

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES “J”, MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER)
AND
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)**

I.T.A. No.570 /Mum/2015
(Assessment Year: 2010-11)

Mehta Equities Ltd 612, 6 th Floor, Arun Chambers Tardeo, Mumbai-34	Vs	The ACIT 4(2), Mumbai
PAN : AAACR4143C		
(Appellant)		(Respondent)

Appellant by	Shri Neelkanth Kandelwal
Respondent by	Arju Garodia

Date of hearing : 08-09-2016
Date of pronouncement : 21 -09-2016

ORDER

Per ASHWANI TANEJA, AM

This appeal has been filed against the order of Commissioner of Income-tax (Appeals) [hereinafter called CIT(A)] dt 01-09-2014 passed against the assessment order of the AO u/s 143(3) dt 22-03-2013 for A.Y. 2010-11 on the following grounds:

“The Commissioner of Income-tax (Appeals) - 8 (hereinafter referred to as the CIT(A)) erred in upholding the action of the Assistant Commissioner of Income-tax - 4(2) (hereinafter referred to as the Assessing Officer) in disallowing depreciation Rs 5,01 ,924 on motor cars on the ground that the said cars are registered in the name of the directors and not in the name of the appellant- company and hence, the appellants are not the owners of the motor cars.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have confirmed the impugned disallowance notwithstanding the fact that the motor cars are registered in the name of the directors inasmuch as the appellants, having paid for the cost of the said vehicles are owners of the vehicles which have been used for the purposes of business of the appellants and hence, the said disallowance is required to be deleted."

2. During the course of hearing, the Ld. Counsel filed an additional ground also, which reads as follows:

"The following ground of appeal is independent of and without prejudice to the original ground of appeal -

The Commissioner of Income-tax (Appeals) - 8 (hereinafter referred to as the CIT(A)) erred in upholding the action of the Assistant Commissioner of Income-tax - 4(2) (hereinafter referred to as the Assessing Officer) in disallowing car insurance Rs 53,240 being, 50% of 1,06,479, interest paid on car loan Rs 81,278 being 50% of 1,62,556 and motor car expenses Rs 3,73,33 1 on motor cars on the ground that the said cars are registered in the name of the directors and not in the name of the appellant-company and hence, the appellants are not the owners of the motor cars.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have confirmed the impugned disallowance notwithstanding the fact that the motor cars are registered in the name of the directors inasmuch as the appellants, having paid for the cost of the said vehicles are owners of the vehicles which have been used for the purposes of business of the appellants and hence, the said disallowance is required to be deleted.

- 2.1. Further, with regard to admissions of the additional ground it was submitted that this ground was omitted to be raised in the appeal memo inadvertently and no fresh facts are required to adjudicate this ground.

It was noted by us the additional ground can be decided on the basis of material held on records and therefore after hearing both the parties, it was admitted.

3. It is also noted that there is delay in filing of appeal by 43 days. It was submitted by the Ld. Counsel that there has been inadvertent delay in filing this appeal. Our attention was drawn on the petition for seeking condonation of delay in filing this appeal which is duly supported with an affidavit. It was explained that the delay occurred due to negligence of the accountant of the assessee which happened inadvertently. The affidavit filed by the said accountant reads as follows:-

"I, VIKRAM KABRA, aged about 38 years, residing at 4/002, GAURAV CITY, MIRA ROAD (E)-Mumbai 401107, do hereby solemnly affirm and state as under:

- 1. That I am a senior accountant at Mehta Equities Ltd.*
- 2. I look after the accounts, income-tax and other matters related to finance of the said Company.*
- 3. I received the order of the Commissioner of Income-tax (Appeals) - 8, dated 01.09.2014 in the case of Mehta Equities Limited for the assessment year 2010-11 on ^{16th} October, 2014 and kept them separately in my drawer. I also kept other papers and documents together with the aforesaid order. As a practice, all income-tax related papers/ documents are sent to Messrs P. D. Saraf & Co, Chartered Accountants for further action but somehow inadvertently, the Commissioner of Income-tax (Appeals) order for the assessment year 2010-11 remained in the drawer; as a result of which the said order could not be given to the Chartered Accountants in time for filing the appeal. The said order was later noticed and immediately sent to them on 14th January, 2015.*

I further state that whatever is stated hereinabove is true to my own knowledge and belief and I believe the same to be true."

