

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 102/Chd/2024
निर्धारण वर्ष / Assessment Year : 2016-17

Tarsem Bharti Bharti Filling Station Shoghi, Shimla	बनाम	The ITO Ward -2, Shimla
स्थायी लेखा सं./PAN NO: ABSPB1981C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tarsem Bharti
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR
सुनवाई की तारीख/Date of Hearing : 16/10/2024
उदघोषणा की तारीख/Date of Pronouncement : 28/11/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/NFAC, Delhi dt. 16/02/2023 pertaining to Assessment Year 2016-17 wherein the sole ground of appeal relates to the sustenance of disallowance of depreciation of Rs. 13,77,523/- claimed by the assessee while filing his return of income.

2. Briefly the facts of the case are that the assessee filed his return of income declaring total income of Rs. 18,83,780/- on 17/10/2016 which was processed under section 143(1) and thereafter, selected for scrutiny through CASS to examine the claim of depreciation as so made in the return of income. Notice under section 143(2) and 142(1) followed by show cause dt. 03/12/2018 was issued to the assessee and thereafter, the assessment was completed under section 144 dt. 20/12/2018 by making an addition of Rs. 13,77,523/- . As per the AO, the assessee has claimed depreciation of Rs. 13,77,523/- in his return of income and the assessee was asked to explain as to why the depreciation so claimed should not be disallowed and treated as his total income and he has

failed to substantiate the same with documentary evidence and in absence of any objection / explanation submitted by the assessee, it can be inferred that the assessee has nothing to say in the matter and therefore depreciation claimed was disallowed and as against the returned income, the assessed income was determined at Rs. 32,61,303/-, which, on appeal by the assessee, has been confirmed by the Ld. CIT(A).

3. Against the said findings and direction of the Ld. CIT(A) and the addition so made and sustained by the Ld. CIT(A), the assessee is in appeal before us.

4. During the course of hearing, the assessee himself appeared and submitted that the assessment order has been passed under section 144 due to non response by the tax consultant so appointed by him. It was submitted that since June 2018, he was ill and has been diagnosed with Cancer in August 2018 and thereafter, he has been admitted in PGI Chandigarh and IGMC Shimla many times during this period and is still under treatment. It was submitted that the mistake was on the part of the consultant so appointed which has resulted in non-compliance to the notices issued by the AO.

4.1 It was further submitted that he was not even served with a copy of the assessment order and demand notice and the AO has directly initiated recovery proceeding by attaching his bank account without giving him any opportunity.

4.2 It was further submitted that he thereafter carried the matter in appeal before the Ld. CIT(A) and there also, as the matter could not be represented due to his ill health, the Ld. CIT(A) gone ahead and passed an ex-parte order without giving any findings on the merits of the case.

4.3 On the merits of the depreciation so claimed in the return of income, it was submitted that the depreciation has been claimed on the assets forming part of the opening WDV as well as certain additions made during the Financial

Year relevant to the impugned Assessment Year. It was submitted that the details of the opening WDV as well as the addition under the respective block of assets have been duly disclosed in the return of income so filed by the assessee. It was submitted that as far as the depreciation on the opening WDV is concerned, there is clearly non application of mind on the part of the AO as the same could not have been disallowed as the details regarding the opening WDV are very much disclosed in the return of income itself and the same has been carry forward from the earlier assessment year wherein no adverse finding has been recorded by the AO.

4.4 In respect of the additions to the block of assets during the financial Year, it was submitted that the assessee purchased plant and machinery worth Rs 4,50,585/- and computers worth Rs 30,190/- during the year and necessary invoices/purchase bills have been placed on record. It was submitted that the said evidences regarding purchase of the assets during the financial year could not be submitted before the lower authorities due to ill health of the assessee as evident from the medical records which have been placed on record and in the interest of substantial justice, these additional evidence be admitted and matter be decided accordingly.

5. The Ld. DR is heard who has submitted that as far as the claim of depreciation on opening WDV which has been carried forward from the earlier years is concerned, the Revenue has no objection where the same is directed to be allowed by the Bench. However, as far as the additional evidences which are sought to be submitted by the assessee, the matter may be set aside to the file of the AO to examine the same and thereafter decide the matter.

6. We have heard the rival contentions and purused the material available on record. The relevant details in terms of opening written down value, the additions to different block of assets and period of usage and claim of depreciation is evident from the return of income. As far as depreciation claim

on the opening written value of various block of assets is concerned, there cannot be any dispute and the Id DR has also submitted that the Revenue has no objection, hence, depreciation claim on the opening written value of various block of assets is directed to be allowed to the assessee.

7. As far as additions to block of plant and machinery is concerned, the additional evidence is hereby admitted and the matter is remitted to the file of the AO to examine the same and decide as per law after providing reasonable opportunity to the assessee.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 28/11/2024

Sd/-
परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar