

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ए' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
श्री शमिम याह्या लेखक सदस्य, एवं श्री रविश सूद, न्यायिक सदस्य, के समक्ष
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAVISH SOOD, JM

आयकर अपील सं/ I.T.A. No.2277/Mum/2013
(निर्धारण वर्ष / Assessment Year:2009-10)

Dy. Commissioner of Income Tax Circle 2(2) Aayakar Bhavan, Room No.545, 5 th Floor, M.K.Road, Mumbai - 400020	बनाम/ Vs.	M/s. Kaytee Corporation Pvt. Ltd. 7, Malhotra House, 2 nd Floor Walchand Hirachand Marg, Opp. GPO, Fort, Mumbai - 400001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACK1732E		
(पीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Rajesh Kumar Yadav	
Assessee by:	Ms. Aarti Vissanji	

सुनवाई की तारीख / Date of Hearing: 28.02.2017
घोषणा की तारीख /Date of Pronouncement: 12.04.2017

आदेश / O R D E R

PER SHAMIM YAHYA, AM:

This appeal filed by the revenue is directed against the order of the Commissioner of Income Tax (Appeals)-5, Mumbai [hereinafter referred to as the "CIT(A)"] dated 31.12.2012 and pertains to A.Y.2006-07.

2. The grounds of appeal are as under:-:-

- “1. *The order of the CIT(A) is opposed to law and facts of the case.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the depreciation on motor car, ignoring that AO had correctly disallowed the claim as the car was not registered in the company’s name.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in excluding the interest of Rs.31,07,917/- from the computation of disallowance u/s.14A, holding that interest on car loan, packing credit interest and term loan interest cannot be attributed to investment in securities, ignoring that the said interest is related to assets and not to income and therefore cannot be excluded from the gross interest.*
4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of prior period expenses disallowed in A.Y.2007-08, ignoring that the assessee had not made a claim in its return for the A.Y.2006-07 nor filed a revised return of claim the said expenses, which is in contravention of the decision of the Hon’ble Supreme Court in the case of Goetz (India) Ltd. [284 ITR 323].*
5. *For these and other grounds that may be urged at the time of hearing, the decision of the CIT(A) may be set aside and that of the AO restored.”*

Apropos Ground No. 1:-

3. On this issue Assessing Officer disallowed the claim of depreciation on motor car since the same was registered in the name of the Director and not the company. Before the learned CIT(A) assessee submitted that purchase consideration has been paid by the assessee company and the motor car was accounted for in the books of the assessee company as part its fixed assets. That the motor car was

used for the business purpose of the company. Considering the above learned CIT(A) held as under:-

“3.3 *In Mysore Minerals Ltd. vs. CIT (1999) 156 CTR (SC) 1 : (1999) 239 ITR 775 (SC) the Supreme Court has held that anyone in possession of property in his own title exercising such dominion over the property as would enable others being excluded therefrom and having right to use and occupy the property in his own right would be the owner of building for the purpose of s. 32(1) though a formal deed of title may not have been executed and registered, and he would be entitled to depreciation thereon.*

3.4 *In view of the aforesaid facts and case laws, the depreciation disallowed by the AO amounting to Rs.2,49,149/- is deleted.”*

4. Against the above said order the revenue is in appeal before us. We have heard both the counsel and perused the records. Learned departmental representative has relied upon the decision of Income Tax Appellate Tribunal in case of Edwise Consultants Pvt. Ltd. in ITA No.391/Mum/2011 vide order dated 19.04.2013. On the other hand, learned counsel of the assessee relied upon the order of the same assessee for subsequent assessment year vide order dated 14.10.2015 in which the Tribunal has decided the issue in favour of the assessee.

5. On careful consideration we find that the Income Tax Appellate Tribunal in its order dated 14.10.2015 in the case of Edwise Consultants Pvt. Ltd. has held as under:-