4. Ld. Counsel submitted that there was no intention to file the appeal belatedly. The delay occurred on the part of the accountant inadvertently. It was beyond the knowledge of the assessee. The reasons given are duly explained in the affidavit.

5. Ld. DR could not rebut the facts narrated before us that led to the delay in filing this appeal. No serious objection was made by her in condoning the delay. Therefore, taking into account all the facts and circumstances of the case, the delay in filing this appeal is condoned.

6. First we shall take up the **additional ground**. In this ground the assessee has challenged the action of the Ld. CIT(A) in not allowing fully the expenses incurred by the assessee on motor car maintenance, car insurance and interest paid on car loan.

7. The brief facts are that the AO disallowed 50% of the motor running and maintenance expenses and 100% of car insurance and interest paid on car loan. Being aggrieved, the assessee filed appeal before the Ld. CIT(A) and contended that no disallowance should have been made. But, the Ld. CIT(A) sustained the disallowance on motor car expenses @50% as has been made by the AO, but brought down the disallowance on account of car insurance and interest paid on car loan to 50% to make the disallowance at par with the motor car expenses. While doing so, the Ld. CIT(A) did not give any proper reasoning as to why this 50% disallowance should be made. Being aggrieved, the assessee came in appeal before the Tribunal and contended that it is a case of a company, complete details have been furnished before the lower authorities, there cannot be any disallowance on the ground of personal user and, therefore, disallowance should be fully deleted.

8. On the contrary, the Ld. DR did not object to the admission of additional ground and submitted that the Ld. CIT(A) has fairly brought down the disallowance to 50% which should be sustained.

9. We have considered the submissions made by the lower authorities. It was submitted that complete details have been furnished before the lower authorities. There are no basis to disallow 50% of the expense incurred on the motor car which was used exclusively for the purpose of the business of the assessee. Nothing has been detected to show the user of the motor car for non business purposes. No reasoning whatsoever has been given by the AO as to why these expenses have not been allowed fully. Ld. CIT(A) also has not given proper reasoning to sustain 50% disallowance of motor car expenses. It is noted by us that it is a case of a company which is a separate legal juristic person. There cannot be any disallowance on account of alleged personal user. It was shown that complete details and evidences were submitted in this regard. Nothing has been brought on record by either of the authorities to show any discrepancies in the details and evidences with regard to running and maintenance of motor car, car insurance and payment of interest on car loan furnished by the assessee company. Under these circumstances, we find the action of the lower authorities as unjustified in making the disallowances on surmises and conjectures. Therefore, the AO is directed to fully allow the motor car expenses, car insurance and interest paid on car loan as claimed by the assessee. Thus, additional ground is hereby allowed.

10. Now we shall take up original ground. In this ground, the assessee has contested the action of lower authorities in disallowing depreciation of Rs.5,01,924 on motor cars on the ground that the said cars were registered in the name of the director and not in the name of the assessee company.

11. The brief background of this issue is that the AO disallowed the depreciation on the motor car on the ground that it was registered in the name of one of the directors of the assessee company and, therefore, depreciation

was not allowable. Ld. CIT(A) upheld the action of the AO. Being aggrieved, the assessee filed appeal before the Tribunal.

12. During the course of hearing, Ld. Counsel of the assessee brought our attention upon the written submissions filed before the Ld.CIT(A) wherein it was explained in detail along with requisite evidences that actually the assessee company is the owner of the car but due to certain reasons it was purchased in the name of the director. The assessee had paid requisite amount for purchase of the car and it was shown in its balance-sheet as such. The assessee was its owner and, therefore, entitled for depreciation. It was further submitted that since the AO had himself allowed 50% of the motor car expenses which indicated that cars were used for the purposes of business of the assessee company. It was also submitted that the assessee company had passed a resolution to clear any doubt with regard to ownership of the car with the assessee company keeping in view the provisions of the Companies' Act. He further placed reliance on the following judgements in support of the proposition that even if the asset is not registered in the name of the assessee, but if the assessee is *de-facto* owner of the asset, then the claim of depreciation shall be allowed to the assessee:-

1. Mysore Minerals (1999) 106 Taxman 166 (SC)
2. Navdurga Transport Co 149 CTR 219
3. Dilip Singh Sardarsingh Bagga 201 ITR 995
4. Electro Ferro Alloys Ltd 25 Taxmann.com 458 (Ahd)
5. Aravali Finlease Ltd 341 ITR 383 (Guj)
6. Basti Sugar Mills Co Ltd 257 ITR 88 (Del)

13. In view of the above said legal position and facts of the case, Ld Counsel requested for allowing the claim of depreciation.

