

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT
MEMBER**

**&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 1310/MUM/2024
(Assessment Year: 2013-14)**

Sadhana Nayyar, 1416 Maker Chamber V, Nariman Point, Mumbai-400021.	Vs.	Income Tax Officer, Ward- 26(2)(1), Kautilya Bhavan, Bandra Kurla Complex, Mumbai-400051.
PAN/GIR No. AAEPN6511F		
(Appellant)	..	(Respondent)

Assessee by	Shri. Shiv Parkash, Adv
Revenue by	Shri. Ram Parkash Rastogi, Sr. DR
Date of Hearing	01/10/2024
Date of Pronouncement	16/12/2024

आदेश / ORDER

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 16.02.2024 passed in Appeal no. CIT(A), Mumbai-28/10190/2018-19 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-Tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2013-14, wherein learned CIT(A) has

dismissed assessee's first appeal, confirming the disallowance made by learned assessing officer against the assessee's claim of depreciation.

2. The brief facts related to this appeal state that the appellant assessee filed original return of income on 28.09.2013 for A.Y. 2013-14, declaring total income of Rs. 17,19,890/-. The return was processed u/s. 143(1) of the Act. The case was selected for scrutiny under CASS and an assessment order u/s. 143 (3) of the Act was passed on 07.12.2015 by accepting the return of income. Subsequently, the case was reopened to verify the claim of depreciation of asset, being car. Notice u/s. 148 of the Act was issued and assessee file her return on 11.04.2018, showing the income of Rs. 17,19,890/-. During the assessment proceedings, statutory notices u/s. 143(2) r.w.s 142(1) of the Act were issued and served upon the assessee. The assessee claimed to be involved in trading of medical goods and pharmaceuticals in the name and style of M/s. Hansraj Nayyar Medical India. It was found by learned assessing officer that the assessee purchased a new car for Rs. 11,80,474/- and claimed depreciation of Rs. 1,77,071/- on asset being a motor car (vento). The car was in the name of assessee's husband Mr. Chetan Nayyar. After considering the submissions of the assessee, learned assessing officer disallowed assessee's claim of depreciation on the ground firstly, that the said car was not owned by the assessee as it was purchased in the name of her husband Mr. Chetan Nayyar. Secondly, that the car was not being used for the

purposes of assessee's business. Aggrieved, assessee filed first appeal before the learned CIT(A), who dismissed assessee's appeal.

3. The appellant has filed this second appeal before this tribunal on the ground that the learned CIT(A) has erred in law in confirming AO's order, disallowing assessee's claim of depreciation on car, merely on the ground that the car was in the name of assessee's husband Mr. Chetan Nayyar, ignoring the fact that the payment for the said motor car was made by appellant assessee and the car was used for the assessee's business.
4. Perused the records and heard learned representative for the assessee and learned DR for the revenue.
5. The main point of determination under appeal is as to whether the appellant assessee is entitled for the claim of depreciation on the purchase of new car for the year under consideration?
6. Learned representative for the appellant assessee has argued that the car was though, purchased in the name of assessee's husband Mr. Chetan Nayyar, the price of the car was paid by the assessee. It was further argued that the car was in the use of assessee's business. The assessee was thus entitled for depreciation on the said car. The assessee has referred following case law in support of his arguments:-
 - a) Mysore Minerals Ltd. V. Commissioner of Income Tax, [1999] 239 ITR 775 (SC).
 - b) Commissioner of Income Tax V. Podar Cement Pvt. Ltd., [1997] 226 ITR 625 (SC).
 - c) Commissioner of Income Tax V. Mirza Ataulaha Baig, [1993] 202 ITR 291 (Bom-HC).

- d) Commissioner of Income Tax V. Dilip Singh Sardar Singh Bagga, [1993] 201 ITR 995 (Bom-HC-Nag)
- e) CIT V. Aravali Fin Lease Ltd., [2012] 341 ITR 282(Guj-HC).
- f) CIT V. Basti Sugar Mills Ltd., [2002] 257 ITR 88 (Del-HC).
- g) Income Tax Officer V. Electro Ferro Alloys Ltd. [2012] 13 ITR 594 (Ahd-Trib).
- h) ACIT, Circle 6 Ahmedabad V. Gopal Fabrics, order dated 29.11.2013 passed by ITAT Ahd in ITAT no. 3338/Ahd/2010 and 463/Ahd/2013.
- i) Edwis Consultants Pvt. Ltd. V. Deputy Commissioner of Income Tax order dated 14.10.2015 passed in ITAT No. 5376/Mum/2011 and ITAT No. 4121/Mum/2014 by Mumbai-Tribunal.
- j) SF Dyes Pvt. Ltd. V. ACIT, order dated 17.01.2022 passed in ITA No. 5456/Mum/2018 and 661/Mum/2019 by Mumbai-Tribunal.

