
(2005) 05 DEL CK 0195

In the Delhi High Court

Case No : IT Appeal No. 122 of 2005 12 May 2005

Commissioner of Income Tax

APPELLANT

Vs

Jagan Nath Dudadliar

RESPONDENT

Date of Decision : 12-05-2005

Acts Referred:

Citation : (2005) 149 TAXMAN 68

Hon'ble Judges : Swatanter Kumar, J; Madan B. Lokur, J

Bench : Full Bench

Advocate : Ms. Prem Lata Bansal for the assessee, for the Appellant;

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.

The main question raised by the revenue in these appeals u/s 260A of the Income Tax Act, 1961 is as under:

"Whether the Income Tax Appellate Tribunal was justified in law in allowing the higher rate of depreciation at the rate of 40 per cent to the assessed instead of normal rate of 25 per cent on lorries ?"

2. This question was answered by the Income Tax Appellate Tribunal in favor of the assessee and against the revenue, vide its order dated 30-12-2003 in ITA No. 2701 /Del/2000 by holding as under:

"6. We have heard the appellant department and have also perused the orders of the lower authorities and we proceed off the issue in the following lines. At the outset, we may state that the revenue has to fail in the present appeals. A gainful reference can be made to the orders of the Commissioner (Appeals) wherein the issue has been discussed in an appropriate manner, which we are tempted to reproduce as under:-

"There is no doubt about the fact that the assessed has derived income by way

of lease rental. It is also a matter of fact that the lorries in question have not derives an income on account of hiring charges of a truck or lorry, it is entitled for a higher depreciation. It does not make any difference whether hiring charges called lease rental is earned on account of day-to-day hiring of the lorry or on account of hiring of the lorry on long-term basis for which lease rent is received. The reliance of the assessing officer on CBDT Circular No. 652 is unjustified. On the contrary, the Circular No. 652 clarifies that hiring of the motor lorries could be entitled for higher depreciation."

7. A perusal of the aforesaid, reveals that the factum of the assessed having deployed the impugned vehicles for which it was getting lease rentals, for hiring out is an established fact. Therefore, the conclusions drawn by the Commissioner (Appeals) based on the aforesaid do not require any interference from out side. In the result, the revenue has to fail.

8. In the result, the two appeals of the revenue are dismissed."

3. Learned counsel appearing for the revenue while relying upon the Division Bench judgment of this court in the case of Commissioner of Income Tax Vs. Bansal Credits Limited, Pratap Singh, MGF Limited, Motor and General Finance Ltd., MGF India Limited, Rungta Irrigation Ltd. and Anuvrat (P) Limited, contended that the end user of the lorry was not the assessed and in terms of section 32 of the Act, the asset was not being used for the purpose of business of the assessed and Therefore, the assessed was not entitled to higher rate of depreciation.

4. The Commissioner (Appeals) while dealing with the facts of the case clearly held that there was no doubt about the fact that the assessed had derived income by way of lease rental and also that it was a matter of fact that lorries in question have not been utilised by the assessed in its own business. Thus, the Appellate Authority was of the opinion that assessing officer had erred in law in interpreting and placing reliance upon Circular No. 652 of the CBDT in the manner as it was done. It was held that this circular clarifies that hiring of motor lorries would be entitled for higher depreciation. It is apparent from the order of the First Appellate Authority that there was no dispute to the fact that trucks leased out by the assessed to the third parties have done on hire. In view of this fact, apparently there could be no dispute to the consequential conclusion that same were not being used in the business of the assessed.

5. Even before us, there is no dispute to the fact that the lorries have been leased out by the assessed to different parties and income is derived from hiring of such vehicles. Vide order dated 18-3-2005, we had directed the appellant to produce before the court Circular No. 652. A bare reading of this circular shows that it was issued in clarification to second proviso to section 32(1)(ii) of the Act and clearly stated that no deduction shall be allowed under this clause in respect of any motor car manufactured outside India where such motor car is acquired by the assessed af ter 28-2-1975 and is used otherwise than in a business of

running it on hire for tourists. The bare reading of circular shows that it has not been applied in its proper perspective to the facts and circumstances of the present case. The view taken by the Commissioner Income Tax (Appeals) which was upheld by the ITAT, is obviously the correct view. In the case of Bansal Credits Ltd. (supra). The Division Bench of this court while granting benefit to the assessed in somewhat similar circumstances held as under:-

"In our opinion, on a plain reading of the section and the relevant entry in the Appendix, it is clear that it is the end user of the specified asset which is relevant for determining the percentage of depreciation. The section requires that the asset should be used for the purposes of the assessed's business and the entry in the Appendix refers to the user it should be put to. Apart from the fact that the leasing out of the vehicles is by itself tantamount to hire of vehicles, we are unable to read into any of the aforementioned provisions the requirement that the assets are to be used by the assessed for the purposes of "his" business or profession. Once it is accepted that the leasing out of the vehicles is one of the modes of doing business by the assessed and in fact the income derived from such leasing is treated as business income of the assessed, it would be clearly contradictory in terms to hold that the vehicles in question were not used wholly for the purpose of the assessed's business, which, as noted above, is one of the requisites stipulated in section 32, apart from the other two conditions indicated above, which all the assessed indubitably fulfill." (p. 74)

6. No distinguishing facts are available on record. The department of revenue, in fact, pleaded no distinguishing facts before the Commissioner (Appeals) of the ITAT and from the orders of both these authorities, we are satisfied that they have acted in accordance with law and have rightly answered the question which was posed before the authority.

7. In view of the above discussion, we are of the considered opinion that no question of law much less substantial question of law arises for consideration before the court in the present appeal as contemplated u/s 260A of the Act. Dismissed.