(2009) 08 KL CK 0061

In the High Court Of Kerala

Case No : Income Tax A. No. 1255 of 2009

Commissioner of Income Tax APPELLANT

Vs

Gaylord Constructions RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Citation : (2009) 4 KLT 523 : (2010) 190 TAXMAN 406

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : P.K. Raveendranatha Menon and Jose Joseph, for the Appellant;

Final Decision : Dismissed

Judgement

N. Ramachandran Nair, J.—The question raised in the appeal filed by the Department is whether the Tribunal as justified in upholding the assessee''s claim for depreciation of earth moving equipment, namely, JCB at the rate of 40% which rate is provided for "Motor Buses, Motor Lorries, Motor Taxis" used in the business of running them on hire. The assessing officer took the view that earth moving equipment, popularly known as JCB, is not Motor Buses, or Motor Lorries or Motor Taxis, eligible for depreciation at the higher rate of 40%. Therefore he granted depreciation to the assessee at 25%.

2. Senior standing Counsel appearing for the appellant supported the case of the assessing officer and contended that the items covered by the above entry are only motor vehicles used for carriage of goods or passengers and since JCB is only an excavator-cum-earth moving equipment, it does not answer the description of any of the motor vehicles referred to in the above entry. We notice from the Tribunal''s order that the Tribunal allowed the claim relying on the decision of the Supreme Court in Bose Abraham v. State of Kerala 2001 (1) KLT 730 (SC) : (2001) 9 KTR 366 (SC) and that of the Gujarat High Court in Gujco Carriages v. C.I.T. 122 Taxman 206 (Guj.) wherein the Gujarat High Court held that mobile crane which is registered as a heavy motor vehicle falls within the

expression "motor lorries" and is eligible for depreciation at higher rate of 40% under the above entry.

3. Admittedly JCB which is used on road is registered as a motor vehicle. Though it is not used as a transport vehicle, JCB is a four wheeled excavator-cum-transport vehicle used for excavation of earth and movement of the same, though for limited distances. Even though the purpose of Motor Lorry which is a heavy motor vehicle used for transport of goods from place to place, cannot be served by a JCB, we are of the view that the expression "motor lorry" covered by the above entry of the Income Tax Rules providing for higher rate of depreciation, has a wide meaning. JCB though basically is used for excavation of soil, it is a heavy vehicle also used for transport of excavated soil, sand or other goods, for a limited distance and the machine is also used to level and shape the land. Therefore it serves as a transport equipment as well and so long as it is registered under the Motor Vehicles Act, it is a motor vehicle within the meaning of the said term as held by the Supreme Court in the decision above referred. We therefore feel that in a larger sense JCB answers the description of Motor Lorry within the meaning of the entry referred above contained in the IT Rules. There is no dispute that the item is not let on hire by the assessee which is one of the items of business carried on by them. The argument of Senior Standing Counsel that the case decided by the Gujarat High Court is on different facts, appears to be true because there the crane in that case is mounted on the truck and the truck is admittedly entitled to depreciation at 40%. When the crane mounted on the truck, the crane becomes mobile and when both are let out on hire as a mobile crane, the value of the crane also becomes part of the motor lorry entitling for depreciation on the combined value. Even though the facts in the Gujarat decision are different, we still feel the principle applied by the Gujarat High Court is applicable in this case also, because in this case JCB itself is functionally and operationally used as motor vehicle for transport of goods within limited distances. We therefore uphold the view of the Tribunal that JCB is entitled to higher rate of depreciation claimed by the assessee. In the circumstances, the appeal is dismissed.

