

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 828/Ahd/2023
(निर्धारण वर्ष / Assessment Year : 2017-18)

Mukesh Trends Lifestyle Limited N.H. No. -8, Narol-Naroda Road, Narol, Ahmedabad – 382405	बनाम/ Vs.	The Dy. Commissioner of Income Tax Circle - 2(1)(2), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCM0500F		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Vihar Soni, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Vipul Chavda, Sr. DR

Date of Hearing	20/02/2024
Date of Pronouncement	23/02/2024

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed at the instance of the assessee is directed against the order dated 31.08.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi, arising out of the order dated 19.12.2019 passed by the DCIT, Circle - 2(1)(2),

Ahmedabad, under Section 143(3) r.w.s. 147 of the Act for Assessment Year 2017-18.

2. Ground Nos. 2, 3 & 4 are not pressed. The same are dismissed as not pressed.

3. Ground No.1 of appeal relates to the disallowance of depreciation on car amounting to Rs.11,75,823/- on the ground that the car is in the name of the Director.

4. The brief facts leading to the case is this that the appellant has claimed depreciation on vehicle being Audi Q7, purchased in the name of Shri Devkinandan Gopiram Agarwal being the Director of the assessee company. While adjudicating the issue in order to ascertain whether the car was put to use for the business of the company, the assessee was requested to furnish explanation with the copy of log book whereupon it was replied that the car is being used by the Company which is reflected in the books of the company. The issue was finalized on the basis of the fact that the Car was purchased in the name of the Director and not in the name of the company and since not fulfilled the condition required for claim of depreciation, and further that, as the assessee failed to show the car was used exclusively for the business purposes by supporting documents, the depreciation @15% claim amounting to Rs.11,75,823/- has been disallowed which was, in turn, confirmed by the First Appellate Authority. Hence, the instant appeal before us.

5. Before the First Appellate Authority, it was submitted by the appellant that the new car was registered in the name of the Director of the company but the funds were utilized of the company and the same was shown as asset in the financial statement of the company. In that view of the matter, for all practical purposes, the company is the owner of the vehicle and has dominion over the vehicle and, thus, depreciation was rightly claimed. The vehicle is further being used wholly and exclusively for the purpose of the business of the appellant company and denial of depreciation, therefore, was unwarranted in the facts and circumstances of the case. He further relied upon the judgment passed by the Hon'ble Apex Court in the case of Mysore Minerals Ltd. vs. CIT, reported in [1999] 106 Taxman 166 (SC) and ITO vs. Electro Ferro Alloys Ltd., reported in 13 ITR 594 (Ahd.-Trib.).

6. Before us in addition to the case made out by the assessee, it was further submitted by the Ld. AO that the interest on car loan and the insurance expenses were allowed. Therefore, the question of disallowance of the depreciation on the car is not warranted. He finally relied upon the judgment passed by the Hon'ble Jurisdictional High Court in the case of PCIT vs. Asian Mills (P.) Ltd., reported in [2022] 135 taxmann.com 163 (Gujarat).

7. Ld. DR, on the other hand, relied upon the orders passed by the authorities below.

8. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

9. On the narrated facts, we have further considered the judgment passed by the Hon'ble Jurisdictional High Court in the case of PCIT vs. Asian Mills (P.) Ltd. (supra), wherein the assessee was denied depreciation and other expenses on car claimed by the appellant on the ground that Car was purchased and owned in the name of Directors and hence, the asset could not be said to be of the company. While dealing with the issue, the Hon'ble Court was pleased to consider the judgment passed by the Hon'ble Apex Court in the case of Mysore Minerals Ltd. vs. CIT (supra) and passed order finally in favour of the appellant with the following observations:

“15. The CIT(Appeals) held in favour of the assessee by holding thus: “20. Aggrieved assessee preferred an appeal before the learned CIT(A) who allowed the appeal of the assessee by observing as under: Having considered the facts of the case I am inclined to accept the contentions of the Ld.A.R. as admitted by the A.O himself the funds for purchase of the car were provided by the appellant. The Hon'ble Supreme Court in the case of Mysore Minerals Ltd. vs. C.I.T 239 ITR 775(S.C.) has held that the section of the I.T.Act, 1961, confers a benefit of the assessee. The provision should be so interpreted and the words used therein should be assigned such meaning as would enable the assessee to secure the benefit intended to be given by the Legislature to the assessee. It was further held by the Hon'ble Supreme Court that the term owned as occurring in section 32(1) of the Incometax Act must be assigned a wider meaning. The Hon'ble Supreme Court has held as under: “It is well-settled that there cannot be two owners of the property simultaneously and in the same sense of the term. The intention of the Legislature in enacting section 32 of the Act would be best fulfilled by allowing deduction in respect of depreciation to the person in whom for the time being vests the dominion over the building and who is entitled to use it in his own right and is using the same for the purpose of his business or profession. Assigning any different meaning would not subserve the legislative intent.” 4.3.1 Further, the Ahmedabad I.T.A.T. in

the case of Ambuja Synthetics Mills Pvt. Ltd. vs. the Dy. C.I.T., Range-1, Ahmedabad, on similar facts, decided the issue in favour of the assessee, by holding. "It is not disputed that funds for purchases of the car- were provided by the assessee company which is also reflected in the accounts of the assessee company. In our opinion, when the car is actually used for the purpose of business of the company depreciation thereon cannot be denied." As regards the A.O's observation that the appellant failed to establish that the vehicles were used by the company, it is seen that there are various judicial pronouncements to the effect that the use means kept ready for use and not actually use. The case laws cited at 123 ITR 404 (Delhi, 170 Taxman 407(MP), 187 Taxman 442 (Mad), 201 Taxman 666 (P & H), 198 Taxman 470 & 199 Taxman 273 are in favour of the appellant."

16. *The Revenue challenged the same before the Tribunal. It also relied on the decision of ITO vs. Electro Ferro Alloys Ltd. in ITA No.2773/Ahd/2009 reported in 25 taxmann.com 458. According to the ITAT, the material available on record, when looked at, the assessee though was not the legal owner of the vehicle, it has made the payment for acquisition of cars and thus, it is a beneficial owner. It is, therefore, held to be entitled for depreciation on the car. It has drawn the support from the decision of ITO vs. Electro Ferro Alloys Ltd.B (supra) and the decision of the Rajasthan High Court in CIT (Appeals) vs. Mohd. Bux Shokat Ali (no.2),[2002] 256 ITR 357(Raj.) and the decision in the case of CIT vs. Basti Sugar Mills Co.Ltd. [2002] 257 ITR 88(Delhi).*

17. *The Tribunal has rightly distinguished the concept of dominion ownership of the car. The question raised is answered accordingly."*

10. In fact, in the case in hand before us, it is also not a disputed fact that the purchase of a car was made by the appellant company which is also reflected in the books of account of the appellant company and therefore it can be well said that the car is commercially used for the purpose of business of the company and the depreciation thereon cannot be denied; moreso, the interest on car loan and car insurance was allowed by the department. Thus, having regard to the facts and circumstances of the matter, we find that the appellant's case is squarely covered by the Jurisdictional High Court in the case of PCIT vs. Asian Mills (P.) Ltd. (supra), following the judgment passed by the Hon'ble Apex Court in the

case of Mysore Minerals Ltd. vs. CIT (supra), we allow this appeal preferred by the appellant with a direction on the Ld. AO to allow depreciation in accordance with law.

11. In the result, the appeal preferred by the assessee is allowed.

This Order pronounced on 23/02/2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 23/02/2024
S. K. SINHA

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

True Copy

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad