

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "C" KOLKATA**

Before **Shri N.V. Vasudevan, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

**ITA No.793-794/Kol/2011**  
Assessment Years :2003-04 & 2004-05

M/s Bothra Automotive Pvt. Ltd. 16A Everest House, 46C Jawahar Lal Nehru Road, Kolkata-700 071 <b>[PAN No.AABCB 1359F]</b>	<b>V/s.</b>	ACIT, Central Circle-XX, Poddar Court, 18, Rabindra Sarani, Kolkata-700 001
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Mrs. Varsha Jalan, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Shital C. Das, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	02-12-2015
घोषणा की तारीख/Date of Pronouncement	-01-2016

**आदेश /ORDER**

**PER Waseem Ahmed, Accountant Member:-**

Both appeals by the assessee is against order of Commissioner of Income Tax (Appeals)-I, Kolkata dated 18.03.2011. Assessments were framed by ACIT, Central Circle-XX Kolkata u/s 143(3)/154 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for assessment years 2003-04 and 2004-05 respectively.

**First we take up ITA No.793/Kol/2011 A.Y. 03-04.**

2. Assessee has raised the following grounds:-

*"01) That the order of Learned Commissioner of Income Tax, (Appeals)-C-I, confirming the disallowance of depreciation on motor car amounting to Rs.33,470/- made by the Assessing Officer, is erroneous in law as well as on the facts of the case.*

*02) That the order of Learned Commissioner of Income Tax, (Appeals)-C-I, confirming the addition made by the Assessing Officer treating the profit on sale of motor car amounting to Rs.6,47,464/- as trading profit, against assessee's claim on sale of fixed assets of Rs.14,97,140/- is erroneous in law as well as on the facts of the case.*

*03) That the order of Learned Commissioner of Income Tax, (Appeals)-C-I, confirming the disallowance made by Assessing Officer in respect of traveling expenses is erroneous in law as well as on the facts of the case.*

*04) That the order of Learned Commissioner of Income Tax, (Appeal)-C-I, confirming the disallowance made by Assessing Officer on account of Sundry Balance being written off amounting to Rs.2,87,472/- u/s 36(2) of the Income Tax Act is erroneous in law as well as on the facts of the case.*

*05) That the order of Learned Commissioner of Income Tax, (Appeal)-C-I, confirming the disallowance made by Assessing Officer on account of claim written off amounting to Rs.27,000/- is erroneous in law as well as on the facts of the case.*

*06) That the order of Learned Commissioner of Income Tax, (Appeal)-C-I, confirming the addition made by Assessing Officer on account of Short Term Capital Gain u/s 50(2) amounting to Rs.18,10,318/- is erroneous in law as well as on the facts of the case."*

3. First we take up second ground raised by assessee is that Id. CIT(A) erred in confirming the order of the Assessing Officer by treating the profit on sale of car amounting to Rs.6,47,464/- as trading profit as against the claim of the assessee that it was a sale of fixed assets from the block of assets.

3.1 The facts of the case are that assessee is a Private Limited Company and has declared income under the head "business of trading in cars and spare parts". During the year, assessee had purchased seven new cars and one old car which were shown as fixed assets. The assessee sold four new cars out of the 7 new cars purchased during the year. As a result of sale the

block of assets of the cars were reduced by the amount of sale consideration. However AO opined that the transaction of sale of cars from the block of fixed assets was a trading transaction in nature on the basis of following observation.

- 1) The invoice for the purchase of fixed assets was common as of purchase of cars for trading.
- 2) The cars sold were purchased within the same year. It means the cars were held for a short period of time.
- 3) There was sufficient number of cars in stock for the similar make then why the cars were sold from the block of assets.
- 4) No road tax has been paid in respect of these cars.
- 5) No insurance was made for these cars.
- 6) Only some expenditures have been incurred for test derive.

3.2 The AO sought explanation from the assessee for selling the cars from the block of assets of car and not from stock-in-trade. According to the AO, the assessee failed to reply in this regard. Accordingly the AO held the transaction of sale & purchase of cars as trading in nature. So the profit arrived from the sale and purchase of the cars was treated as "business profit" for an amount of Rs.6,47,464/-.

4. Aggrieved assessee preferred an appeal before Ld. CIT who upheld the action of AO by observing as under:-

*"4.1 I have carefully considered the submission of the Ld. AR. The assessee is involved in the trading business of car and spare parts. During the course of assessment proceeding on perusal of the fixed asset schedule, it was noted by the AO that during the year under consideration, 7 new vehicles were purchased by the assessee out of which 4 were sold. It was further noted that the car shown under the head fixed asset were not used by the assessee as neither the road tax were paid nor the car were insured. The AO has discussed the issue in detail in para 3 of & 4 the order. Accordingly the profit on the car sold*

*has been treated as business income and the balance unsold car as closing stock. In result the short term capital gain declared by the assessee was recalculated and since the block ceased to exist after readjustments the depreciation claimed on motor car of Rs.33,470/- was disallowed.*

*4.2 Considering above, I do not find any infirmity in the order of the AO. There is no dispute that the assessee is a dealer of car and spares. Further during the year the addition made in fixed asset on account of purchase of motor car were sold off without using it. Taking all the factors into consideration as discussed by the AO, it is apparent that the vehicles in question were not purchased for investment or business use of the appellant. Considering above it is held that the AO has rightly calculated the profit on sale of the vehicle as business income. Hence the disallowance of depreciation of Rs.33,470/- and addition of Rs.6,47,464/- on account of trading profit on sale of car is confirmed. Accordingly ground no 2 and 3 taken by the appellant is dismissed.”*

5. Being aggrieved by this order of Ld. CIT(A) assessee preferred second appeal before us.

6. Mrs. Varsha Jalan Ld. Authorized Representative appearing on behalf of assessee and Mr. Shital C. Das, Ld. Departmental Representative appearing on behalf of Revenue.

7. We have heard both the rival parties and perused the materials available on record. Ld. AR submitted paper book containing pages 1 to 91. Before us Ld. AR submitted that the purchase of the cars were classified by the assessee as depreciable assets forming part of the block of assets. So on sale of depreciable assets the provisions of section 50 of the Act will be attracted. The assessee has reduced the block of assets by the sale proceeds hence now lower depreciation will be claimed. The accounts of the assessee were duly audited by a qualified chartered account and no defect in the accounts has been reported in the audit report. The learned DR relied on the order of the CIT(A).

8. From the aforesaid discussion we find that the AO has treated the sale of depreciable cars as trading transaction and taxed the same as business profit accordingly. However the Id. AR contended that there is no provision under the Act to treat the particular assets as part of the block of assets or stock in trade. It is the policy of the Assessee and decision of the management to treat a particular asset as part of the block of asset and vice versa. In the instant case the assessee has treated the cars as part of block of assets and sold subsequently during the year under consideration. The Assessee is at liberty to treat items which are trading asset as part of the depreciable asset also. In such cases the accounting entries in the books of accounts will be a very important and most relevant consideration for coming to a conclusion as to whether the sale of such item gives rise to Income from Business” or not. We find no defect in the accounting treatment of the assessee. Hence we reverse the order of the lower authorities and ground raised by assessee is allowed.

9. Next ground raised by assessee is that Ld. CIT(A) erred in confirming the order of AO by disallowing the depreciation on motor car for an amount of Rs. 33,470/-.

10. During the year the assessee has purchased 7 new cars and 1 old car which were classified as fixed assets and forming part of the block of assets in the books of the assessee. The assessee sold 4 new cars from the block of assets and reduced the block by the amount of sale consideration. Accordingly the assessee claimed depreciation on the WDV of the block of assets. However the AO rejected the accounting treatment in the books of the assessee for buying the cars and showing in the block of assets. Accordingly the AO treated the purchase and sale transaction as trading transaction. (For details refer ground no. 2 supra). As a result the block of assets ceased to exist in the books of accounts of assessee, so the depreciation for an amount of Rs. 33,470.00 was disallowed. In view of above the depreciations claimed

by assessee for an amount of Rs. 33,470/- was disallowed and added to the total income of the assessee.

