

(2001) 10 DEL CK 0010

In the Delhi High Court

Case No : Income-tax Appeal No's. 80 of 1999 and 18 and 95 of 2000

Commissioner of Income Tax

APPELLANT

Vs

B.L. Passi

RESPONDENT

Date of Decision : 16-10-2001

Acts Referred:

Citation : (2002) 85 CTR 172 : (2002) 254 ITR 225 : (2002) 122 TAXMAN 805

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; D.K. Jain, J

Bench : Division Bench

Advocate : Prem Lata Bansal and R.C. Pandey, for the Appellant; C.S. Aggarwal, Salil Aggarwal and Prakash Kumar, for the Respondent

Judgement

D.K. Jain J.

1. These are three appeals u/s 260A of the Income Tax Act, 1961 (in short "the Act"), arising out of the decisions of the Income Tax Appellate Tribunal (in short "the Tribunal") in ITAs Nos. 2537/Delhi of 1990 and 627/Delhi of 1993 (assessment year 1986-87), ITAs Nos. 1013/Delhi of 1991 and 3891/Delhi of 1991 (assessment year 1987-88) and ITA No. 1014/Delhi of 1991 (assessment year 1988-89).

2. The issue involved being common to all the years, this order will govern all the three appeals. Since the issue has been discussed in greater detail in the Tribunal's order for the assessment year 1986-87, we will refer to the facts of that year, as illustrative. The following questions have been posed for adjudication.

"1. Whether the Tribunal is correct in upholding the order of the Commissioner of Income Tax (Appeals) in accepting the claim of depreciation by the assessed on the trucks allegedly purchased at the end of the accounting year ?

2. Whether the Tribunal is correct in holding that the transactions made by the assessed did not form part of a device to lessen the tax liability and did not fall

within the category of colourable device ? .

3. Whether the Tribunal is correct in not deciding the issue whether the trucks were held as stock-in-trade by the assessed or they were fixed assets entitled to depreciation ?

4. Whether the Tribunal is correct in not deciding the true nature of the business of the assessed ?

5. Whether the Tribunal is correct in holding that res judicata was applicable in this case, as according to it, no fresh material was brought on record to justify deviation from the view taken in the earlier years ?

6. Whether on the facts, the order of the Tribunal is perverse?"

3. The respondent-assessed is running a proprietary concern under the name and style of Pasco Automobiles, which mainly deals in sales of Maruti cars on commission basis. He also derives share income from two other firms. Both the firms are dealing in purchase and sales of Telco trucks. For the relevant assessment year, the assessed filed his return of income declaring an income of Rs. 37,79,520. In his profit and loss account, the assessed had claimed depreciation of Rs. 10,29,581 on trucks. During the course of assessment proceedings, the Assessing Officer noticed that the assessed had earned commission income of Rs. 36,02,999 on the sale of Maruti cars and Rs. 6,30,848 on the sale of other vehicles as against the commission income of Rs. 6,50,000 earned during the preceding year. Suspecting that the claim of depreciation of Rs. 10,29,581 against the commission of Rs. 36,02,999 was a device to reduce his tax liability to the extent of the depreciation claimed, the Assessing Officer undertook investigation into the said claim. It was found that the assessed had shown to have procured ten trucks from its sister concern during the period between March 3, 1986, and March 15, 1986, without making any payment and these trucks were claimed to have been given on hire to Bombay Okara Cargo Limited and Bombay Okara Carriers Movers Registered at Rs. 300 and Rs. 290 per day, respectively. The hire charges amounting to Rs. 14,850 were shown to have been received from the said concerns. The Assessing Officer asked the assessed to furnish particulars regarding purchase, registration, fabrication of body on chassis and evidence of receipt of hire charges. He also recorded the statement of one Vijay Kumar, accountant of the aforesaid transport companies. Not being satisfied with the Explanation furnished by the assessed, the Assessing Officer disallowed the depreciation on the ground that the assessed had failed to establish the user of the trucks.

4. Being aggrieved, the assessed preferred an appeal to the Commissioner of Income Tax (Appeals) (in short "the CIT(A)), who, vide his order dated February 20, 1990, set aside the assessment and directed the Assessing Officer to re-examine the issue and record fresh findings on various points, including the question whether these trucks were given on hire.

5. Pursuant to the said directions, the Assessing Officer again required the assessed to produce the parties who had hired these trucks along with the books of account, etc. He also issued notices u/s 131 of the Act to the said parties by registered post, which were received back unserved. Observing that in spite of issue of summons the assessed had failed to produce the parties with whom the transactions had taken place, the Assessing Officer again disallowed the depreciation.

6. Aggrieved, the assessed filed appeal before the Commissioner of Income Tax (Appeals). Being satisfied with the Explanation of the assessed regarding purchase, registration, user and subsequent sale of the trucks and relying on the affidavit of one of the directors of Bombay Okara Carriers, dated March 23, 1989, the Commissioner of Income Tax (Appeals) held that there was no reason to deny depreciation to the assessed. The Revenue took the matter in further appeal to the Tribunal. On consideration of the rival submissions, the Tribunal endorsed the view taken by the Commissioner of Income Tax (Appeals) on the issue. While doing so, the Tribunal heavily relied on the statement of the said Vijay Kumar dated March 14, 1989, and the aforementioned affidavit of the director of Bombay Okara Carriers. The Tribunal also observed that the said transactions made in the normal course of business could not be termed as part of the device to lessen tax liability. Being aggrieved by the said decision, the present appeals have been filed.

7. We have heard Ms. Prem Lata Bansal, learned counsel for the Revenue, and Mr. C. S. Aggarwal, learned counsel for the assessed.

8. It is submitted by Ms. Bansal that the findings recorded by the Tribunal are perverse inasmuch as there is no material on record to support the same. It is asserted that after the matter had been set aside by the Commissioner of Income Tax (Appeals), fresh notices were sent to the parties, who, according to the assessed, had taken trucks on hire, to produce the books of account and other materials in support of the said claim, but the said notices were received back unserved and, Therefore, the Tribunal has misdirected itself in relying on the statement of Vijay Kumar and the affidavit of the director. On the other hand, Mr. Aggarwal has vehemently argued that the findings recorded by the Tribunal are pure findings of fact based on relevant evidence and, Therefore, no question of law, arises out of its order.

9. The exercise to distinguish between a question of fact and question of law is normally difficult because there are some common areas between the two where the distinction may not be clear. It is well settled that it is not possible to turn a mere question of fact into a question of law by asking whether on a matter of law the authority came to a correct conclusion upon a matter of fact. But a finding on a question of fact can be challenged as erroneous in law where there is no evidence to support it; or it is based on material which is irrelevant or partly relevant and partly irrelevant; or it is based on conjectures or surmises or partly on these and partly on evidence; or the finding is so perverse or unreasonable

that no person acting judicially and properly instructed on law could have arrived at it.

10. In the instant case, we find from the order of the Commissioner of Income Tax (Appeals), dated February 20, 1990, that one of the issues to be examined by the Assessing Officer in terms of the said order was whether the trucks, in question were given on hire or not, in other words, put to use during the previous year. The Commissioner of Income Tax (Appeals) thought it proper to give such a direction despite the fact that the statement of the said Vijay Kumar and the affidavit of the director of the transport company were already on record. To comply with the said direction, the Assessing Officer issued fresh notices by registered post to the parties who are said to have hired the trucks, but these notices remained unserved. Although copies of the paper books filed before the Tribunal have been placed on record but learned counsel for the assessed has not been able to point out any material/document which was brought on record by the assessed before the lower authorities during the course of re-examination of the issue in pursuance of the directions contained in the Commissioner of Income Tax (Appeals) order dated February 20, 1990. Therefore, prima facie, the findings recorded by the Tribunal on the issue of user of trucks do not seem to be based on any material. But we say no more lest it may prejudice the case of either side.

11. We are, Therefore, of the view that the orders of the Tribunal give rise to substantial questions of law. We, accordingly, admit the appeal. The following questions of law shall be adjudicated :

"1. Whether there was any material before the Tribunal to come to the conclusion that the trucks in question were given on hire ?

2. Whether the Tribunal was correct in law in accepting the assessed's claim of depreciation on the "trucks ?"

12. The appellant shall file within three months ten copies of the cyclostyled paper books, containing all documents on which reliance was placed before the Tribunal, either by the assessed or the Revenue.

13. The appeal be listed for hearing in the regular course.