
(2002) 05 RAJ CK 0009

In the Rajasthan High Court

Case No : IT Ref. No. 118 of 1995 11 May 2002 A.Y. 1986-87 & Income Tax
Reference No. 118 of 1995

Commissioner of Income Tax

APPELLANT

Vs

Bhola Ram

RESPONDENT

Date of Decision : 11-05-2002

Acts Referred:

Citation : (2003) 260 ITR 381

Hon'ble Judges : N.N. Mathur, J;D.N. Joshi, J

Bench : Division Bench

Advocate : Sandeep Bhandawat, for the Appellant;

Judgement

N.N. Mathur, J.—The Income Tax Appellate Tribunal, Jaipur Bench, has made the instant reference u/s 256(1) of the Income Tax Act, 1961, seeking opinion of the following question :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in confirming the order of the learned Commissioner of Income Tax (Appeals) and thereby directing grant of depreciation at 30 per cent. on rig machines not used for exploration of mineral oil as per item III-D(7) of the depreciation schedule."

2. The facts giving rise to the instant reference are that the respondent-assessee is engaged in drilling work. He filed a return for the assessment year 1986-87 on February 1, 1988, declaring income of Rs. 40,980. The case was selected for scrutiny and, therefore, notice u/s 143(2) was issued. A questionnaire was issued to the assessee. A notice was also given to produce the regular books of account, if maintained by the assessee. The assessee was asked to furnish information on the following points :

"1. In drilling work, total number of holes done and charges per hole with names and complete addresses of the persons for whom job work was done.

2. Any record showing day-to-day consumption of diesel.

3. Record showing the spare parts replaced and the scrap value of the parts replaced.

4. Documentary evidence regarding sale of compressor."

3. None of the above informations were furnished by the assessee but he claimed depreciation at 30 per cent. on the cost of rig, i.e., Rs. 5 lakhs. The Income Tax Officer rejected the claim observing that the 30 per cent. rate is allowable only in the case of mineral oil concerns. He allowed depreciation only at 15 per cent. The Commissioner of Income Tax (Appeals) relying on the decision in Commissioner of Income Tax Vs. Super Drillers, and. First ITO v. Popular Borewell Service [1986] 15 ITD 420 (Mad), etc., by the order dated February 14, 1990, partly allowed the appeal and granted relief to the assessee directing the Assessing Officer to allow the depreciation on rig machine at 30 per cent. The Income Tax Appellate Tribunal simply referred to the aforesaid judgment of the Andhra Pradesh High Court and confirmed the finding of the Commissioner of Income Tax (Appeals). The Income Tax Appellate Tribunal has made the instant reference at the instance of the Revenue seeking opinion on the question extracted above.

4. In order to appreciate the controversy involved, it would be convenient to refer to the relevant entry being, i.e., item III(ii)D(9) of Part I of Appendix I to the Income Tax Rules, which reads as follows :

"III. Machinery and plant (not being a ship),

(ii) Special rates : D. (1) to (8) (omitted)

(9) Motor buses and motor lorries, motor taxis, 30 per cent."

motor tractors (N.E.S.A.)

5. The "rig machinery" does not fall in the category of motor buses and motor lorries. It is of course true that rig and compressor are mounted on a lorry used for drilling borewells. It consists of three distinct items, viz., rig, compressor and lorry. The rig and compressor do not form an integral part of the motor lorry. Merely because, the rig and compressor are mounted on a lorry to facilitate their easy and convenient transport from one place to another, it cannot be said that the rig and compressor either constitute integral parts of a lorry by themselves or can be appropriately called or known as a "lorry". Therefore, the rig and compressor used for drilling borewells though mounted on a lorry, cannot held to fall under the category "motor lorry" occurring in entry No. III(ii)D(9) of Part I of Appendix I to the Income Tax Rules, 1962. Thus, in our opinion the assessee is not entitled to depreciation at the special rate of 30 per cent in respect of such rigs and compressors. The view finds support from the decision of the Madras High Court in Commissioner of Income Tax Vs. Popular Borewell Service and others,

6. As far as the decision of the Andhra Pradesh High Court is concerned, it was a

case of a rig used for drilling borewells to extract mineral oil, thus/ the said case has no application to the facts of the instant case.

7. In view of the aforesaid the question referred by the Income Tax Appellate Tribunal is answered in favour of the Revenue and against the assessee.