



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI G. D. PADAMAHSHALI, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No.228/LKW/2023
Assessment Year: 2015-16

Technical Associates Limited 8 th KM, Faizabad Road Vijaypur, Gomti Nagar Lucknow	v.	Dy. Commissioner of Income Tax Range 6 Lucknow
PAN:AABCT7365F		
(Appellant)		(Respondent)

Appellant by:	Shri Santhosh Kumar		
Respondent by:	Shri Sanjeev Krishna Sharma, D.R.		
Date of hearing:	25	06	2024
Date of pronouncement:	25	06	2024

ORDER

PER SUBHASH MALGURIA, J.M.:

This appeal has been filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 18.05.2023 for the assessment year 2015-16, inter alia, on the following grounds:-

1. That the Ld. Commissioner of Income Tax (Appeals), (herein-after referred to as the Ld. CIT(A)) has erred in assessing the income at Rs.7,06,40,916/- against the returned income of Rs.7,03,35,900/- by sustaining addition made by the Ld. Assessing Officer (herein referred to as the Ld. AO) against the facts and circumstances of the case.

2. That the Ld. CIT (A), has erred in upholding the addition made by the Ld. A. O. amounting to Rs.3,03,032/- on account of profit on sale of vehicles which is bad in law.

3. That the Ld. CIT(A) has erred in law and on facts in upholding the addition made on account of profit on sale of vehicles without appreciating the facts that the treatment of such profit is different under The Companies Act, 2013 and The Income Tax Act, 1961.

4. That the Ld. CIT (A), has erred in sustaining addition on account of profit on sale of vehicles without appreciating the law and the fact that the same is not taxable under the provisions of Income Tax Act, 1961.

2. The authorized representative of the assessee moved an application dated 21.06.2024 for adjournment. Since there was no justifiable reason for seeking adjournment, the same was rejected and Shri Santosh Kumar, authorized representative of the assessee was heard.

3. The brief facts of the case are that the assessee, manufacturer of power transformers, filed its return of income declaring a total income of Rs.7,03,35,900/- on a total turnover of Rs.172,62,86,685/-. According to the Assessing Officer, in the computation of income, the assessee had claimed depreciation under section 32(1)(iii) of the Income Tax Act, 1961 at Rs.40,016,103/- (Rs.1,01,82,132 + Rs.2,95,30,939 + Rs.3,03,032). The assessee had also filed the Tax Audit Report. However, the Assessing Officer held that as per Tax Audit Report, the total depreciation allowable is Rs.3,97,13,069/- and accordingly he disallowed a sum of Rs.3,03,032/-. The Assessing Officer further disallowed a sum of Rs.2,16,353/- under section 36(1)(va) of the Act, being the contribution received from the employees, as the same was deposited after the due date.

4. Aggrieved, the assessee preferred an appeal before the ld. CIT(A). The ld. CIT(A), NFAC vide impugned order dated

18.05.2023 partly allowed the appeal of the assessee, confirming the addition of Rs.3,03,032/- being the alleged deduction claimed by the assessee under section 32(1)(iii) of the Act and also confirming the addition on account of contribution received from the employees of Rs.1,984/- out of the total addition of Rs.2,16,353/-.

5. Now the assessee is before us against the addition of Rs.3,03,032/ confirmed by the ld. CIT(A), NFAC.

6. The submission on behalf of the assessee was that the assessee sold three vehicles during the year under consideration for Rs.5,27,000/-. The WDV of the said vehicles was Rs.2,23,968/- as per the books of account prepared in line with the rules laid down under the Companies Act, 2013. Thus, the sale had a resultant profit amounting to Rs.3,03,032/- and this amount of profit was appropriately reported by the assessee as income under the head 'Other Income' in its audited account. It was further contended that the assessee while preparing its return, reduced the said profit of Rs.3,03,032/- from its business income, which is not taxable under the Income Tax Act. However, the Assessing Officer erroneously treated the same as 'Deduction under section 32(1)(iii) of the Act' in place of 'Any Other Deductions'. It was further contended that the block of asset ceases to exist for the reason that all the assets in that block are transferred/sold. The sale consideration from the sale of vehicles is more than the aggregate of the WDV of the block of asset at the beginning of the previous year and the actual cost of any asset falling within that block of assets acquired during the previous year nor the block of asset has ceased to exist for the reason that all the assets in that block are transferred/sold. Therefore, question of bringing to tax this profit of Rs.3,03,032/-

which was calculated solely for purpose of books of accounts being prepared as per the provisions of the Companies Act, 2013, does not arise. In view of these facts, the addition made on account of such profit on sale of vehicles at Rs.3,03,032/- is liable to be deleted.

7. Per contra, relying on the orders of the authorities below, the ld. D.R. submitted that the assessee had earned profit of Rs.3,03,032/- from the sale of three vehicles and this profit is to be offered for tax. Whereas the assessee had reduced this income from business & profession in the computation of total income. The total depreciation allowable under section 32 of the Act is Rs.3,97,13,070/-, but in the computation of income, the assessee had reduced Rs.4,05,90,069/-, meaning thereby that the assessee had reduced Rs.3,03,032/- in excess, which is not correct and the Assessing Officer has rightly made the disallowance and the ld. CIT(A) has rightly confirmed the same.

8. We have heard both the parties and perused the material on record. With regard to the issue in dispute, we find that the assessee had sold vehicles during the year under consideration and earned a profit of Rs.3,03,032/-, which is shown as 'Profit/(loss) on sale of assets' under the head 'OTHER INCOME/MISC RECEIPT' under Note 18 as appearing at page 50 of the paper book. The books of account of the assessee are duly audited and the Tax Audit Report was submitted by the assessee along with the return of income. The profit from sale of vehicles, amounting to Rs.3,03,032/- was appropriately reported by the assessee as income under the head 'Other Income' in its audited account and while preparing its return, reduced the said profit of Rs.3,03,032/- from its business income, which is not taxable under the Income Tax Act. However, the Assessing Officer

wrongly treated the same as 'Deduction under section 32(1)(iii) of the Act' in place of 'Any Other Deductions' and made the addition. The Id. CIT(A), vide his impugned order passed under section 250 of the Act, sustained the addition so made by the Assessing Officer.

9. So far as computation of capital gains in case of depreciable assets is concerned, the same is envisaged in section 50 of the Act, which reads as under:

“[Special provision for computation of capital gains in case of depreciable assets.

Sec. 50: Notwithstanding anything contained in clause (42A) of section 2, where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed under this Act or under the Indian Income-tax Act, 1922 (11 of 1922), the provisions of sections 48 and 49 shall be subject to the following modifications:

(1) where the full value of the consideration received or accruing as a result of the transfer of the asset together with the full value of such consideration received or accruing as a result of the transfer of any other capital asset falling within the block of the assets during the previous year, exceeds the aggregate of the following amounts, namely:

i. expenditure incurred wholly and exclusively in connection with such transferor transfers;

ii. the written down value of the block of assets at the beginning of the previous year, and

iii. the actual cost of any asset falling within the block of assets acquired during the previous year,

such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets;

(2) where any block of assets ceases to exist as such, for the reason that all the assets in that block are transferred during the previous year, the cost of acquisition of the block of

assets shall be the written down value of the block of assets at the beginning of the previous year, as increased by the actual cost of any asset falling within that block of assets, acquired by the assessee during the previous year and the income received or accruing as a result of such transfer or transfers shall be deemed to be the capital gains arising from the transfer of short- term capital assets.)

10. In the light of the above stated provisions, it is evident that income, i.e., gains from depreciable assets can arise only in two instances. Firstly, when the sale consideration from sale of an asset falling within the block of asset exceeds the aggregate value of the WDV of the block of assets at the beginning of the previous year and the actual cost of any asset falling within that block of assets acquired during the previous year, and, secondly, when the block of asset ceases to exist for the reason that all the assets in that block are transferred/sold. But, in the case under consideration, neither the sale consideration from the sale of vehicles is more than the aggregate of the WDV of the block of asset at the beginning of the previous year and the actual cost of any asset falling within that block of assets acquired during the previous year nor the block of asset has ceased to exist for the reason that all the assets in that block were transferred/sold. Therefore, question of bringing to tax this profit of Rs.3,03,032/-, which was calculated solely for purpose of books of accounts being prepared as per the provisions of the Companies Act, 2013, does not arise.

11. In the light of the above stated facts, we are of the considered view that the authorities below were not justified in making the addition, which is not sustainable in law. We,

therefore, set aside the order of the ld. CIT(A), NFAC and delete the addition of Rs.3,03,032/- confirmed by the ld. CIT(A), NFAC.

12. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open Court on 25/06/2024.

Sd/-
[G. D. PADAMAHSALI]
ACCOUNTANT MEMBER

Sd/-
[SUBHASH MALGURIA]
JUDICIAL MEMBER

DATED:25/06/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar