

अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI**

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1259/Mds/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Chennai Radha Engineering  
Works Private Limited,  
No.40, Sapthagiri Colony,  
Jaferkhanpet,  
Chennai – 600 083.

v. The Additional Commissioner of  
Income Tax, Company Range 1,  
Chennai.

PAN : AACCC6068R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri T.Banusekar, C.A.

प्रत्यर्थीकीओरसे/Respondent by

: Shri A.V.Sreekanth, JCIT

सुनवाईकीतारीख/Date of Hearing

: 24.10.2016

घोषणाकीतारीख/Date of Pronouncement

: 25.11.2016

**आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the order of CIT(A) -  
1, Chennai dated 18.02.2016 for the assessment year 2011-12.

2. Shri T.Banusekar, the learned representative for the assessee submitted that the only issue arises for consideration is disallowance of depreciation to the extent of Rs.69,18,594/-. According to the learned representative for the assessee, the assessee claimed higher rate of depreciation in respect of Hydraulic cranes, tipper, pay loader and JCB loaders. The assessing officer disallowed the higher rate of depreciation and allowed the depreciation at the rate of 15%. Referring to the order of the assessing officer, more particularly, at paragraph 4, the learned representative for the assessee submitted that the assessee claimed depreciation at the rate of 30%. However, the assessing officer restricted the same to 15%. Referring to the new Appendix I, under Item III(3)(ii), the learned representative submitted that the motor cars, motor lorries and motor taxis used in a business of running them on hire are eligible for a higher rate of depreciation of 30% as against the regular rate of 15%. The assessing officer observed that the assessee is not in the business of running motor vehicle or motor car or in the business of either transportation of goods or on hire.

3. Referring to the CBDT Circular No.652 dated 14.06.1993, the learned representative submitted that the higher rate of depreciation is available on the motor lorries used in the assessee's business of transportation of business on hire. Therefore, according to the learned representative, when the assessee is using the tripper, JCB and other motor

vehicles in the assessee's own business, the assessee is eligible for higher rate of depreciation. Referring to the order of the assessing officer, the department representative submitted that this circular of CBDT was distinguished by the assessing officer on the ground that the assessee is not engaged in the business of transportation of goods on hire. According to the learned representative, when the assessee used motor vehicles in its own business, the same is eligible for higher rate of depreciation.

4. Referring to the judgment of the Apex Court in CIT Vs. Gupta Global Exim (P) Ltd. reported in [2008] 305 ITR 132 (SC), the learned representative submitted that in the case before the Apex Court, there was no evidence to indicate that the assessee was in the business of hiring out motor Lorries for running them to earn business income. In the case before us, according to the learned representative, materials available on record to substantiate that the assessee was using the motor car in its own business for earning the income. Therefore, the judgment of the Apex Court in Gupta Global Exim (P) Ltd. (supra) may not be applicable to the facts of the case.

5. On the contrary, Shri A.V.Sreekanth, the learned department representative submitted that the assessee engaged in the business of manufacturing of components and spares for conveyor systems and labour contract, operation and maintenance of conveyor systems at thermal power stations and port and generation of power. The assessee claimed

depreciation in respect of Hydraulic cranes, tipper, pay loader and JCB loaders, etc. at the rate of 30%. The assessing officer restricted the same at 15% on the ground that the assessee's business is not transport of goods. The motor vehicle was not used in the business of hiring. Therefore, the assessing officer found that the assessee is eligible for depreciation only at the rate of 15%. The CIT(A) also confirmed the order of the assessing officer. According to the representative for the assessee, the circular of the CBDT in circular No.652 was examined by the assessing officer and it was found that it was applicable in respect of motor lorries which was hired out to some other person or it was used in the business of transportation of goods. Admittedly, manufacturing of components and spare for conveyor system is the business of the assessee. It is not the business of the assessee to hire out the vehicles. Therefore, the assessing officer has rightly disallowed the claim of the assessee by restricting the depreciation at the rate of 15%. Referring to the judgment of the Apex Court in the case of Gupta Global Exim (P) Ltd. (supra), the learned department representative submitted that the use of the motor lorries in the business of the assessee of transportation of goods is the test to be applied for the purpose of allowing the higher rate of depreciation. The apex court specifically found that the assessee was in the business of trading in tipper and not in any other business. The Apex Court has also found that there was no evidence to indicate that the assessee was in the business of hiring out the motor

lorries for running them to earn business income. Therefore, the CIT(A) has rightly found that in view of the judgment of the Apex Court in Gupta Global Exim (P) Ltd. (supra), the assessee is not eligible for higher rate of depreciation.

6. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee is engaged in the business of manufacturing of components and spares for conveyor systems and labour contract of operation and maintenance of conveyor systems at thermal power stations and port and generation of power. The assessee is not in the business of hiring out of motor Lorries or in the transport of goods. We have carefully gone through the new Appendix I, under Item III(3)(ii) of depreciation schedule which clearly says that Motor cars, other than those used in a business of running them on hire, acquired or put to use on or after the 1st day of April, 1990 is eligible only at the rate of 15%. So the vehicles namely motor Lorries used in the business of running them on hire alone are eligible for depreciation at the rate of 30% which is evident from the new Appendix I, under Item III(3)(ii) of the depreciation schedule. In the case before us, admittedly, the assessee is not engaged in the business of running motor car or motor lorries on hire. It is also not the case of the assessee that the assessee is using the Hydraulic cranes, tipper, pay loader and JCB loaders, etc. in the business of transportation of goods. Transportation of goods admittedly is not the

business of the assessee. Therefore, as rightly found by the assessing officer and CIT(A), the circular of the CBDT in circular No.652 is not applicable to the facts of the present case. Therefore, the CIT(A) has rightly placed his reliance in the judgment of the Apex Court in Gupta Global Exim (P) Ltd. (supra) and confirmed the order of the assessing officer. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly, the same is confirmed.

7. In the result, the appeal of the assessee stands dismissed.

Order pronounced on 25<sup>th</sup> November, 2016 at Chennai.

Sd/-  
(डि.एस. सुन्दर सिंह)  
**(D.S. Sunder Singh)**  
लेखा सदस्य/Accountant Member

Sd/-  
(एन.आर.एस. गणेशन)  
**(N.R.S. Ganesan)**  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 25<sup>th</sup> November, 2016.

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील) /CIT(A)
4. आयकर आयुक्त/CIT,
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.