narrower than the expression 'carriage of goods'. In the instant case, truck is adapted for use solely for carriage of the crane mounted on it. The mounted crane is attached to the truck which carries it. The test of carrying goods such as potatoes and tomatoes that requires loading and unloading in context of carriage of freight when transported, as was suggested on behalf of the revenue, will not be decisive. Unloading, in the context of truck crane where the crane remains mounted and attached to the truck when carried and even at the destination where it is put to use is not a relevant factor at all. Though not required to be loaded or unloaded like other goods transported in carriage of freight, the crane remains fixed, mounted on the truck which has been adapted for use solely for its carriage and such truck crane is used for special service of lifting and moving heavy objects. This is why such mobile crane is registered as a heavy motor vehicle which is a heavy goods vehicle as defined in section 2(16) of the Motor Vehicles Act.*

15. *The approach of the Tribunal and the authorities below it that cranes are not mentioned specifically as an independent item falling in the categories for which higher depreciation allowance at the rate of 40 per cent when used for hire and at 30 per cent when not so used has been provided as against 10 per cent of machinery in general, and, therefore, they should be treated as falling in the general category of machinery, is an over-simplification of the matter. The approach of the Tribunal that the plea taken by the assessee that crane was an integral part of the motor vehicle on which it is mounted required ascertainment of facts and fresh investigation, amounts to imposing a burden on a person to prove something of which the Court or the Tribunal can take judicial notice. For example, if a witness deposes that he had seen a horse, the Court need not insist upon him for a proof of the anatomy of a horse and can take a judicial notice of horse as an animal. The Courts and Tribunals are not required to act dumb or ignorant of the facts of which judicial notice can be taken. Thus, just as a Court can presume what a horse is, it can as well know what a crane is, and also that crane is an integral part of a truck-crane which is registered as a heavy motor vehicle. Lack of effort and knowledge sufficient for taking such judicial notice should not be a burden on the citizens in judicial proceedings. As provided by section 56 of the Evidence Act, no fact of which the Court will take judicial notice, need be proved. This equally applies to the Tribunals, which are not, in fact, strictly bound by the rules of evidence.*

16. *The mobile crane of the assessee which admittedly was registered as a heavy motor vehicle, would, for the above reasons, clearly fall within the expression 'motor lorries' (which means motor trucks) in heading III E(1A) of the Table in Appendix I under rule 5, since it was used by the assessee in its business of running the crane on hire.*

16.1 *We, therefore, hold that the Tribunal was not right in holding that the assessee was not entitled to depreciation at the rate of 40 per cent on crane mounted on motor truck. The question referred to us is, therefore, answered in the negative in favour of the assessee and against the revenue. The reference stands disposed of, accordingly, with no order as to costs."*

11. Therefore, respectfully following the above binding judgments of Hon`ble Gujarat High Court, it is abundantly clear that assessee can claim

higher depreciation on cranes @ 30%, therefore, we do not find any infirmity in the conclusion reached by ld CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

12. In the result, the appeal of the Revenue is dismissed.

Order is pronounced on 21/12/2023 by placing the result on the Notice Board.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Surat/दिनांक/ Date: 21/12/2023
Dkp Outsourcing Sr.P.S.
Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// **True Copy** //

Assistant Registrar/Sr. PS/PS
ITAT, Surat