IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES " B ", MUMBAI

BEFORE SHRI G.E. VEERABHADRAPPA, HON'BLE PRESIDENT
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No.6411 /Mum/2010

Assessment Year: 2005-2006

M/s Blue Steel Engineers P. Ltd. Blue Steel House, D-12, MIDC, Street No.21, Marol, Andheri (E), Mumbai PAN NO.AAACB2866Q	Vs.	**DCIT 8 (1), Mumbai.**
Appellant		Respondent

Appellant by	:	Mr. H.N.Motiwalla & Mr. Pyush Chhajed.
Respondent by	:	Mr. P.C.Maurya
Date of hearing	:	11th April 2012
Date of pronouncement	:	11th May 2012

O R D E R

PER AMIT SHUKLA (J.M.) :

The present appeal is filed by the assessee against the order dated 28-6-2010, passed by CIT(A)-16, Mumbai for the quantum of assessment determined under Section 143(3) for the assessment year 2005-2006 on the following grounds of appeal :-

"1. The learned Commissioner of Income-tax (Appeals) erred in the restricting the depreciation on motor car used for the purpose of business, at the rate of 20% against 50%, as applicable during the relevant period.

2. The learned Commissioner of Income-tax (Appeals) erred in upholding the ad hoc disallowance of Rs.5 lacs out of foreign travelling expenses, without pinpointing any specific instance and when all the details were submitted before both the lower authorities."

2. Brief facts relevant for adjudication of grounds No.1 & 2 are that the assessee is a company engaged in the business of manufacturing harness testers and measuring instruments. From the perusal of the Schedule of fixed assets forming part of the balancesheet, the Assessing Officer observed that the assessee has claimed depreciation at the rate of 50% i.e. `.1,85,508/- on cars. The opening WDV of block of vehicles on which the depreciation @50% claimed was at `.3,71,016/- and the same was claimed as "new commercial vehicles". Accordingly the Assessing Officer queried the assessee as to why the depreciation should not be allowed at 20% instead of 50%.

3. In response the assessee submitted that cars in question were purchased during the previous year 2001-2002 relevant to assessment year 2002-2003 and the rate of depreciation on commercial motor cars for that year was 50%. The Assessing Officer did not agree with the contention of the assessee and observed that in the Income Tax Rules, there is a separate head for motor cars, other than those used in the business of running them on hire, acquired or put to use on or after 1st day of April, 1990 wherein depreciation on motor cars is allowable @ 20%, whereas depreciation of 50% is available to new commercial vehicles, which have been acquired on or after the 1st day of April, 2001 but before 1st day of April, 2002. Thus, he was of the opinion that the cars in use are not commercial vehicles, hence,

eligible for 50% depreciation. In arriving to this conclusion, the Assessing Officer has referred to dictionary meaning of 'commercial' as given in 'Law Lexicon', 'Webster's Encyclopaedic Unabridged Dictionary' and some reference to reports given in the newspapers. Accordingly, the claim for depreciation was restricted to 20% only and balance sum of `.1,11,305/- was added to the total income of the assessee.

4. In the first appeal before the CIT(A), the assessee reiterated the same argument and contended that the different meaning given to the term 'commercial vehicle' by the Assessing Officer cannot be taken into account as the definition of "new commercial vehicle" itself has been given in the Appendix-I of Depreciation Chart of Income Tax Rules.

5. The learned CIT(A) too rejected the contention of the assessee on the ground that business of the appellant is manufacturing of hardness testers and measuring instruments and not for hiring of vehicle, and, therefore, depreciation on these vehicles is @20% instead of 50%. He, accordingly, confirmed the findings of the Assessing Officer on this score.

6. Learned AR appearing on behalf of the assessee referred to the 'Appendix I' of ITAT Rules wherein the rates on which depreciation is admissible have been elaborated along with the meaning of

"commercial vehicle". In support of the contention raised before the authorities below, he heavily placed reliance on the decision of coordinate Bench of Mumbai Tribunal in the case of **Shri Shah Rukh Khan Vs. DCIT, passed in ITA No.1489/M/2006 vide order dated 23-7-2009**.

7. On the contrary, learned Sr. DR relied upon the findings of the Assessing Officer as well as CIT(A) and submitted that reasoning given by the CIT(A) as well as by the Assessing Officer has not been controverted by the assessee.

8. We have carefully considered the rival contentions of the parties and also perused the orders of the learned CIT(A) as well as the Assessing Officer. The assessee company had purchased three Hyundai Accent cars on 11-2-2002 which was prior to 1-4-2002. Admittedly, these cars have been purchased in the name of the assessee company and have been used for the purpose of assessee's business. The short controversy involved whether the depreciation on these cars should be allowed @ 20% or @ 50%. *Clause 2 of Part III of Appendix I* provides "Motor Cars" acquired or put to use on or after 1st day of April, 1990, the rate of depreciation from the Assessment year 2003-2004 to 2005-2006 was allowable @ 20%. Sub-clause *(vi)* and *(via)* of clause *3 of Part III of Appendix I* provides that new commercial vehicle, which is acquired on or after 1st day of April, 2001 but before

1st day of April, 2002 or put to use on or after 1st day of April, 2002 for the purpose of business, the rate of depreciation is 50%. The definition of commercial vehicle has been given in *Note 6 of the Appendix I*, which defines "Commercial Vehicle" as under :-

> *"6. "Commercial vehicle" means heavy goods vehicle", "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle", and "medium passenger motor vehicle" but does not include "maxi-cab", motor-cab, "tractor" and "road-roller". The expressions "heavy goods vehicle", "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle", "medium passenger motor vehicle", "maxi-cab", "motor-cab", "tractor" and "road-roller" shall have the meanings respectively as assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988)."*

8.1 The assessee's cars being light motor vehicles and the definition of light motor vehicle has been given in Section 2 of the "Motor Vehicles Act, 1988", which defines as under :-

> *"2(21)- "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of motor car or tractor or road roller, unladen weight of any of which, does not exceed [7500] kgs.*

Thus, the definition of "commercial vehicle" had itself been given in the rules which also includes light motor vehicle having unladen weight of less than 7,500Kgs. Nowhere it has been defined that the "commercial vehicle" should be used only for the purpose of hire. On the contrary *sub-clause 6* of *Clause 3* of *Part III of Appendix-I*, provides that commercial vehicle should be used for the purpose of

business or profession. Once a definition has been provided in the Appendix to the Income Tax Rules itself, there is no need for looking other definition of "commercial vehicle" as given in various dictionaries. The report of newspapers as have been referred by the Assessing Officer has no relevance here or gives any separate meaning with regard to definition of "commercial vehicle". In this case, the gross weight of the vehicle as per the registration certificate is 820 kg, which is much less than 7500 kgs and, therefore, it comes within the purview of light motor vehicle.

8.2 Similar issue has been considered by the ITAT Mumbai Bench in the case of **Shah Rukh Khan (supra)**, wherein the same analysis has been considered by the ITAT and came to the following conclusion :-

> *"4.3 We have perused the records and considered the rival contentions carefully. Dispute is regarding the rate of depreciation on the BMW car purchased by the assessee. The clause (1A) of part III of Appendix-I prescribes depreciation @20% in case of motor cars other than those used in a business of running them at hire. In case of motor buses, motor lorries and motor taxies used in a business of running them on hire, the depreciation has been provided at a higher rate of 40% as per clause 2(ii) of part III. However, clause 2(iid) was inserted w.e.f. 1.4.2002 as per which a new commercial vehicle which is acquired on or after 1.4.2001 but before 1.4.2002 and is used before first day of April, 2002 for the purposes of business or profession would be entitled for depreciation @ 50%.The note (3A) defines the commercial vehicle which includes light motor*

vehicles as defined in Section 2 of the Motor Vehicles Act, 1988. The light motor vehicle under the Motor Vehicle Act has been defined to mean different transport vehicles including the motor car the weight of which does not exceed 7500Kg. In case of the assessee, it is not in dispute that the motor car had been acquired between 1.4.2001 to 1.4.2002. The weight of the car as per the RC Book placed on record is 2170KG and therefore, it is a light motor vehicle as per the definition under the Motor Vehicle Act. There is also no dispute that the vehicle had been used in the profession of the assessee. The commercial vehicle has been specifically defined in the Appendix and the said definition does not require that the vehicle should be registered as a commercial vehicle under the Motor Vehicle Act. The BMW car purchased by the assessee is covered by the definition of commercial vehicle and had been purchased between 1.4.2001 to 1.4.2002 and used before 1.4.2002 in the profession of the assessee. It thus satisfies all the conditions for allowance of depreciation @ 50%. In our view it would be entitled to depreciation @ 50%. The order of CIT(A) denying the claim of the assessee for higher rate of depreciation cannot be sustained and the same is set aside and the claim of the assessee is allowed."

