आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / **ITA Nos. 72, 73 & 74/Hyd/2024**
(निर्धारण वर्ष / Assessment Years: 2011-12, 2014-15 & 2016-17)

Diwakar Road Lines, Tadipatri, Ananthapur [PAN No. AAAFT9857C]	Vs.	Asst. Commissioner of Income Tax, Circle-1, Ananthapur
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri K.A. Sai Prasad, AR
राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख/Date of hearing: 05/03/2024
घोषणा की तारीख/Pronouncement on: 26/03/2024

आदेश / **ORDER**

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order(s) dated 06/12/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Diwakar Road Lines ("the assessee") for the assessment years 2011-12, 2014-15 & 2016-17, assessee preferred these appeals.

2. Brief facts of the case are that the assessee is a partnership firm, deriving income from operating transport business as well goods carriers. The depreciation claimed by the assessee in respect of the transport vehicles is in question for the assessment years 2011-12 and 2016-17; whereas the remuneration admitted to the partners and also the non deduction of TDS in respect of payments made towards finance charges to non-banking financial institutions are in issue for the assessment year 2014-15.

3. Insofar as the disallowance of full depreciation in respect of the buses for the assessment year 2011-12 is concerned, according to the learned Assessing Officer though the assessee purchased commercial vehicles in the month of September 2010, the same cannot be used for commercial purposes on the basis of temporary registration granted by the competent authority and without obtaining transport permit; that the assessee was required to obtain permit to ply the vehicle for commercial purposes and without required permit from the competent authority under Motor Vehicles Act, 1988, plying of vehicle is an offence; and that, therefore, the assessee cannot legally use the vehicle for the purpose of business unless and until required permit from the competent authority is obtained and not on the basis of temporary registration number allotted by the competent authority. Learned Assessing Officer accordingly held that till such time the permanent registration was made and required permit was obtained by the assessee, it cannot be said that the vehicle is ready to use or put to use. On this premise, learned Assessing Officer held that the assessee is entitled to claim depreciation only at 50% of the

allowable depreciation, on the ground that the assessee used the buses for a period less than 180 days.

4. It could be seen from the record that originally, by order dated 29/03/2014, the learned Assessing Officer allowed depreciation at such 50% of the allowable depreciation, but in appeal, learned CIT(A) by order dated 22/01/2016 deleted the disallowance to 50% stating that the assessee in fact put the buses to use even before obtaining the permit from the competent authority and for the purpose of income tax, when once the assessee owns the vehicles and puts such vehicles to use, the assessee is entitled to claim depreciation for the actual period for which the vehicles were used.

5. When the Revenue preferred appeal, a Co-ordinate Bench of the Tribunal found that the learned CIT(A) returned the finding of fact, basing on the material in respect of which the learned Assessing Officer was not heard and, therefore, set aside the issue to the file of the learned Assessing Officer to take a view, after considering such material.

6. Learned Assessing Officer after considering the material produced by the assessee took the view that the claim of the assessee for full depreciation on the ground of putting such vehicles to use before September, 2010 cannot be accepted because the assessee did not have the road permit to ply the vehicles.

7. In appeal, learned CIT(A) also was of the same opinion that as verified by the learned Assessing Officer the assessee was not granted road permits in respect of said vehicles before 30th September, 2010, the cut-off date for claiming full depreciation, contrary to the claim of the

assessee that these vehicles were eligible for full depreciation as they had been put to use before September, 2010; that the assessee cannot ply the vehicles on road without a valid permit from the concerned Regional/State Transport Authorities as is evident from section 66 of Motor Vehicle Act, 1988; that therefore, in the absence of the same, the assessee is not eligible for full depreciation, but depreciation @ 50% is allowable since the asset has been put to use on or after 01/10/2010.

8. Learned AR submitted that there is no dispute that all the vehicles were purchased before September, 2010 and were registered with the competent authority. As a matter of fact, in the first round of litigation, the learned CIT(A) held that the vehicles were put to use before September, 2010. He further submitted that it is the settled principle of law that under the Income Tax Act, once the assessee owns the vehicles and puts them to use, the permit to be issued by the Transport Department becomes irrelevant. He placed reliance on the decision of the Co-ordinate Benches of the Tribunal in the cases of R. Vishwanath vs. ITO in ITA No. 1726/Hyd/2012, dated 24/05/2013 and SPR Publications 42 ITR (Trib) 61.

9. Learned DR placed heavy reliance on the orders of the Revenue authorities.

10. We have gone through the record in the light of the submissions made on either side. It is an admitted fact that in the first round of litigation, learned CIT(A) found as a matter of fact that the assessee put the buses to use even before September, 2010 and the matter was set aside to the file of the learned Assessing Officer to verify the fact of the

vehicles put to use before September, 2010. Learned Assessing Officer, however, recorded that he will not accept the contention of the assessee that the vehicles are eligible for full depreciation as they were put to use before September, 2010 because no transport vehicle could be used without obtaining a road permit by the transport department. Nowhere in the assessment order, learned Assessing Officer disputed the fact of assessee actually using the vehicles, but his only objection was that without valid road permit, the assessee cannot use the same. As against the findings of the learned CIT(A) in the first round of litigation, learned CIT(A) in the second round, strangely found that the trip sheets are self-serving documents.

11. Be that as it may, both the Revenue authorities are of the opinion that because of the reequipment of law under section 66 of Motor Vehicle Act, 1988, the vehicles cannot be legally put to use. In the case of R. Vishwanath (supra), a Co-ordinate Bench of the Tribunal clearly held that under the Income Tax Act, to allow the claim of depreciation, the assessee has only to prove that he has put the vehicle to use before the relevant date; that if the vehicle is used in contravention of the rules provided by the respective transportation department, it would not affect the claim of depreciation under the Income Tax Act; and that it is for the respective transportation department to take action for the contravention of its Rules, but the Income Tax authorities cannot disallow the claim of depreciation.

12. In this set of circumstances, we have no hesitation to hold that merely because the assessee does not hold any road permit to ply the vehicle, the assessee cannot be denied full depreciation and respectfully

following the view taken by the Co-ordinate Bench of the Tribunal in the case of R. Vishwanath (supra), we answer the issue in favour of the assessee and directing the learned Assessing Officer to allow full depreciation.

13. In the result, appeal for the assessment year 2011-12 is allowed.

14. Coming to appeal for the assessment year 2014-15 as stated above, two issues are involved for this year. One is in respect of the remuneration paid to the partners and the other relates to the disallowance on account of section 40(a)(ia) of the Act. On the aspect of remuneration to the partners, learned Assessing Officer held that the partnership deed stipulates that the partners shall receive remuneration at the rate of Rs. 18,000/- per month for the first and second partners; whereas it is Rs. 24,000/- for the third partner, but an actual amount of Rs. 10.8 lakhs was paid to first and second partners and Rs. 14.40 lakhs was paid to the third partner, which is excess by Rs. 28.8 lakhs and such excess amount was disallowable. Learned CIT(A) decided the issue ex parte on the ground that in spite of several opportunities, the assessee did not enter appearance and, therefore, in the absence of any new material, no interference could be made with the findings of the learned Assessing Officer.

15. Learned AR submitted that in the impugned order, the learned Assessing Officer noted that though the remuneration for the partners was fixed at a ratio mentioned therein, in the event of inadequacy of book profits, the partners shall be paid a remuneration of Rs. 5,000/- each per month and in the event of higher profits, the partners shall be entitled to higher remuneration in the same proportion. He, therefore, submitted

that there is no point in the learned Assessing Officer holding that the partners are entitled only at such rates as Rs. 18,000/- per month for first and second partners and Rs. 24,000/- for the third partner.

16. In respect of the addition made by disallowance under section 40(a)(ia) of the Act, learned AR submitted that due to political reasons, the managing partner of the assessee was imprisoned and was not available to submit the material before the learned Assessing Officer, which resulted in disposal of the matter, without documents and also ex parte disposal of the appeal. learned AR prayed for another opportunity of being heard before the learned Assessing Officer, so that all the material would be produced to get the matter disposed-of on merits.

17. Learned DR opposed the same by stating that sufficient opportunity was already granted.

18. On a careful consideration of the matter, we are of the considered opinion that the learned Assessing Officer did not read the clause relating to the remuneration to working partners in the partnership dated 01/04/2008 as a whole. It is stated in the deed that when the profits are high, they shall be distributed to the partners in the proportion of Rs. 18,000/- per month to first and second partners and Rs. 24,000/- to the third partner and when the profits are low, only Rs. 5,000/- per month has to be paid.

19. In view of the fact that there was no proper representation before the Revenue authorities due to the imprisonment of the managing partner of the company, we are inclined to grant an opportunity to the assessee to produce the material on both the issues and set aside the impugned orders

and restore the issues to the file of the learned Assessing Officer for disposal of the matter on merit, after considering the material to be produced by the assessee. Grounds are answered accordingly.

20. In the result, appeal for the assessment year 2014-15 is treated as allowed for statistical purposes.

21. Insofar as the appeal for the assessment year 2016-17 is concerned, assessee filed petition to admit additional evidence and it pleaded similarly that due to the non-availability of managing partner of the company, the matter could not be prosecuted properly and given an opportunity, the assessee would submit all the evidences and co-operate with the learned Assessing Officer in disposing of the case on merits. Considering the same, we admit the additional evidence, set aside the impugned order and restore the issue to the file of the learned Assessing Officer to consider the material and decide the issue as per fact and law. Ground is answered accordingly.

22. In the result, appeal for the assessment year 2016-17 is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 26th day of March, 2024.

Sd/-	Sd/-
(RAMA KANTA PANDA)	**(K. NARASIMHA CHARY)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Hyderabad, Dated: 26/03/2024

TNMM

Copy forwarded to:

1. Diwakar Road Lines, C/o. Katrapati & Associates, 1-1-298/2/B/3, Sowbhagya Avenue Apts., 1st Floor, Ashok Nagar, Street No. 1, Hyderabad.
2. Asst. Commissioner of Income Tax, Circle-1, Anantapur.
3. Pr.CIT,
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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