(1996) 09 GAU CK 0032

In the Gauhati High Court

Case No : Income-tax Reference No. 19 of 1995

A.B.C. India Ltd. — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 26-09-1996

Acts Referred:
Income Tax Act, 1961 — Section 32

Citation : (1997) 226 ITR 914

Hon'ble Judges : N. Surjamani Singh, J;D.N. Baruah, J

Bench : Division Bench

Advocate : A.K. Saraf, K.K. Gupta and R.K. Agarwalla, for the Appellant; G.K. Joshi and U. Bhuyan, for the Respondent

Judgement

D.N. Baruah, J.—As per directions given by this court in Civil Rule No. 1(M) of 1992, the following three questions have been referred by the Income Tax Appellate Tribunal u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act"), for opinion of this court :

" 1. On the facts and circumstances of the case where trucks and trailers owned by the assessee-company are used to carry goods of outside parties and the assessee-company earns hire for such carrying of goods in its own trucks and trailers and which business the assessee is carrying on since its inception whether the Tribunal was justified in holding that the trucks are not used in a business for running them on hire and thereby reducing the rate of depreciation already allowed at the higher rate of 40 percent, to 30 percent ?

2. Whether the business of transportation of goods by road, where an assessee books goods at its office premises for transportation thereof by trucks to destination or lifts such goods direct from the party''s godown/factory for such transportation and in the process uses its own trucks for such transportation from booking point to destination and charges freight (hire) from the owner of goods, is a business of running the trucks on hire entitled to higher rate of depreciation as prescribed by the Income Tax Rules,'' 1962 ?

3. Whether the order of the Tribunal upholding the order of the Deputy Commissioner of Income Tax, Assessment, Special Range-I, Guwahati, u/s 154 of the Income Tax Act is valid and legal ?"

2. The assessee is a company engaged in transport business. They carry on the business with the help of their own trucks and as well as hired trucks of other persons. The Assessing Officer allowed depreciation on such trucks at the higher rate at 40 percent. Later on, the Assessing Officer for the assessment years 1982-83 to 1985-86 revised and reduced the depreciation allowance from 40 percent, to 30 percent. In this order of assessment, he mentioned that the assessee was using the trucks for his own business and not for running them on hire. So, the depreciation ought to be, according to the Assessing Officer, 30 percent, in the place of 40 percent, which was earlier allowed. The Assessing Officer, therefore, withdrew the higher rate of depreciation and allowed the depreciation allowance at the rate of 30 percent.

3. Being aggrieved by the order of the Assessing Officer reducing the rate of depreciation allowance from 40 percent, to 30 percent., the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The appeal was allowed by the Commissioner of Income Tax (Appeals) and the order of the Assessing Officer reducing the depreciation at the rate of 30 percent, on the trucks was cancelled. Being aggrieved, the Revenue preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal was of the opinion that since the assessee did not use those trucks for the purpose of running them on hire, the depreciation admissible would be at 30 percent, in view of the clear provision of the depreciation table. Therefore, the Tribunal reversed the finding of the Commissioner of Income Tax (Appeals) and restored the order of assessment made by the Assessing Officer. The assessee requested the Tribunal to refer the questions for the opinion of this court u/s 256(1) of the Act which was, however, refused. Thereafter, the assessee moved an application before this court in Civil Rule No. 1(M) of 1992 and this court gave directions to refer the above questions and hence the present reference.

4. We have, heard Dr. A.K. Saraf, learned counsel for the assessee, and Shri G.K. Joshi, learned counsel for the Revenue.

5. Dr. Saraf, learned counsel for the assessee, submits before us that in the present facts and circumstances of the case, the depreciation allowance at the rate of 40 percent, should be made available to the assessee. The Tribunal, however, by wrongly appreciating the facts and the law came to an erroneous finding by holding that the assessee did not use the vehicles for running them on hire. In this connection, Dr. Saraf has drawn our attention to Appendix I, Part I, item III-E(1A) of the Income Tax Rules, 1962. The said entry reads as under :

" Motor buses, motor lorries and motor taxis used in a business of running them on hire (N. E. S. A.). 40."

6. Drawing our attention to the said entry quoted above, Dr. Saraf submits that

the motor buses, lorries and motor taxis which are used in the business of running those vehicles on hire would be entitled to higher rate of depreciation at 40 percent. Dr. Saraf further submits that the assessee-company does not carry on any business other than the business of transportation of goods on hire. According to learned counsel, the fleet of trucks are made available to the intending customers who may take the service of the vehicles for transportation of their goods with the assessee-company from one place to another on payment of hire charges. Learned counsel also submits that the assessee-company does only the business of running the vehicles on hire.

7. Shri Joshi, learned counsel for the Revenue, on the other hand, opposed the submission of learned counsel for the assessee. According to him, these motor vehicles belonging to the assessee-company are not used for running them on hire. The assessee simply carries on the business of transportation of goods, therefore, the assessee is entitled to the benefit under entry 9 of the Appendix I, Part I, item III-D. Entry 9 as submitted by Shri Joshi, is also quoted below :

"Motor buses and motor lorries other than those used in a business of running them on hire (N. E. S. A.) 30."

8. On the rival contentions of both the parties, it is to be seen that whether the vehicles belonging to the assessee-company are used in the business of running them on hire or it is only a business of transportation and not running them on hire. The expressions "hire" and "transportation" are not defined in the Act. However, the dictionary meaning as per Black''s Law Dictionary of "hire" means "compensation for the use of a thing, or for labour or services". It also includes the other meaning "to purchase the temporary use of a thing, or arrange for the labour or services of another for a stipulated compensation". The expression "transportation" means "the movement of goods or persons from one place to another, by a carrier". "Carrier" as per the dictionary meaning is "individual or organization engaged in transporting passengers or goods for hire" and also "any person engaged in the transportation of passengers or property by land, as a common carrier, or private carrier, or freight forwarder . .,". Even under the Carriers Act, the common carrier has been defined and it denotes "a person other than the Government engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately".

9. From the above, it is abundantly clear that the assessee-company does not carry on any business other than by running those vehicles for hire, the goods are transported from one place to another and there may be one person who may take the service of one vehicle for transportation or there may be many. But, in our opinion, it does not make any difference. For illustration, there may be some other businesses where they may use their own fleet of vehicles and use it in their own business. So, for instance, a tea garden having a business of tea manufacture, plantation and sale of tea, arid for the purpose of that business, the tea garden may have some motor vehicles, motor lorries for

transportation of goods for one place to another, that use of vehicles cannot be said to be used in the business of running them on hire. Those vehicles are used for the purpose of the business but in the case of a transporter, the business is of running the vehicles on hire to make the vehicles available to the customers for transporting their goods for hire or reward.

10. In view of the above, we are of the firm opinion that the assessee-company used the motor vehicles and lorries for running them on hire. Therefore, in our opinion, the higher rate of depreciation as provided under entry (1A) of Appendix I, Part I, item III-E will be available to the assessee-company.

11. In view of the above, we answer questions Nos. 1 and 3 in the negative, in favour of the assessee and against the Revenue and question No. 2 in the affirmative, in favour of the assessee against the Revenue.

12. A copy of this judgment under the signature of the Registrar and the seal of the High Court shall be transmitted to the Income Tax Appellate Tribunal, Gauhati.