

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA  
(Virtual Court)**

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Partha Sarathi Chaudhury, Judicial Member)**

**I.T.A. No. 912/Kol/2019  
Assessment Year: 2013-14**

**Anjali Jewellers.....Appellant**  
**[PAN: AAIFA 3096 J]**

**vs.**

**DCIT, Central Circle-1(4), Kolkata.....Respondent**

**Appearances by:**

*None appeared on behalf of the Assessee.*

*Sh. Dhrubajyoti Ray, JCIT, appeared on behalf of the Revenue.*

Date of concluding the hearing : November 5<sup>th</sup>, 2020

Date of pronouncing the order : November 13<sup>th</sup>, 2020

**ORDER**

**Per Partha Sarathi Chaudhury, JM:**

This appeal preferred by the assessee emanates from the order of the Learned Commissioner of Income Tax (Appeals)-12, Kolkata [hereinafter the "CIT(A)"], dated 28.02.2019 u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act') for the Assessment Year (hereinafter 'AY') 2013-14 as per the following grounds of appeal:

*"1. For that on the facts and in the circumstances of the case, the CIT(A) erred in law and on facts in upholding the AO's order disallowing the claim for depreciation in respect of WDV of Paintings which formed part of the block of depreciable assets and qualified for allowance u/s 32 of the Act.*

*2. For that on the facts and in the circumstances of the case, the authorities below were unjustified in disallowing the claim for depreciation in respect of the WDV of the paintings by relying on irrelevant and inappropriate facts and overlooking the material evidence that in the schedule of depreciation the tax auditor had certified the depreciation allowance was available in respect of such paintings.*

*3. For that on the facts and in the circumstances of the case, the AO be directed to allow the claim for depreciation allowance in respect of WDV of paintings.*

*4. For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before."*

2. The sole grievance of the assessee in this appeal is the disallowance of the claim for depreciation in respect of WDV of paintings.

3. The brief facts involved in this case are that the assessee had claimed depreciation of ₹5,11,236/- on paintings. That during the assessment proceedings the AO show caused the assessee as to why this depreciation on paintings may be disallowed as it does not form part of any block of asset. That before the AO the assessee has accepted that he has no objection if the said amount is disallowed. Accordingly the AO disallowed the amount of ₹5,11,236/- claimed as depreciation on paintings and added to the income of the assessee. The ld. CIT(A) vide para 2 of his order observed and held that when the AO was examining this issue of depreciation on paintings, the assessee has not come forward to offer the said asset to the AO's scrutiny by responding to the show cause offering the claimed depreciation as addition. That further the ld. CIT(A) opined that also it has to be ascertained whether the asset was a business asset used in the business.

4. That for the very fact that the assessee accepted the disallowance on this issue before the AO, the ld. CIT(A) also confirmed such addition made by the AO. At the time of hearing before us the assessee was not present either personally or through his authorised representative.

5. The ld. D/R's submissions were recorded and the case was heard on merit. The ld. D/R placed strong reliance on the orders of the subordinate authorities.

6. We have perused the case records and analyzed the facts and circumstances in this case. The only issue to be adjudicated is whether the depreciation on paintings as claimed by the assessee was allowable. It is the case of the Department that at the stage of the AO such disallowance was not contended by the assessee. The ld. CIT(A) confirmed this addition on this ground only that the assessee has accepted such addition at the stage of the assessment. That whether such asset was a business asset or whether it was used in the business or not there is no categorical finding in the order of the ld. CIT(A). Therefore this aspect needs a detailed factual verification. The ld. D/R submitted that the matter may be restored to the file of the AO for verification in this regard. In our considered view therefore the matter needs to be restored to the file of

the AO for factual verification at the outset also whether the paintings were forming the part of the business asset or whether they were used in the business and thereafter the AO shall adjudicate the issue while complying with the principles of natural justice. The order of the Id. CIT(A) is set aside and the matter is restored to the file of the AO as indicated hereinabove.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

***Kolkata, the 13<sup>th</sup> November, 2020.***

Sd/-  
[J. Sudhakar Reddy]  
Accountant Member

Sd/-  
[Partha Sarathi Chaudhury]  
Judicial Member

Dated: 13.11.2020  
*Bidhan*

*Copy of the order forwarded to:*

1. ***Anjali Jewellers, 522C, Diamond Harbour Road, Behala, Kolkata-700 034.***
2. ***DCIT, Central Circle-1(4), Kolkata.***
3. CIT(A)-12, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar  
ITAT, Kolkata Benches