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Loss incurred on sale of foreign cars used in business without claming dep. would be treated as business loss: HC

Summary – The High Court of Madras ITAT in a recent case of K.D. Madan., (the Assessee) held that where foreign cars were utilized in business of assessee on which no depreciation was claimed, loss arising out of sale of those cars would be treated as business loss

Facts

- The assessee-shipping agent used some foreign cars in its business, but claimed no depreciation on same. He incurred a cumulative loss on sale of those foreign cars and claimed the same as business loss liable to be set off against business profits.
- The Assessing Officer held that provisions of section 50 would be applicable as the loss would be capital in nature liable to be set off against capital gains.
- On appeal, the Commissioner (Appeals) allowed the appeal of the assessee on the basis that invocation of provisions of section 50 was erroneous.
- On further appeal, the Tribunal reversed the order of the Commissioner (Appeals) and held that loss could not be treated as a business loss as the assessee was not a dealer in foreign cars.
- On appeal to the High Court:

Held

- Section 50 invoked by the Revenue applies to a capital asset forming part of a block of assets, in respect of which, depreciation has been allowed. In the instant case, the foreign cars do not form part of a block of assets and, admittedly, have not been granted depreciation in so far as depreciation was not allowable in respect of foreign cars for the relevant period. The provisions of section 50 are, thus, applicable to the instant.
- The provisions of section 32(1)(*iii*) is applicable to the assets in question, being foreign cars used in the business of the assessee in terms of section 32(1)(*i*). The assessee sold the foreign cars and the sale consideration resulted in a loss of an amount of Rs. 51,6,108. Such loss has been written off in the books of account and claimed as a business loss. The extent of depreciation that could have been claimed would be the amount, by which the sale consideration falls short of the written down value. In the present case, the written down value as defined under section 43(6), would mean actual cost less depreciation actually allowed. In the present case, since no depreciation was allowed, the written down value would equal the actual cost.
- The loss suffered by the assessee on the sale of foreign cars is quantified. In view of the categoric finding of the Commissioner (Appeals) that has attained finality, to the effect that the foreign cars

were utilized in the business of the assessee, the loss arising out of their sale would be liable to be categorized as a business loss.