

(2006) 07 DEL CK 0009

In the Delhi High Court

Case No : IT Appeal No. 100 of 2000 & Income Tax A. No. 100 of 2000 5 July
2006 A.Y. 1996-97

Commissioner of Income Tax

APPELLANT

Vs

M.G.F. (India) Ltd.

RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

Citation : (2006) 206 CTR 92 : (2006) 285 ITR 142

Hon'ble Judges : Vipin Sanghi, J; Madan B. Lokur, J

Bench : Full Bench

Advocate : Ms. P.L. Bansal and Vishnu Shanna and Rajeev Awasthy, for the
assessed O.S. Bajpai and V.N. Jha, for the Revenue, for the Appellant;

Judgement

The revenue is aggrieved by an order dated 27-4-2000, passed by the Income Tax Appellate Tribunal, Delhi Bench "A", New Delhi in I.T.A. No. 4915/Delhi of 1999 relevant for the assessment year 1996-97.

2. The assessed is a non-banking finance company and is running a business of hire-purchase, finance, lease of assets/vehicles. As a part of its business the assessed leased out vehicles to third parties (hereinafter called "lessees"). In respect of these leased vehicles, the assessed claimed depreciation at 40 per cent. in terms of section 32 of the Income Tax Act read with rule 5 of the Income Tax Rules and Appendix I to the Rules.

3. The assessing officer by his order dated 12-3-1999, allowed depreciation at 20 per cent. while holding that the assessed had given the vehicles on lease to third parties, which is not the same as running them on hire by the assessed.

4. Feeling aggrieved by the assessment order, the assessed preferred an appeal which was taken up for consideration by the Commissioner (Appeals). In his order dated 6-12-1999, the Commissioner (Appeals) upheld the allowance of depreciation at 20 per cent. and did not accept the contention of the assessed that it was entitled to depreciation at 40 per cent. The Commissioner (Appeals)

held that the business of the assessed is finance and leasing of vehicles and while it may have been the owner of the vehicles in a technical sense, the assessed would not be entitled to higher depreciation because what the lessee does subsequently with the vehicles is only a matter of conjecture.

5. The assessed then filed an appeal before the Tribunal which accepted its contention and allowed depreciation at 40 per cent. While doing so, the Tribunal relied upon its decision in Goodwill India Ltd. (I.T.A. No. 4916/Delhi of 1999), which is a part of the same order passed by the Tribunal.

6. The Tribunal noted the conclusion of the assessing officer that the assessed was not running vehicles on hire and hence was not entitled to the higher rate of depreciation. It also noted the view of the Commissioner (Appeals) confirming the action of the assessing officer.

7. The Tribunal then considered the rival submissions of the parties and concluded that the case is covered by an earlier decision rendered by the Tribunal in India Lease Development Ltd. wherein depreciation at 40 per cent. was allowed. The Tribunal noted that in its earlier decision it had relied upon its decision in the case of MFG India Ltd. (the assessed in the present appeal) and the decision of the Gauhati High Court in the case of ABC India Ltd. v. CIT (1997) 226 ITR 944 . In view of its earlier decision as well as the decision of the Gauhati High Court, it was held that the assessed would be entitled to depreciation at 40 per cent. in respect of the vehicles given on lease. Following the order passed in Goodwill India Ltd., the assessed in the present case was granted depreciation at 40 per cent. on the vehicles given by it on lease to third parties.

8. As abovementioned, the revenue challenged this conclusion of the Tribunal. On 30-10-2000, this appeal was admitted and the following question of law was framed :

"Whether, the Income Tax Appellate Tribunal was right in law in directing the assessing officer to allow depreciation at 40 per cent. on the vehicles given on lease ?"

9. It is submitted on behalf of the revenue that the assessed is not entitled to depreciation at 40 per cent. in view of the fact that the vehicles given on lease are not being used by it for hire and there is no material to show that the lessees used the vehicles for hire. Reference was made to the concluding paragraph of the decision rendered by this court in 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, .

