

IN THE INCOME TAX APPELLATE TRIBUNAL “B(SMC)” BENCH: KOLKATA
[Before Shri Rajesh Kumar, Accountant Member& Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 40/Kol/2020
Assessment Year : 2013-14

Mr. Ashim Krishna Bhatta (PAN: AGKPB 3372 N)	Vs.	ACIT, Circle-49(1), Kolkata
Appellant		Respondent

Date of Hearing	15.03.2022
Date of Pronouncement	21.04.2022
For the Appellant	Shri P Jhunjunwala, A.R
For the Respondent	Shri Manash Mondal, Addl. CIT

ORDER

Per Shri Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Commissioner of Income Tax(Appeals)-15, Kolkata [hereinafter referred to as ‘CIT(A)’] dated 04.10.2019 for the assessment year 2013-14.

2. We note that there is a delay of 32 days in filing this appeal. After going through the application for condonation of delay and after hearing both the sides, we are of the opinion that the cause for delay was reasonable ,so we condone the delay and proceed to hear the appeal.

3. The only issue raised by the assessee in this appeal is against the order of Ld. CIT(A) confirming the order of AO wherein the expenses of Rs. 47,40,701/- were treated as capital expenditure as against the assessee’s contention that the same were of revenue nature as being incurred on repairs and maintenance of the trucks etc.

4. Facts in brief are that the assessment was framed u/s 143(3) of the Income Tax Act, 1961 vide order dated 24.02.2016 assessing the income at Rs. 3,17,504/- against the returned income of Rs. 2,89,490/-. Thereafter the said order was revised by the Ld. PCIT u/s 263 of the Act on the ground that the assessee has claimed excess

depreciation at 50% as against the allowable rate of 30% and thus the order being erroneous and prejudicial to the interest of the revenue and directed the AO to frame the assessment fresh. In the set aside assessment proceedings vide letter dated 26.09.2018 the assessee was called upon by the AO to show cause as to why the excess claim of depreciation amounting to Rs. 47,40,701/- should not be disallowed and added to the income of the assessee which was replied by letter dated 10.08.2018 wherein the assessee submitted that the said expenditure was incurred on the replacement of body of trucks which was damaged due to wear and tear and these expenses incurred by the assessee on routine basis. The assessee submitted that since the expenses incurred on repair/replacement of truck's body were very high, these were accounted for under capital cost however while finalizing the account at the year end the said expenditure was charged to profit and loss account at 100% wrongly under the head depreciation instead of the said cost being directly charged the revenue expenditure. The assessee submitted before the AO that had he incurred expenditure under capital account, then depreciation would have come to 30% only. The assessee reiterated that the amount of Rs. 47,40,701/- was actually the expenses for bodyrepairs/replacements but wrongly classified under the head depreciation which has resulted into the rate of depreciation going up as high as 50% instead of 30%. The assessee submitted that .this being accounting mistake on the part of the accountant ,cannot be the basis for punishing the assessee. The AO however was not convinced with the reply of the assessee and he rejected the claim of the depreciation qua the expenses and allowed depreciation at 30% thereby making an addition of Rs. 47,40,701/-.

5. In the appellate proceedings also the Ld. CIT(A) dismissed the appeal of the assessee by observing that the expenses incurred on replacements which were of capital nature and thus upheld the order passed by the AO.

6. After hearing contentions and perusing the material on record, we note that the assessee is an operator of trucks and lorries on hire. During the year, the assessee has incurred expenditure on replacements of old truck bodies which was treated as revenue

expenditure however wrongly shown under the head depreciation by claiming 100% of the said expenditure as allowable during the year instead of charging the expenditure directly to the profit and loss account as the revenue item. We note that the authorities below have not been doubted the genuineness of the expenditure that the assessee has not incurred the expenditure but the dispute was with regard to the nature of the expenses whether to be treated as capital or revenue in nature. According to the assessee's counsel the said expenditure is revenue in nature and has to be allowed fully against the income of the assessee whereas the tax authorities were of the view this is capital in nature and only depreciation is to be allowed @ 30% without doubting the genuineness of the expenditure. So the issue before us is whether the expenditure is of revenue or capital in nature. We have also perused the decision of Hon'ble Calcutta High Court in the case of CIT vs. Tea Estate Pvt. Ltd. reported in [1992] 198 ITR 535 (Cal) as cited before us by the counsel of the assessee wherein the Hon'ble Court has held that where the assessee has replaced the part of trucks being petrol engine by diesel engine, the said replacement could not be considered as bringing into existence any new asset or any new advantage of enduring character and therefore expenditure incurred on replacement of said petrol engine by diesel engine was treated as revenue expenditure. Respectfully following the same ratio, we are inclined to hold that the expenditure incurred by the assessee as such on replacement of wooden body of truck has to be allowed fully against the income of the assessee in the current year. Consequently we set aside the order of Ld. CIT(A) and direct the AO to treat the expenditure as revenue in nature.

7. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 21st April, 2022

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Rajesh Kumar)
Accountant Member

Dated: 21st April, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Mr. Ashim Krishna Bhatta, 13 & 14, Dumdum Park, Kolkata-700055.
2. Respondent – ACIT, Circle-49(1), Kolkata
3. The CIT(A)- 15, Kolkata
4. Pr. CIT- Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata