

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENCHES 'C' MUMBAI**

**ITA No: 1546/Mum/2010  
Assessment Year: 2004-05**

**CREDIT LYONNAIS, MUMBAI  
(BROUGH THEIR SUCCESSORS CALYON BANK)  
(PAN: AACCC3872B)**

**Vs**

**DEPUTY DIRECTOR OF INCOME TAX  
(INTERNATIONAL TAXATION)  
RANGE 1(2), MUMBAI**

**R V Easwar, President and B Ramakotaiah, AM**

**Dated: July 08, 2011**

**ORDER**

**Per: R V Easwar:**

This is an appeal by the assessee and it relates to the assessment year 2004-05. The assessee is a foreign banking institution carrying on business in India.

2. The appeal arises out of the order passed by the Assessing Officer under section 154 of the Income Tax Act, 1961, in the following circumstances. In the assessment made under section 143(3), the Assessing Officer allowed depreciation at the rate of 50% on motor cars on the WDV of Rs. 41,06,414/-. Later he took the view that depreciation was allowable on the motor cars only at the rate of 20%. He considered the allowance of depreciation at the rate of 50% in the assessment order to be a mistake apparent from the record. He accordingly issued notice to the assessee to rectify the mistake. It may be noticed that under the Depreciation Table for the relevant assessment year, motor cars other than those used in a business of running them on hire, acquired or put to use on or after 01.04.1990 were eligible for depreciation at the rate of 20% under Entry III.(2). Under Entry III.(3)(vi) of the same Table, any new commercial vehicle acquired on or after 01.04.2001 but before 01.04.2002 and put to use before 01.04.2002 for the purpose of business or profession was eligible to depreciation at the rate of 50%. Obviously the Assessing Officer took the view that the motor cars owned by the assessee were eligible for depreciation only at the rate of 20% since they were used in a business other than the business of running them on hire.

3. The assessee submitted that as per Entry III.(3)(vi) read with Foot Note 6. of the Depreciation Table, a "light motor vehicle" as defined in section 2(21) of the Motor Vehicles Act, 1988, means a transport vehicle or omnibus, the gross weight of which does not exceed 7500 kgs. It was submitted that the light motor vehicles or in other words the motor cars were used for various commercial activities related with banking operations such as cash transfer, meetings with clients, regulators, etc. and

therefore these vehicles have to be categorized as "commercial vehicles" and accordingly the depreciation was rightly allowed in the assessment at the rate of 50%.

4. The Assessing Officer however took the view that since the motor cars were not used in the business of running them on hire; depreciation has to be allowed only at the rate of 20%. He accordingly passed an order under section 154 of the Act, withdrawing the excess depreciation, i.e. the difference between depreciation at the rate of 50% and that at the rate of 20%. The order was passed on 29.10.2008.

5. On appeal, the assessee pointed out that the issue as to whether depreciation was allowable at the rate of 50% or 20% was debatable and was therefore not amenable to section 154 of the Act. This contention was rejected by the CIT(A). The assessee's claim was also rejected by him on merits. In other words, having regard to the use to which the motor cars were put, the CIT(A) took the view that they cannot be considered as commercial vehicles eligible for depreciation at 50%.

6. The assessee is in further appeal before the Tribunal to contend firstly that the issue is debatable and cannot be rectified under section 154 of the Act. It is also contended that even on merits the assessee's claim was valid in law. After considering the rival submissions, we agree with the first contention and hold that the issue involves interpretation of the two entries in the depreciation schedule read with foot note 6. of the schedule which also refers to section 2 of the Motor Vehicles Act, 1988. That the issue is debatable is also seen from the order of the Mumbai Bench of the Tribunal in *Daleep S Chandnani vs. ACIT (2007) 14 SOT 233 (Mum)* as also that of the Hyderabad Bench in *Avanti Feeds Ltd. vs. DCIT (2010) 35 SOT 50 (Hyd)*. In the order of the Mumbai Bench it was held that so long as the car is used by an assessee for business purposes, it would get depreciation as a commercial vehicle at higher rates. To the same effect is the order of the Hyderabad Bench cited above. The discussion in these orders shows that the issue as to which of the two entries will apply is not free from doubt and therefore is not a case for rectification under section 154 of the Act. It is well settled that under section 154, any issue which requires a long drawn argument cannot be considered as a mistake apparent from the record. In this view of the matter, we set aside the order passed by the Assessing Officer under section 154 of the Act and allow the assessee's appeal with no order as to costs.