

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.162/PUN/2018
निर्धारण वर्ष / Assessment Year: 2012-13

Sehgal Autoriders Pvt. Ltd., D-II, 64/6, MIDC Telco Road, Chinchwad, Pune- 411019. PAN : AAFCS2240A	Vs.	DCIT, Circle- 10, Pune.
Appellant		Respondent

Assessee by : Shri Rishi V. Lodha
Revenue by : Shri S. P. Walimbe
Date of hearing : 25.01.2022
Date of pronouncement : 25.01.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)- 6, Pune ['CIT(A)' for short] dated 08.11.2017 for the assessment year 2012-13.

2. The appellant raised the following grounds of appeal :-

- "1. On the facts and circumstances of the case and in law, Hon. Commissioner of Income Tax, (Appeals), Pune-6 erred in disallowing the depreciation claimed for the cars used by the directors for official work of the company but ownership documents in the name of individual director.*
- 2. On the facts and in the circumstance of the case the learned Commissioner of Income Tax, (Appeals), Pune-6 erred in disallowing the interest paid on the purchase of cars.*

Appellant prays that the same may be accepted and the returned income be ordered to be accepted.

3. *On the facts and in the circumstances of the case the learned Commissioner of Income Tax,(Appeals), Pune-6 erred in disallowing the extended warranty paid of Rs.1,30,340/-.*
4. *On the facts and in the circumstances of the case the learned Commissioner of Income Tax,(Appeals), Pune- 6 erred in disallowing the difference as per 26AS amounting to Rs. 8,900/- Appellant craves for leave to add, alter, amend and / or drop from the grounds of appeal before or at the time of hearing.”*

3. Briefly, the facts of the case are as under :

The appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of dealership of two wheelers and four wheelers vehicles. The return of income for the assessment year 2012-13 was filed on 29.09.2012 declaring a loss of Rs.56,77,017/-. Against the said return of income, the assessment was completed by the Deputy Commissioner of Income Tax, Circle-10, Pune ('the Assessing Officer') vide order dated 27.01.2015 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total loss of Rs.50,26,459/-. While doing so, the Assessing Officer made the following disallowances :-

- (i) Provisions for warranty of Rs.1,30,340/-.
- (ii) Disallowance of depreciation of vehicle of Rs.4,57,557/-.
- (iii) Disallowance of interest on purchase of car of Rs.53,761/-.

4. One of the disallowance relates to disallowance of depreciation and interest paid on car loan, the Assessing Officer disallowed both the claims on the ground that the car was held in the name of the director instead of appellant company.

5. Being aggrieved by the above disallowances, an appeal was filed before the Id. CIT(A), who vide impugned order confirmed the action of the Assessing Officer.

6. Being aggrieved, the appellant is before us in the present appeal.

7. The ground of appeal nos.1 and 2 challenges the disallowance of depreciation as well as interest on car loan. The Id. Counsel submits that though the car was purchased in the name of the director in order to avail the concessional rate of road taxes, in substance, the car is owned by the appellant company, inasmuch as, the repayment of car loan was made by the appellant company as well as it was used in the business of the appellant company. He also submitted that the issue is covered in favour of the appellant company in assessee's own case for the earlier assessment year by the order of this Tribunal in ITA No.286/PUN/2015 for the assessment year 2010-11 dated 31.10.2017.

8. On the other hand, ld. Sr. DR placing reliance on the orders of the lower authorities submits that, inasmuch as, the vehicle is held in the name of the director of the appellant company, no depreciation should be allowed.

9. We heard the rival submissions and perused the material on record. The issue raised in the ground of appeal nos.1 and 2 in the present appeal relates to the allowance of depreciation on vehicle held in the name of director of the appellant company. The undisputed facts of the case are that the vehicle i.e. BMW car is registered in the name of director of the appellant company although the repayment of loan out of which the car was acquired, was made by the appellant company and it was used in the business of the appellant company. The fact that the loan was repaid by the appellant company affirms the position that the appellant company is owner of the vehicle. The fact that the vehicle is registered in the name of the director of the appellant company does not make any difference, inasmuch as, the registration under the Motor Vehicle Act, 1988 is not conclusive evidence of the ownership of the vehicle. The term "ownership" under the Motor Vehicle Act is different from the ownership as envisaged under the provisions of section 32 of the Act as held by the Hon'ble Supreme Court in the

case of I.C.D.S. Ltd. vs. CIT, 29 taxmann.com 129 (SC). Further, the Hon'ble Calcutta High Court in the case of CIT vs. Salkia Transport Associates, 143 ITR 39 (Cal.-HC) held that there is no requirement under the provisions of section 32 that in order to avail the depreciation, an assessee should be registered the ownership of the vehicle. On the similar lines, the decision of the Hon'ble Allahabad High Court in the case of CIT vs. Navdurga Transport Co., 235 ITR 158 (All.-HC) and the decision of the Hon'ble Bombay High Court in the case of CIT vs. Dilip Singh Sardarsingh Bagga, 201 ITR 995 (Bom.-HC).

10. In the light of above legal position, we are of the considered opinion that the assessee is entitled to the depreciation under the provisions of section 32 of the Act inspite of the fact that the vehicle is registered in the name of the director of the appellant company. Therefore, we direct the Assessing Officer to delete the addition on account of disallowance of depreciation on car and interest paid on car loan. Accordingly, the orders of the lower authorities are hereby reversed on this issue. Thus, the ground of appeal nos.1 and 2 stands allowed.

11. The ground of appeal nos.3 and 4 are dismissed as not pressed during the course of hearing of the appeal.

12. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced on this 25th day of January, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 25th January, 2022.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-6, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.