7. Learned representative for the revenue has vehemently supported the impugned order.
8. The small issue arising in this appeal is in respect of assessee's claim of depreciation u/s. 32 of the Act with regard to the tangible asset (car). For the claim of depreciation u/s. 32 of the Act, two essential ingredients are required to be proved by the assessee. Firstly, that the tangible asset (car) was owned either wholly or partly by the assessee. secondly, the said tangible asset (car) was used for the purposes of assessee's business. It is an admitted fact that the said car was purchased by the assessee in the name of her husband Mr. Chetan Nayyar out of assessee's funds. Learned assessing officer disallowed assessee's claim of depreciation on the ground that the car was neither owned by the assessee nor was used for the purposes of the assessee's business. Learned CIT(A) has concurred with the assessment order.
9. Let's now examine the case law referred by the assessee.

9.1 In Mysore Minerals Ltd. (supra), Hon'ble Supreme Court has held that in a case when the assessee is in possession of building used for the purpose of business on part payment of price and the building is not registered in assessee's name. In such a case, the assessee shall be treated to be the owner of the building for the purpose of section 32 and the assessee shall be entitled to depreciation on it.

9.2 In Podar Cement Pvt Ltd. (supra), the issue was as to whether the rental income from house property, which had come to vest in the assessee but to which the assessee was not legal owner for want of deed of title, was liable to be assessed as income from house property or as income from other sources. Hon'ble Supreme Court has held that the liability to be assessed was fixed on a person who receives or is entitled to receive the income from the property in his own right.

9.3 In Mirza Ataulaha Baig (supra), Hon'ble Bombay High Court has held that even if the truck purchased by the assessee was not registered in the assessee's name but was being used for assessee's business, the assessee was entitled for depreciation.

9.4 In Dilip Singh Sardar Singh Bagga (Supra), Hon'ble Bombay High Court has held that an assessee who had purchased a motor Vehicle for valuable consideration and used the same for his business, cannot be denied the benefit of depreciation on the ground that the transfer was not recorded under motor vehicle Act or that the vehicle stood in

the name of the vendor in the records of the authority under the motor vehicle Act.

9.5 In Aravali Fin Lease Ltd. (supra), Hon'ble Gurjrat High Court has held that the vehicle was registered in the name of the director, were used for the purpose of business of company. Income derived from leasing the vehicles was shown as income of the company and the entire fund for the purchase of the vehicle had also gone from the coffers of the company, hence, the Tribunal was right in confirming the order passed by the CIT(A), allowing depreciation on the vehicle registered in the names of persons other than the assessee.

9.6 In Basti Sugar Mills Ltd., (Supra), Hon'ble Delhi High Court has relied Mirza Ataullah Baig (Supra) and held that where the car was utilized by the company for business purpose but no registration was done in its name, then assessee company would still be entitled to depreciation on such vehicle being used for assessee's business.

9.7 In Electro Ferro Alloys Ltd. (supra), Ahemdabad Bench of the Tribunal has referred and relied Basti Sugar Mills Ltd. (supra) and Mysore Minerals Ltd. (supra).

9.8 In Gopal Fabrics (Supra), Ahmedabad Bench of this Tribunal has referred and relied Mysore Minerals Ltd. (Supra).

9.9 In Edwise Consultants Pvt Ltd. (supra), Mumbai Bench of this Tribunal has referred and relied Aravali Fin Lease Ltd. (supra).

9.10 In SF Dyes Pvt. Ltd. (Supra), Mumbai bench of this Tribunal has referred and relied Basti Sugar Mills Ltd. (Supra) and Aravali Fin Lease Ltd. (supra).

10. According to the cumulative effect of the ratio propounded in aforesaid Judicial authorities, the assessee may be treated to be the owner of the car, purchased in the name of her husband but funded by assessee's proprietorship concern (M/s. Hansraj Nayyar Medical India). The first ingredient of section 32 of the Act, is therefore existing in favour of the assessee.
11. As regards second ingredient of section 32 of the Act, assessee has to show that the car, purchased in the name of assessee's husband, was used for the purpose of assessee's business either wholly or partly. Learned assessing officer has mentioned in his order that the assessee could not lead any evidence such as log book, date of travel, distance travelled etc. of the car to show the travel undertaken. The same is the position before first appellate authority.
12. Appellant assessee as an individual is at the command of her sole proprietor business. The decision-making rests in the assessee herself. The assessee, being the exclusive owner of the business, straight forward tax structure of direct and simple taxation has to be followed in respect of assessee's business income which is reported on the assessee's tax return. Since there is no legal requirement of disclosure of financial information publicly, business activities and financial records can remain confidential giving certain level

of discretion to the assessee as a sole proprietor of her business concern, the assessee should have been more careful in preserving the evidence by way of maintaining a log book or by documenting the terms and conditions with her husband with respect to the use of car for the purpose of assessee's business. The allowance of motor car expenses, insurance paid, etc. u/s. 37 of the Act, cannot automatically entitle assessee for the depreciation u/s. 32 of the Act as both the sections are mutually exclusive. The assessee has thus failed to prove that the car was used for the purpose of assessee's business wholly or in part. Assessee is thus not entitled for the claim of depreciation u/s. 32 of the Act. The aforesaid point is determined in negative against the assessee and in favour of the revenue.

13. In the result, the appeal is dismissed.

Order pronounced on 16.12.2024.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 16/12/2024

Aniket Singh Rajput

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

ITA no. 1310/MUM/2024
Sadhana Nayyar

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai