
(1998) 08 AP CK 0093

In the Andhra Pradesh High Court

Case No : Income-tax Case No. 71 of 1998

Commissioner of Income Tax

APPELLANT

Vs

A.M. Constructions

RESPONDENT

Date of Decision : 26-08-1998

Acts Referred:

Income Tax Act, 1961 — Section 32

Citation : (1999) 238 ITR 775

Hon'ble Judges : T. Ranga Rao, J;S.V. Maruthi, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; None, for the Respondent

Judgement

S.V. Maruthi, J.—This petition is filed by the Revenue u/s 256(2) of the Income Tax Act, 1961, seeking reference of the following questions, viz.

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has erred in allowing higher rate of depreciation on tippers ignoring the fact that the same are not included in the items of machinery and plant for which higher rate of depreciation is admissible ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is justified in treating the tipper as a lorry on the ground that the tippers are lorries with an extra facility of hydraulic system for easy unloading of materials ? and

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is justified in allowing 40 per cent. rate of depreciation on tippers as against 25 per cent. allowed by the Assessing Officer on the ground that the tippers are hired out ignoring the fact that the hire charges declared by the assessee from these four tippers are insignificant ?"

2. The facts of the case in brief are as follows :

The assessee, a firm, is engaged in the execution of civil contracts. For the

relevant assessment years 1992-93 and 1993-94 it has claimed depreciation on tippers at 40 per cent. The Assessing Officer restricted the depreciation on tippers to 25 per cent. On appeal, the Commissioner of Income Tax (Appeals) confirmed the order of the Assessing Officer. On further appeal to the Tribunal, the Tribunal held that the tippers are nothing but motor lorries with extra facility of hydraulic system which facilitates unloading of material and that in the profit and loss accounts for these years, the assessee was in receipt of substantial amounts of hire charges and, therefore, the tippers in question have been used not only for his own business but also on hire and therefore entitled for depreciation at 40 per cent.

Section 32 of the Income Tax Act, 1961, provides depreciation in respect of buildings, machinery, plant or furniture owned by the assessee and used for the purpose of his business or profession, the depreciation shall be allowed in accordance with the rates prescribed under the rules. Section 43, Clause (3) of the Income Tax Act, 1961, defines "plant" as including ships, vehicles, books, scientific apparatus and surgical equipment for the purposes of the business or profession. Section 43(3) is applicable to the interpretation of Sections 28 - 41 of the Act,

3. Rule 5 of the Income Tax Rules, 1962, reads as follows :

"5. Depredation.--(1) Subject to the provisions of Sub-rule (2), the allowance under Clause (ii) of Sub-section (1) of Section 32 in respect of depreciation of any block of assets shall be calculated at the percentages specified in the second column of the Table in Appendix I to these rules on the written down value of such block of assets as are used for the purposes of the business or profession of the assessee at any time during the previous year."

The rates prescribed under Appendix I under item III of sub-item (1A) provides 20 per cent. depreciation allowance on the written down value of the motor cars. Sub-item (2) provides 40 per cent. depreciation allowance on the written down value of the motor lorries. Sub-item (3) provides 25 per cent. depreciation allowance on the written down value of the machinery and plant.

Therefore, a reading of the Appendix makes it clear that depreciation at 20 per cent. of the written down value is allowed as depreciation in respect of motor cars, 40 per cent. in respect of motor lorries and 25 per cent. in respect of plant and machinery.

4. The main argument advanced by learned counsel for the Revenue is that there is no dispute that the tippers which are used by the assessee fall under the category of motor lorries, but item III of sub-item 2(ii) of Appendix I is applicable only to motor cars which are used in the business of the assessee and since the assessee is running them on hire and also using for his own agricultural operations, the said sub-item is not applicable to the assessee and therefore the Tribunal is not correct in allowing the depreciation at 40 per cent. We are afraid, we cannot agree with the contention of learned counsel for the Revenue. The fact

that the tippers are eligible for depreciation is not disputed, but the only dispute is with regard to the rate at which the depreciation to be allowed. The finding of the Tribunal is that in view of the fact that substantial income of the assessee is from hiring of these tippers he would be entitled to depreciation at 40 per cent. notwithstanding the fact that he uses them for his agricultural operations also. Further, sub-item (2)(ii) of item III of Appendix I does not say that the motor lorries should be exclusively used for hire or business by the assessee.

5. In view of the above, we are of the view that the Tribunal is justified in allowing depreciation at 40 per cent. We, therefore, do not see any merit in the petition and it is accordingly dismissed. No costs.