

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.4919 /Del./2018
(ASSESSMENT YEAR : 2013-14)**

M/s. India Safari and Tours Ltd.,
Flat No.13, Community Centre,
2nd Floor, Basant Lok Market,
Vasant Vihar,
New Delhi – 110 057.

vs. DCIT, Circle 12 (1),
New Delhi.

(PAN : AABCI4662E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri D.C. Garg, CA
REVENUE BY : Ms. Anupama Singla, Senior DR

Date of Hearing : 25.05.2022
Date of Order : 15.06.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id.
CIT (Appeals)-22, New Delhi dated 27.04.2018 pertaining to assessment
year 2013-14.

2. The grounds of appeal raised by the assessee read as under :-

“1. That the Learned Commissioner of Income Tax (Appeals)-22, New Delhi, has erred in law as well as on facts and in circumstances of the case in upholding action of the Assessing Officer in disallowing of claim of depreciation of the appellant amounting to Rs. 15,46,939/- without appreciating the fact that the furniture used by the Appellant for a limited period due to expiry of lease of the premises.

2. That the Learned Commissioner of Income Tax (Appeals)-22, New Delhi, has erred in law as well as on facts and in circumstances of the case in confirming disallowance of depreciation claim amounting to Rs. 2,60,403/- of the appellant without appreciating the fact that the Appellant company engage in the business of tour and travel and vehicles have actually been used for carrying the travelers.

3. That the Learned Commissioner of Income Tax (Appeals)-22, New Delhi, has erred in law as well as on facts while confirming disallowance of loss incurred on foreign exchange amounting to Rs. 14,404/- by disregarding verdict of Hon'ble Supreme Court in CIT Vs Woodward Governor India Pvt Ltd. [312 ITR 254].

4. That the Learned Commissioner of Income Tax (Appeals)-22, New Delhi has erred in law as well as on facts and in circumstances of the case in confirming action of the AO in treating legal & professional expenses as capital nature and allowing only depreciation for the part of the year.”

3. Apropos ground no.1 : Brief facts of the case are that the assessee company was engaged in the business of inbound tours and provides tour and travel services to foreigners coming to India. The Assessing Officer (AO) observed that during examination of the case, it was noticed from the schedule of fixed assets as filed with the revised return that there was an addition of Rs.16,28,357/- shown under the head of Temporary Structure and depreciation @ 100% was claimed thereon. AO sought response from the assessee. Not satisfied with the reply, the AO hypothesized that the additions were probably additions in furniture & fixtures. He has held as under :-

“The facts of the case in this regard and submissions made as well as documents filed by the assessee have been duly considered. From the perusal of the same, certain observations made are as under :-

- i) Period of construction of such alleged temporary structure is spread over more than 5 months (from 14.05.2012 to 31.10.2012).
- ii) Details and nature of some of the bills are as following :-
- | | |
|-----------------------------|---------------|
| Interior Design Consultancy | Rs.18,000/- |
| POP | Rs.10,500/- |
| Electrician | Rs.2,00,000/- |
| Furniture making charges | Rs.2,00,000/- |
| Toughened Glass | Rs.1,52,063/- |
| Painter | Rs.76,071/- |
| Wall Paper | Rs.20,116/- |
| Hardware Items | Rs.92,765/- |
| etc. etc. | |
- iii) Depreciation on these assets in the books has been provided at Rs.4,44,907/- i.e. almost @25% whereas depreciation as per IT Act, on these assets has been claimed @100%.

Though the assessee has not revealed the specific nature of these assets even though specifically confronted but from the nature of expenses and further facts as mentioned above it is apparent that the nature of the assets in question was not that of temporary structure rather these were probably additions in furniture & fixture. Accordingly, depreciation on such asset was not allowable @100% rather it was allowable @10%. In view of this depreciation is allowed at Rs. 81,418/- (half of 10% of 16,28,357) and excess depreciation claimed at Rs. 15,46,939/- (1628357 - 81,418) is disallowed and added back to the total income. This gives an addition of Rs. 15,46,939/- to the total income of the assessee.”

4. Upon assessee’s appeal, ld. CIT (A) confirmed the AO’s order, by inter alia further guessing that, “The construction made does not appear to be temporary in nature. The ld. CIT (A) has held as under :-

“The construction made does not appear to be temporary in nature and life span of the construction is definitely longer than in the case of temporary structure. First of all it is to be noted that the rule 1 of Appendix 1 of the Income Tax Rules, depreciation @ 100% is allowable on, temporary erection. Under the head temporary erection, the legislature has given an example of wooden structure. By giving an example of wooden structure, the legislature makes it clear that if the life span of an erection is short, it should be called a temporary erection, otherwise it may fall under the head part of building or furniture and fittings on which depreciation at 10% is allowable. In the instant case, the assessee might have incurred certain expenditure on wooden partition, on which depreciation @100% is allowable.

However, no bifurcation of the same has been submitted by appellant and appellant only argument that since it is a rented premise therefore, depreciation @100% may be allowed. Under the head legal & Professional charge the appellant has made an payment of Rs.1,80,000/- to Aprajita Davar for Designing the office. The payment is appearing in the ledger account of appellant under the head temporary structure - building. It means the payment is made for designing the office for which the alleged temporary structure is erected. When the appellant is paying such a hefty amount to interior designer it further strengthen to believe the argument of the AO. Hon'ble Delhi ITAT in the case of The Triveni Engg. Works Ltd. vs Dy. Commissioner of Income Tax ... on 05 July, 2003 has decided the issue in favour of revenue primarily on the basis of life span of the structure. In view of this I do not see any reason to take a different stand and I concur the view adopted by the AO about the nature of erection.”

5. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the record.

6. Ld. counsel for the assessee submitted that these are purely temporary structures on which 100% depreciation has to be allowed. He submitted that Higher Courts on several occasions have held that such temporary structures are eligible for claim as revenue expenditure. He referred to several case laws in this regard.

7. Per contra, ld. DR of the Revenue relied upon the orders of the authorities below. She further referred to Explanation 1 to section 32 and drew support therefrom.

8. Upon careful consideration, we find that in this case, assessee has incurred certain expenditure in relation to renovation of leasehold premises. The details of the same have been mentioned in the AO's order. The items mentioned by no stretch of imagination can be said to

be building construction material, hence the Explanation-1 referred by the ld. DR is not applicable. As regards the nature of expenditure, it is clearly emanating that the same is relating to interior design, electrification charges, furniture charges, wallpaper, toughened glass etc. These items are certainly revenue fixtures when used in the rented premises. How they are not temporary is beyond comprehension. Further, AO's hypothesis that these are "probably" addition in furniture and fixture is a guess-work, not sustainable in law. Ld. CIT(A)'s observation that the construction made does not appear to be temporary in nature is similar to the guesswork of the AO *de hors* the facts on record which show that these are temporary furnishing and fixtures in its premises. Such expenditure were duly held to be allowable by Hon'ble Allahabad High Court in the matter of Girdhari Dass & Sons vs. CIT 105 ITR 339 and ITAT, Mumabi Bench in the case of Peri India Pvt. Ltd. vs. JCIT in ITA No.1432/Mum/2014. Accordingly, we set aside the orders of authorities below on this issue and decide the issue in favour of the assessee.

9. Apropos issue relating to disallowance of depreciation : On this issue, it was noticed by AO that in the revised return of income, the assessee had claimed depreciation @ 30% in respect of motor vehicle commercial. AO rejected the rate of depreciation of 30% on the ground

that assessee was not in the business of running or hiring of vehicles. Ld. CIT (A) found that AO has stated that assessee is engaged in the business of tour and travel services and higher rate of depreciation has been claimed being used as commercial vehicles but assessee has failed to establish that these vehicles are used for running on hire. Before him, assessee submitted RC book of two Innova Vehicles registered as Taxi one in Delhi and other in Jabalpur. Ld. CIT(A) observed that this submission is not sufficient enough to controvert the finding of the AO. He made a bizarre remark that sometimes person get vehicle registered as Taxi to get some other benefit. Accordingly, he confirmed the addition.

10. Against this order, the assessee is in appeal before us. We have heard both the parties and perused the record.

11. We find that the orders of authorities below in denying depreciation @ 30% on commercial vehicles being used by the assessee in operating touring services leaves no doubt that Revenue authorities have failed to apply any mind. Moreover, even after submitting the RC Book of registration as taxi, ld. CIT (A) has made a bizarre remark that it was obtained with ulterior motives without any material having been brought on record. It is also noted that such depreciation rate was allowed in succeeding years i.e. AYs 2015-16, & 2017-18 u/s 143(3).

Hence, we set aside the orders of the authorities below on this issue and decide the issue in favour of the assessee.

12. Apropos issue relating to disallowance of gross income on foreign exchange. On this issue, AO noted that assessee was found to have claimed certain loss on account of foreign exchange fluctuation on revaluation of advances received. He noted that loss was in respect of advances and not in respect of any revenue or expenditure, hence not allowable. The assessee informed that this was on account of revaluation under the head advance from customer. AO held that the amount of fluctuation on account of revaluation of advances is not revenue expenditure. Ld. CIT (A) confirmed the same.

13. Against this order, the assessee is in appeal before us. We have heard both the parties and perused the record.

14. It has been submitted that assessee is a company bound to follow Accounting Standards issued by the ICAI. It has been submitted that as per the Accounting Standard 11 issued by the ICAI, exchange differences arising on foreign currency transactions have to be recognized as income or as expense in the period in which they arise. Assessee has further placed reliance on the judgment of Hon'ble Apex Court in the case of CIT vs. Woodward Governor India Pvt. Ltd. 312 ITR 254. Further it has

been submitted that the assessee has been consistently following this practice.

15. Upon careful consideration, we find that the claim of the assessee has to be examined on the touchstone of Hon'ble Supreme Court decision in Woodward Governor India Pvt. Ltd. (supra). Hon'ble Apex Court has affirmed the allowability as revenue expenditure of the foreign exchange fluctuation determined on the basis of Accounting Standard-11 consistently on mercantile basis. Here, no case has been made out that the claim of assessee is not in consonance of this exposition. Hence, respectfully following the precedent, the assessee's ground is allowed.

16. Apropos treatment of legal & professional expenses as capital in nature. On this issue, AO noted that assessee has paid Rs.1,80,000/- under the head 'legal & professional charges' in the name of Aprajita Davar. It was explained that a sum of Rs.1,80,000/- was paid for new office to Aprajita Davar for interior designing consultancy and project execution of commercial space. AO observed that this expenditure appeared to be related to additions of fixed assets claimed as temporary structure already added by him. He held that the same is capital expenditure and allowed depreciation accordingly. Ld. CIT (A) confirmed the said order.

17. Against this order, the assessee is in appeal before us. We have heard both the parties and perused the record.

18. We note that we have already set aside the orders of the authorities below on the issue of interior expenditure on interiors held by the authorities below as capital in nature herein above. On the same reasoning, this expenditure is also allowable as revenue expenditure. Hence we set aside the order of the authorities below on this issue and allow the issue in favour of the assessee.

19. In the result, assessee's appeal is allowed.

Order pronounced in the open court on this 15th day of June, 2022.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 15th day of June, 2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-22, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**