(2010) 02 BOM CK 0007

In the Bombay High Court

Case No : Tax Appeal No. 48 of 2002

CIT	APPELLANT
Vs	
Navhind Papers and Publications Ltd. and Another	RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:
Income Tax Act, 1961 — Section 32

Citation : (2010) 02 BOM CK 0007

Hon'ble Judges : Naresh H. Patil, J;N.A. Britto, J

Bench : Division Bench

Advocate : S.R. Rivonkar, for the Appellant; Sudin Usgaonkar, for the Respondent

Final Decision : Disposed Off

Judgement

1. In all these appeals, an identical question of law arises for consideration and hence, the same are finally disposed of by this common judgment. We heard the learned counsel for the respective parties.

2. The Income Tax Appellate Tribunal (Tribunal) has allowed 100 per cent depreciation in all these matters, except in Tax Appeal No. 28 of 2008. Except in Tax Appeal No. 28 of 2008, in respect of all other tax appeals, the assessees were dealing with bottles and crates which were supplied to bottling companies manufacturing cold drinks. In Tax Appeal No. 28 of 2008, the assessee purchased capacitors and leased out to one Asian Electronics Ltd.

3. In substance, the learned counsel appearing for the appellants Shri Rivonkar submitted that for getting benefit of the provision of section 32, and its proviso, the assessees ought to use the leased materials/articles/tools for the purposes of their business. Therefore, according to the learned counsel, the assessees were disentitled to claim depreciation. In the submission of the learned counsel, the assessees did not utilize for themselves the bottles, crates or the capacitors for claiming benefit of depreciation. For claiming such benefit, the assessees ought

to have used the leased material. Learned counsel Shri Rivonkar referred to a judgment of Andhra Pradesh High Court in the case of Commissioner of Income Tax Vs. Margadarsi Chit Fund (P.) Ltd., .

4. Learned counsel Shri Usgaonkar, appearing for the assessees/respondents submitted that the issue raised by the learned counsel appearing for the revenue herein was not raised before any of the authorities below. The learned counsel fairly submitted that the court is entitled to frame substantial question of law if it emerges from the record. In the submissions of the learned counsel, the assessees were entitled to carry out business of leasing and accordingly, except in Tax Appeal No. 28 of 2008, had purchased bottles and crates and leased out to the companies manufacturing cold drinks. In the said process, the assessees had put the purchased material to their use for their business purpose which was for leasing. The learned counsel further submitted that the revenue did not challenge the order passed by the assessing officer and as such, accepted the case of the assessees and allowed 25 percent of depreciation in normal course. The Tribunal, while accepting the case of the assessees, allowed 100 per cent depreciation. The learned counsel submitted that the taxing statute is to be construed strictly in the light of the fact that leasing itself could be a business. The contention of the revenue for disallowing the depreciation requires to be rejected.

5. We have gone through the orders passed by the assessing officer, the CIT and the Tribunal. We find that the authorities below, in the facts of the case, ought to have considered the question raised by the revenue before this court in the light of the provisions contained in section 32 of the Act. In other words, the issue as to whether the depreciation could be claimed by the assessees only after the material leased out, in respect of which depreciation is claimed, is put to use by the assessee for his/its business.

6. In fairness to the parties, we find that an appropriate opportunity must have to be given to the contesting party to address the issue before the Tribunal. Learned counsel Shri Rivonkar fairly conceded that the issue raised before this court by the revenue was not specifically raised before the authorities below. We find that the issue raised by the Revenue before this court goes to the root of the matter and requires appropriate analysis of section 32 of the Act, in the light of the facts of the case.

7. We, therefore, find that all these matters are required to be remanded to the Tribunal, for addressing the following issues and for passing a reasoned order. The issues are :

(i) Whether the assessees, in order to claim depreciation u/s 32 of the Act, ought to have put to use the goods viz., bottles, crates, capacitors, for their business ?

(ii) Whether the assessees in the present matters are entitled to claim depreciation u/s 32 of the Act because they are, according to them, involved in leasing business ?

8. In the light of the issues framed, we quash and set aside the order passed by the Tribunal and remand the matters back to the Tribunal, Panaji Bench, Panaji. The Tribunal is directed to issue notices to the concerned parties in all these appeals and after affording reasonable opportunity of hearing, pass reasoned orders on the issues framed by us supra. The Tribunal is directed to dispose of the appeals finally, within a period of 6 months from the date of receipt of writ of this court. It is clarified that we have not expressed any opinion on the merits of the issues framed by us supra.

9. Appeals stand disposed of accordingly. No order as to costs.