14. It was also submitted by the Ld. Counsel that the car was purchased in earlier year and this is the second year. Since the car has already entered into

the block of assets in A.Y. 2009-10 and depreciation on the same was allowed by the AO, the same cannot be disturbed now in A.Y. 2010-11.

15. The Ld. DR submitted that since assessee is not the legal owner of the car as the same is registered in the name of the director, it cannot be granted benefit of depreciation. Reliance was placed on the decision of Mumbai Bench of the Tribunal in the case of Edwise Consultants Pvt Ltd (A.Y. 2007-08 in ITA No.391/Mum/2011 order dated 19-04-2013).

16. In reply, Ld. Counsel submitted that in the case of Edwise Consultants Pvt Ltd, the Tribunal (vide its order dt 14-10-2015 for A.Ys 2008-09, 2009-10 and 2010-11 in ITA Nos 4376/Mum/2011, 4121/Mum/2014 and 594/Mum/2013) considered the issue again in the light of aforesaid judgments of High Court in the case of Aravali Finlease Ltd (supra) and Basti Sugar Mills Co Ltd (Del) (supra) and held that depreciation was allowable to the assessee if car was *de-facto* owned by the assessee company even if it was registered in the name of the director. Thus he requested that as per latest position of law, depreciation claim is available to the assessee.

17. We have gone through the orders passed by the lower authorities and copies of judgments placed before us and submissions made by both the parties before us. It is not in dispute that car has actually been purchased by the assessee company from the funds of the company and the same has been shown by the company in its balance-sheet. It was also stated that a resolution was passed by the company wherein it was clarified that though the car, for some reasons, has been purchased in the name of the director, but it belongs to the company and is owned by the company. The director has never claimed the ownership of the car. The company has undisputed ownership of the car. Both the parties involved in the transaction are clear about this factual and

legal position. There is no confusion on that. Under these circumstances, it can be safely said that the company is the *de-facto* owner of the car. It is also not disputed that the car has been actually used by the company for its business purposes. Similar position came up before the Hon'ble Gujarat High Court in the case of Aravali Finlease Ltd (supra) wherein it was held that where vehicle though registered in the name of the director of the company, but if entire funds for purchase of vehicles had gone from the coffers of the company and the same was used for the purpose of the business of the company, under these circumstances, the company was entitled to depreciation on the said vehicle. Similarly, the Hon'ble Delhi High Court in the case of Basti Sugar Mills Co Ltd (supra) held that the company was entitled to depreciation on car which was owned by it but not registered in its name. The law in this regard was also clarified by Hon'ble Supreme Court way back in the case of Mysore Minerals Ltd vs CIT 239 ITR 775 (SC). It is further noticed by us that the co-ordinate bench of Mumbai Tribunal in its later judgment passed in the case of Edwise Consultants Pvt Ltd (supra) clarified the correct legal position in this regard and following the aforesaid judgements of high courts held that depreciation will be allowable in such a situation.

18. It is further noted that in this case car was purchased by the assessee company in preceding year i.e. A.Y. 2009-10, wherein depreciation was claimed by the assessee and allowed by the AO. Thus, the said car had entered into block of assets in A.Y. 2009-10. Once an asset is entered into the block of asset and is brought forward as part of opening WDV, there arises no question for not allowing depreciation on the opening amount of WDV of the car, so long as continues to be used for the business of the assessee. It is further noted that in this case, the AO has himself allowed motor car expenses on the same car

@50%. Thus, AO himself has accepted the user of the car for the purpose of business of the assessee company. Under these circumstances, contradictory decision could not have been taken for the purpose of allowing depreciation. Thus, taking into account the aforesaid legal position and peculiar facts and circumstances of this case, we find that depreciation is allowable on the car and, therefore, the same is directed to be allowed. Thus, the impugned ground is allowed.

19. As a result, appeal of the assessee is allowed.

Order pronounced in the court on this 21st _day of September, 2016.

Sd/-	Sd/-
(C.N. PRASAD)	(ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt: 21st September, 2016

Pk/-

Copy to:

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, J -Bench

(True copy)

By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES