(2009) 02 RAJ CK 0088

In the Rajasthan High Court

Commissioner of Income Tax APPELLANT

Vs

Bimalchand Jain RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Citation : (2010) 322 ITR 346 : (2009) 180 TAXMAN 317

Hon'ble Judges : R.C. Gandhi, Acting C.J.;M.N. Bhandari, J

Bench : Division Bench

Judgement

1. The following reference has been made by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter referred to as ''the Tribunal'') at the instance of the Revenue in R.A. No. 352/JP/88(arising out of ITA No. 850 /JP/87) pertaining to assessment year 1984-85, for opinion of the Court:

Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was entitled to depreciation on trucks at the rate of 40 per cent as against 30 per cent allowed by the ITO?

2. The assessee is a registered firm engaged in purchase and sale of limestone and transportation work on behalf of Kota Thermal Power Project. The assessee firm owned two trucks and claimed depreciation at the rate of 40 per cent on the ground that same were hired by the outsiders from whom total receipts of Rs. 28,940 were shown. The income tax-Officer was of the view that the assessee was not engaged in the transportation business, therefore, not admissible for higher rate of depreciation, i.e., 40 per cent. On an appeal, the Appellate Assistant Commissioner allowed the assessee''s claim and upset the order of the Income Tax Officer. On further appeal before the Tribunal, the Tribunal confirmed the order of the Appellate Assistant Commissioner.

3. Learned Counsel for the Revenue has submitted that the reference made for opinion of the Court was also subject-matter in case Commissioner of Income Tax Vs. Manjeet Stone Co., and stood answered by Division Bench of this Court. On perusal of the aforesaid judgment, we find that the issue was the same and

while dealing with the issue, the Division Bench of this Court observed as under:

In the present case, the business of the assessee is that of mining and sale of stones excavated from the mines and the trucks, are used mainly for its business of mining. They are used mainly for carrying the stones from the mine-site to the sales depot or to the godown of the assessee. If the trucks are used for its own business, then they are entitled to depreciation at 30 per cent only, as the assessee was not using the trucks in the business of running them on hire. The registration of the trucks as ''public carriers'' will not, in any way, affect the eligibility to depreciation as the main consideration as per entry No. III(ii)E(1A) is that the assessee is using the vehicle in the business of running them on hire. The business of the assessee is quarrying and selling the stones after excavation and not of hiring. If a small portion of its income is received from the business of hiring from two or three transactions of hiring, then it will not make the business of the assessee as one of hiring the trucks. Even otherwise, when we look into the finding arrived at by the Tribunal regarding the business of the assessee, then we find that the findings are to the effect that the business of the assessee is of quarrying and selling stones and the trucks are mainly used for carrying the stones from the mines to the sales depot. As the trucks were mainly used by the assessee in its own business for carrying the stones from the mine-site to the sales depot, the case of the assessee is covered by entry No. III(ii)D(9) and not by Entry No. III(ii)E(1A), and as such the assessee is entitled to depreciation at 30 per cent and not at 40 per cent. In this view of the matter, we are of the opinion that the Tribunal was not right in holding that the assessee is entitled to depreciation at 40 per cent and not at 30 per cent on the trucks and dumpers used by it for its business.

We, therefore, answer the question in the negative, i.e., in favour of the Revenue and against the assessee, by holding that the assessee is entitled to depreciation at 30 per cent and not at 40 per cent, as the case of assessee is covered by Entry No. III(ii)D(9) and not by Entry No. III(ii)E(1A). No order as to costs.

4. We answer the reference in favour of the Revenue and against the assessee, accordingly.

5. The reference is disposed of.