10. In that case eight appeals were filed by the revenue in this court on a similar fact situation and in respect of four of them the Tribunal had remanded the matter back to the assessing officer to examine whether the leased out vehicles were actually used by the lessee for the business of hire. This court did not interfere with that direction of the Tribunal. On this basis, it was contended by

learned counsel for the revenue that in the present appeal, a similar direction should be given remanding the matter back to the Assessing Officer to examine whether the leased out vehicles had actually been used by the lessees in the business of hire.

11. It was contended by learned counsel for the assessed that the assessed is only required to show that it had leased out its vehicles or given them by way of hire to third parties. The assessed is not at all concerned with how the lessees of those vehicles use them. The assessed is claiming depreciation at 40 per cent. on such leased out vehicles and to determine the entitlement of the assessed, all that is required to be seen is whether the assessed is using the vehicles for its own use (in which case it would not be entitled to a higher rate of depreciation) or whether the assessed is using those vehicles in its business of hire by giving them out to third parties (in which case the assessed would be entitled to depreciation at a higher rate).

12. Admittedly, there is no dispute that the assessed is the owner of the vehicles and there is also no dispute that the assessed leased out those vehicles to third parties.

13. The only question, Therefore, that is required to be considered by us is whether the assessed has utilised the vehicles for its own use, and if not whether the assessed would be entitled to depreciation at 40 per cent, as claimed by it.

14. We have examined the matter in great detail after hearing learned counsel for the parties and after going through the judgment of this court in 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,

15. We may note at the outset that the decision of the Gauhati High Court in A.B.C. India Ltd. Vs. Commissioner of Income Tax, which is in favor of the assessed and which was relied upon by the Tribunal has been followed by this court in 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,

16. Quite apart from that, it was noted in 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, that the cases relied upon by the revenue are not applicable to the matter in issue. In respect of the cases relied upon by the revenue, that is, the decision of the Calcutta High Court in Soma Finance and Leasing Co. Ltd. Vs. Commissioner of Income Tax, , the Rajasthan High Court in Commissioner of Income Tax Vs. Sardar Stones, and the Karnataka High Court in Gowri Shankar Finance Ltd. Vs. Commissioner of Income Tax, , it was found as a fact that the trucks that were the subject-matter of depreciation were being used by the assessed for the transportation of their own products. It was observed that the dominant purpose

for which the assessed was required to use the trucks, so as to be entitled to a higher rate of depreciation, was in the business of running them on hire and the occasional use of the trucks for hiring was not sufficient for availing of a higher rate of depreciation.

17. If there is some doubt whether the assessed is actually utilising the vehicles for its own use, then an issue may arise whether the assessed is entitled to a higher rate of depreciation. In the present case, we do not find an), such doubt having been raised at any stage of the proceedings by the assessing officer or by the Commissioner (Appeals) or even by the Tribunal.

18. If the argument for the revenue is looked at pragmatically, it would result in an impossible burden on the assessed who would have to keep track of all its vehicles leased out to third parties with a view to ascertain whether those third parties are in fact using those vehicles for hire or not. Consequently, we are of the opinion that the requirement, as laid down in 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, would be satisfied if there is material to show that the assessed in fact used those vehicles in its business of hiring or leasing them out to third parties. If there is material to come to this conclusion, then the assessed would be entitled to depreciation at 40 per cent. on the leased out vehicles. However, if the assessed, instead of leasing out those vehicles or giving them out on hire to third parties, utilises the vehicles for its own use, then quite clearly the assessed would not be entitled to a higher rate of depreciation.

19. In the present case, as we have already noted, there is no dispute about the fact that the vehicles which are the subject-matter of the lease agreements were in fact given by the assessed to third parties. To this extent the requirement of law has been met. There is no additional requirement on the assessed to show that the third parties had used those vehicles for hire.

20. Under these circumstances, we do not think that the contention of the revenue should be accepted.

21. The question of law framed while admitting this appeal on 30-10-2000, is Therefore, answered in the affirmative, and in favor of the assessed.

22. We may also note that learned counsel for the revenue tried to make out a distinction between hire and lease of vehicles. This issue is no longer *res integra* having been considered by this court in Bansal Credits Ltd. (*supra*) and the following observation made at page 74 of the report :

"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 assesseds 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 assesseds 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 assesseds indubitably fulfill."

23. In view of the facts of this case, the parties will bear their own costs.