Thus, respectfully following the aforesaid judgment, we direct the Assessing Officer to allow the depreciation @ 50%. **Accordingly, the ground of appeal No.1 as raised by the assessee is allowed.**

9. In ground No.2, the assessee has challenged the disallowance of ₹.5,00,000/- out of foreign travelling expenses. The Assessing Officer has disallowed the expenses on the ground that details of foreign travelling expenses along with the documentary evidences to

prove that the directors have visited particular parties abroad, has not been furnished by the assessee. Thus, out of total claim of foreign travelling expenses of ₹.9,09,947/-, he made an *ad hoc* disallowance of ₹.5,00,000/- on account of personal or non business expenditure. The relevant finding of the Assessing Officer are given herein below :-

> *"5.2 The assessee's submissions are considered. It is a fact that the assessee is an exporter. However, as admitted by the assessee itself, out of total turnover of Rs.90,50,099/-, export sales are only Rs.37,80,766/-.Against the export of Rs.37,80,766/- the assessee has claimed foreign travel expenses to the extent of Rs.9,09,947/-. The assessee has not furnished any details along with documentary evidences to prove that the Directors have visited particular parties abroad, the benefit derived out of such visits and relevant sales made out of such visits. Instead of giving specific explanation the assessee made a general statement that the Directors have to travel foreign countries to ensure export sales. Therefore, the assessee has failed to prove that such expenses were in fact incurred wholly and exclusively for the purpose of business. However, since the assessee is an exporter, it cannot be denied that certain amount of such claim may be relating to the assessee's business, but the assessee has not furnished specific details proving the quantum of actual expenditure relating to business. Therefore, considering the facts of the case, an amount of Rs.4,09,947/- is treated as relating to assessee's business and balance of Rs.5,00,000/- is treated as personal or non-business expenditure."*

10. The CIT(A) too confirmed the findings of the Assessing Officer on the same reasoning that complete details with evidences before the Assessing Officer could not be filed.

11. Learned AR on behalf of the assessee submitted that the assessee-company has substantial exports sales and for that purpose, the directors of the company have to undergo foreign travelling to expand the export business of the assessee. He also pointed out that turn over of the company in this year has increased from `.7,36,00,000/- to more than `.9,00,00,000/-. He further submitted that the details of travelling expenses have filed before the Assessing Officer as well as CIT(A), which are appearing in the paper book from pages 25 to 35, which includes the details of travelling and details of sales exports in the relevant assessment year and subsequent years. He also submitted certain receipts for participation in the international industrial fairs and pleaded that *ad hoc* disallowance made by the Assessing Officer cannot be confirmed.

12. On the other hand, learned Senior DR relied upon the findings of the CIT(A) as well as the Assessing Officer and contended that such a disallowance is wholly justified in view of the facts that the relevant evidences have not been filed by the assessee giving particulars of parties visited abroad.

13. We have carefully considered the findings of the authorities below and also the rival contentions of the parties. It is not disputed that the directors of the company have undergone foreign travelling for the purpose of export and looking for the business avenues abroad. The details submitted by the assessee though only provides the date of travelling, details of country visited and amount of fare, visa charges and other miscellaneous expenses incurred, however, the Assessing Officer has not brought anything in record to show that the foreign travelling was for personal purposes. Once the foreign travelling has been accepted for the purpose of business then part of the amount cannot be disallowed on account of personal user unless it is established that there was personal and non business expenditure. Since no basis has been given nor anything adverse has been brought on record, the *ad hoc* addition of ₹.5,00,000/- cannot be disallowed. **Thus, the order of the CIT(A) confirming the addition is set aside and accordingly, ground of appeal No.2 is allowed.**

14. Resultantly, the appeal of the assessee is allowed.

Order pronounced on this 11th day of May, 2012.

Sd/-	Sd/-
(G.E. VEERABHADRAPPA)	**(AMIT SHUKLA)**
PRESIDENT	**JUDICIAL MEMBER**

MUMBAI, Dt: 11th May, 2012

Copy forwarded to :

1. The Appellant,
2. The Respondent,

3. The C.I.T.
4. CIT (A)
5. The DR, B - Bench, ITAT, Mumbai

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BY ORDER

ASSISTANT REGISTRAR
ITAT, Mumbai Benches, Mumbai

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