11. Aggrieved assessee preferred appeal before Ld. CIT(A) who upheld the action of Assessing Officer.

12. Now, being aggrieved by this order of Ld. CIT(A), the assessee has preferred second appeal before us. This ground of appeal is consequential to the first ground of appeal raised by the assessee. As the first ground of the assessee has been allowed by us in assessee's favour, therefore now this ground being consequential, we allow in assessee's favour.

13. Ground No. 6 raised by assessee is that Ld. CIT(A) erred in confirming the addition made by the AO of Rs.18,10,318/- on account of sale of fixed assets held in the block of assets.

14. During the year under consideration, assessee has capitalized the purchase of seven new cars and one old car. The assessee within the same financial year has sold four new cars and has given the effect of the sale by reducing the sale consideration from the closing W.D.V. of the relevant block of assets. However the AO during the assessment proceedings held that the transaction is in the nature of trading business. Hence, AO treated the purchase and sale of cars as trading transactions and balance four cars were treated as stock-in-trade. As a result of this the block of assets of the cars were brought down by the value of the cars treated as stock in trade. Now the assessee sold certain cars from the block of assets for an amount of Rs.19,54,022/- and the opening balance of WDV was Rs.1,43,704/- and difference between the sale value of the assets and WDV was treated as Short Term Capital Gains for an amount of Rs.18,10,318/-.

15. Aggrieved assessee preferred an appeal before Ld. CIT(A) who upheld the action of AO by observing as under:-

*“13.1 I have carefully considered the submission of the L.d A.r. The assessee is involved in the trading business of car and spare parts. During the course of assessment proceeding on perusal of the Fixed asset schedule, it was noted by the AO that during the year under consideration, 7 new vehicles were purchased by the assessee, out of which 4 were sold. It was further noted that the car shown under the head fixed asset were not used by the assessee as either the road tax were paid nor the car were insured. The AO has discussed the issue in detail in para 3 of & 4 the order. Accordingly the profit on the car sold has been treated as business income and the balance unsold car as closing stock. In result the short term capital gain declared by the assessee was recalculated and since the block ceased to exist after readjustments the Short term capital Gain of Rs.18,10,318/- was calculated. Considering above and as discussed in para 4, while deciding ground no 3 above the addition of Rs.18,10,318/- made by the AO under section 50(2) is confirmed.”*

16. Being aggrieved by this order of Ld. CIT(A) assessee preferred second appeal before us.

17. Now, being aggrieved by this order of Ld. CIT(A) assessee preferred second appeal before us. This ground of appeal is consequential to the first ground of appeal raised by the assessee. So the first ground of the assessee has been allowed by us in assessee's favour, therefore now this ground being consequential, we allow in favour of assessee.

18. Ground No. 3 raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the order of AO by disallowing travelling expenses for an amount of Rs.28,276/-.

19. During the year, Director of the assessee-company along with his wife had travelled to neighboring country (Nepal). On question by AO assessee could not produce the supporting evidence that the said expenses were

incurred in connection with its business. Accordingly, AO disallowed the same and added it to the income of assessee.

20. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who confirmed the action of AO.

21. Being aggrieved by this order of Ld. CIT(A) assessee preferred second appeal before us.

22. We have heard rival submissions of both the parties and perused the materials available on record. Before us Ld. AR reiterated same submission which produced before Ld. Authorities Below. Ld. AR also failed to establish the business connection for travel to Nepal. Therefore, we confirm the orders of Authorities Below and assessee's ground is dismissed.

23. Next ground 4 raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the action of AO by disallowing the sundry balance written off for an amount of Rs.2,87,472/- u/s. 36(ii) of the Act.

24. During the year assessee has written off sundry balance for an amount of Rs.2,87,472/- by debiting in its profit and loss account. During the course of assessment proceedings, AO sought clarification regarding the declaration of income pertaining to the sundry balance written off in the relevant year i.e. in which previous year the written off balance were shown as income. Assessee could not explain the income when it was offered for taxation. Therefore, AO disallowed the same and added it to the income of assessee.

25. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who upheld the action of AO.

26. Being aggrieved by this order of Ld. CIT(A) assessee preferred second appeal before us.

27. We have heard the rival submissions of both the parties and perused the materials available on record. Before us Ld. AR drew our attention on page No. 32 of the paper book where the breakup of assessee's income for an amount of Rs.2,87,472/- was shown pertaining to the sundry balance written off. From the aforesaid discussion, we find that assessee has duly shown its income in earlier year of the balance written off in the relevant year. Ld. DR has not brought anything on record contrary to the finding of Ld. AR. On the other hand the Id. DR relied on the order of authorities below. In view of the above discussion, we reverse the order of Authorities Below and this ground raised by assessee is allowed.

28. Next ground raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the action of AO by disallowing the claimed written off for an amount of Rs. 27,000/- u/s. 36(ii) of the Act.

29. During the year assessee has written off the claim of Rs.27,000/- by debiting in its profit and loss account. During the course of assessment proceedings, AO sought clarification when the written off balance were shown as income in the previous year. Assessee could not explain the income when it was offered for taxation. Therefore, AO disallowed the same and added it to the income of assessee.

30. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who upheld the action of AO.

31. Being aggrieved by this order of Ld. CIT(A) assessee preferred second appeal before us.

32. We have heard the rival submissions of both the parties and perused the materials available on record. Before us the Ld. AR could not produce anything that the claimed written off has been declared as income in the earlier years. The assessee also failed to justify the claimed written off in the books before the lower authorities that when it was treated income. On the other hand the Id. DR relied on the orders of Authorities Below. In view of the above discussion, we do not find any reason to interfere in the order of Authorities Below. Accordingly this ground raised by assessee is dismissed.

33. In the result, assessee's appeal is partly allowed.

**Coming to ITA No.794/Kol/2011 for A.Y. 04-05.**

34. Sole ground raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the action of AO on account of sundry balance written off amounting to Rs.3,99,730/- u/s. 36(2) of the Act.

35. The facts of the case are that during the year assessee has written off sundry balance for an amount of Rs.3,99,730/- by debiting in its profit and loss account. During the course of assessment proceedings, AO sought clarification regarding the declaration of income pertaining to the sundry balance written off in the relevant year i.e. in which previous year the written off balance were shown as income. Assessee could not explain the income when it was offered for taxation. Therefore, AO disallowed the same and added it to the income of assessee.

36. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who upheld the action of AO.

37. Being aggrieved by this order of Ld. CIT(A) assessee preferred second appeal before us.

38. We have heard the rival submissions of both the parties and perused the materials available on record. Before us Ld. AR drew our attention on **page No. 68** of the paper book where the breakup of assessee's income for an amount of Rs.3,99,730/- was shown pertaining to the sundry balance written off. From the aforesaid discussion, we find that assessee has duly shown its income in earlier year of the balance written off in the relevant year. Ld. DR has not brought anything on record contrary to the submission of Ld. AR. On the other hand the Id. DR relied on the order of authorities below. In view of the above discussion, we reverse the order of Authorities Below and allow assessee's ground.

39. **In the result, assessee's appeal in ITA No.793/Kol/2011 is partly allowed and ITA No. 794/Kol/2011 is allowed.**

Order pronounced in the open court 20/01/2016

Sd/-  
(N.V.Vasudevan)  
(Judicial Member)  
Kolkata,  
\*Dkp

Sd/-  
(Waseem Ahmed)  
(Accountant Member)

दिनांक:- 20/01/2016 कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-M/s Bothra Automotive Pvt. Ltd., 16A, Everest House, 46C Jawahar Lal Nehru Road, Kolkata-71
2. प्रत्यर्थी/Respondent-ACIT, CC-XX, Poddar Court, 18 Rabindra Sarani, Kolkata-01
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।