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(2001) 09 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : Income Tax R. No''s. 38 and 39 of 1982 and 105 of 1983

Commissioner of Income Tax — APPELLANT

Vs

Abrol Engineering Co. P. Ltd. — RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 32

Citation : (2001) 251 ITR 830

Hon'ble Judges : Jawahar Lal Gupta, J;J.S. Narang, J;Ashutosh Mohunta, J

Bench : Full Bench

Advocate : R.P. Sawhney and Rajesh Bindal, for the Appellant; None, for the Respondent

Judgement

Jawahar Lal Gupta, J.—These three cases have been placed before this Bench on a reference by the''Division Bench. First, a few facts.

2. On November 22, 1974, the respondent-assessee entered into an agreement and took over the assets and liabilities of Abrol Engineering Company. It paid a consideration of Rs. 2,87,969. The land standing in the name of the vendor was mutated in the revenue records in the name of the assessee-company. However, a registered instrument of conveyance had not been executed.

3. In the return of income filed by the assessee for the assessment year 1978-79, it claimed a depreciation of Rs. 18,507. The Income Tax Officer disallowed the claim. He found that the claim for depreciation could not be accepted as a registered instrument of conveyance had not been executed. Aggrieved by the order, the assessee filed an appeal. The Commissioner of Income Tax (Appeals) relying on the order dated May 21, 1981, passed by the Tribunal in Income Tax Appeals Nos. 222 and 223 (ASR) of 1980 for the assessment years 1976-77 and 1977-78 in the case of the assessee allowed the appeal. The Revenue appealed. However, the challenge was declined by the Tribunal.

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4. The Revenue filed an application u/s 256(1). On a consideration of the matter, the Tribunal referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled to claim depreciation on the building although the transfer of the building was not effected by means of a registered instrument".

5. The case was placed before a Division Bench of this court. Their Lordships vide order dated August 14, 1997, referred it to a Full Bench. Hence, the matter has been placed before this Bench.

6. The short question that arises for consideration is--Was the assessee entitled to claim depreciation in respect of the building, etc., despite the fact that the transfer of the property had not been effected by the execution of a registered instrument?

7. Section 32 of the Income Tax Act, 1961, provides for deduction on account of depreciation "in respect of ''. . . . buildings . . . owned by the assessee and used for the purposes of the business or profession ..." The Division Bench while considering the matter had noticed that the Alla-habad High Court in Additional Commissioner of Income Tax Vs. U.P. State Agro Industrial Corporation Ltd., had taken the view that depreciation was admissible despite the fact that a registered document of conveyance had not been executed. The Bench also noticed that in Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., , their Lordships of the Supreme Court had considered the provisions of Section 22 of the Act. Since the decision of the Supreme Court in the case of Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., , related to the interpretation of Section 22 and not of Section 32, the Bench felt that the matter should be authoritatively considered by a larger Bench.

8. We have heard Mr. R. P. Sawhney, learned counsel for the Revenue.

9. After the reference of the case, the provision of Section 32 has in fact been considered by their Lordships of the Supreme Court in M/s Mysore Minerals Limited, M.G. Road, Bangalore Vs. The Commissioners of Income Tax, Karnataka, Bangalore, . It has been held that the provision (headnote): "confers a benefit on the assessee. The provision should be so interpreted and the words used therein should be assigned such meaning as would enable the assessee to secure the benefit intended to be given by the Legislature ..." It was further held that "the terms ''own'', ''ownership'' and ''owned'' are generic and relative terms". On a detailed examination of the provisions, it was held that (headnote): "the intention of the Legislature in enacting Section 32 of the Act would be best fulfilled by allowing deduction in respect of depreciation to the person in whom for the time being vests the dominion over the building and who is entitled to use it in his own right and is using the same for the purposes of his business or profession. Assigning any different meaning would not subserve the legislative intent". This dictum was followed by another Bench in Dalmia Cement (Bharat)

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Ltd. Vs. Commissioner of Income Tax, .

10. In view of the two authoritative pronouncements relating to Section 32 of the Act, the necessity of a detailed examination of the matter is totally obviated. Resultantly, the question as posed by the Tribunal for the opinion of this court is answered in favour of the assessee and against the Revenue. Since no one has put in appearance on behalf of the assessee, there will be no order as to costs in all the three cases.

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