“We have heard the parties on this issue and perused the record. We notice that the Hon’ble Gujarat High Court has considered identical issue in the case of Aravali Finlease Ltd. (supra) and has taken the decision that the depreciation is allowable in the hands of the company,

even if it is registered in the name of its director provided that the vehicle is used for the purpose of business of company and income derived there from was shown as income of the company. In the instant case there is no dispute with regard to the fact that the vehicles are used for the purpose of business of the assessee company. In the instant case there is no dispute with regard to the fact that the vehicles are used for the purpose of business of the assessee company. In the case of Basti Sugar Mills Co. Ltd. (supra), the Hon'ble Delhi High Court approved the decision of the Tribunal in holding that, since vehicle is a movable asset, the registration as required in the case of transfer of immovable property is not a condition precedent for legal ownership. In the instant case, the funds for purchase of vehicles have been provided by the assessee company and they have been shown as assets of the assessee company. Hence, in our view, the assessee company should be considered as owner for all practical purposes and hence it is entitled for depreciation. In view of the direction decision of Hon'ble Gujarat High Court is available on this issue, we prefer to follow the same to that rendered by the Tribunal in the assessee's own case for A.Y.2007-08. Accordingly, we set aside the order of Ld. CIT(A) on this issue and direct the AO to allow depreciation on vehicles."

6. Since above decision of the Tribunal has been passed after taking into account Hon'ble Gujarat High Court and Hon'ble Delhi High Court decisions, following the above said decisions we uphold the order of the learned CIT(A). Hence this issue is decided in favour of the assessee.

Apropos Ground No. 2:-

7. On this issue the assessee had explained to the Assessing Officer as under:-

"During the year under assessment, our assessee has not earned any exempt income. Our assessee has not incurred any expenses for earning 'Nil' exempt income. Our assessee has not incurred any expenses for earning 'Nil' exempt income. There are no direct / indirect expenses incurred by our assessee for earning 'Nil' exempt income. As no

deduction have been claimed, question of disallowance of such expenses u/s.14A does not arise”.

8. Assessing Officer did not accept this proposition. He proceeded to make disallowance under Rule 8D by placing reliance upon the decision of the Income Tax Appellate Tribunal, Special Bench in the case of M/s. Daga Capital Management. Accordingly, he made a disallowance of Rs.2,74,112/-. Upon assessee's appeal learned CIT(A) held that assessee should be granted relief for the interest paid on car loan, packing credit interest and term loan interest which cannot be attributed to investment in securities. This resulted in the disallowance being restricted to Rs.69,140/-. Against this order revenue is in appeal before us.

9. We have both the counsel and perused the records. We find that assessee has not earned any exempt income in the present assessment year. Hence on the basis of Hon'ble Delhi High Court decision in the case of Cheminvest Ltd. Vs. CIT (378 ITR 33), since no exempt income has been earned no disallowance u/s.14A of the Income Tax Act, 1961 (in short “the Act”) is liable to be made. However, in this case CIT(A) has affirmed the disallowance of Rs.69,140/-. In this view of the matter revenue cannot have any grievance. Accordingly, we uphold the order of the learned CIT(A).

Apropos Ground No. 3:-

10. Brief facts on this issue are as under:-

- “7.1 *The assessee during the course of appellate proceedings vide letter dated 03.12.2008 stated that the assessee has disallowed an expenditure of Rs.32,74,839/- in A.Y.2007-08 as prior period expenses. Therefore the same should be allowed as expenditure during the year as the same pertains to the A.Y. under question.*
- 7.2 *The AO did not consider the appellant's claim stating that the appellant has not filed any revised return as required in the case of Goetz India (Ltd.) 284 ITR 323.”*

11. Upon assessee's appeal learned CIT(A) held that Assessing Officer has not doubted that the expenditure does not pertain to the year under consideration but his only objection is that the assessee has not filed the revised return. The learned CIT(A) placed reliance upon the Hon'ble Bombay High Court decision in the case of Balmukund Acharya, ITA 217/2001 310 ITR 310. He held that prior period expenses are therefore allowed. Against the above order revenue is in appeal before us.

12. We have heard both the counsel and perused the records. We find that Assessing Officer has not accepted the assessee's claim of prior period expenditure on the basis that assessee has not filed revised return. Nowhere in the assessment order, assessing officer has mentioned that otherwise he is satisfied with the expenditure claimed. In our considered opinion learned CIT(A) has erred in appreciating these aspect since Assessing Officer has not examined the veracity of these expenditures. We remand the issue to the file of the Assessing Officer. Assessing Officer will examine the veracity of these

expenditures and allow accordingly as per law. Needless to as assessee should be granted adequate opportunity of being heard.

13. In the result, this appeal filed by the **revenue is Partly Allowed.**

Order pronounced in the open court on 12th April, 2017.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 12th एप्रिल, 2017
MP

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai