(1997) 09 AHC CK 0186

In the Allahabad High Court

Case No : Income-tax Reference No. 261 of 1981

Commissioner of Income Tax APPELLANT

Vs

Navdurga Transport Co. RESPONDENT

Date of Decision : 17-09-1997

Acts Referred:
Income Tax Act, 1961 — Section 32

Citation : (1998) 149 CTR 219 : (1999) 235 ITR 158

Hon'ble Judges : R.K. Gulati, J;Om Prakash, J

Bench : Division Bench

Judgement

1. At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following question relating to the assessment years 1975-76 and 1976-77 for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the assessee was entitled to claim depreciation u/s 32 of the Income Tax Act, 1961, on the three trucks ?"

2. The facts as found by the Tribunal are that the assessee-firm came to be constituted under a partnership deed dated October 6, 1973. It consisted of seven partners, Sarvasri Moti Lal Agarwal, Anand Agarwal, Anil Agarwal, Pradeep Agarwal, Prem Ji Agarwal, Murari Swaroop and Sub-hash Godbole. The firm was constituted to carry on transport business in the name and style : "Messrs. Nav Durga Transport Company". Whereas, the first four partners contributed capital of Rs. 600, Rs. 700, Rs. 600 and Rs. 1,100, respectively, the other three partners brought their trucks into the firm as their contribution. The firm appointed three agents under three separate agreements for the supervision, control and plying of the vehicles. The three vehicles were shown as the assets of the firm in its balance-sheet.

3. Whereas, the Assessing Officer and the Appellate Assistant Commissioner rejected the claim of the assessee to get depreciation u/s 32(1) of the Income

Tax Act, 1961 (briefly "the Act"), on the ground that the assessee failed to satisfy the requisite conditions that it owned and used the trucks, the Appellate Tribunal accepted the contention of the assessee, holding that the three trucks became the assets of the firm and they were used through the agents by the assessee-firm. This is how the Appellate Tribunal concluded that the assessee owned and used the three trucks and it was entitled to depreciation u/s 32(1) of the Act.

4. The Tribunal as "a last fact-finding body categorically recorded a finding of fact that all the three vehicles became the assets of the firm and, as such, they have been used through agents by the firm and the income from the three vehicles were credited in the books of account of the assessee-firm. No doubt, the registration continues in the name of three partners, who initially acquired the vehicles.

5. In Commissioner of Income Tax Vs. Dilip Singh Sardarsingh Bagga, , the Bombay High Court held that registration under the Motor Vehicles Act is not an essential pre-requisite for the acquisition of ownership of the motor vehicles, but is an obligation cast upon an owner of the vehicle for the purpose of running the vehicles in any public place.

6. As registration cannot be made in the name of the firm, the registration continued in the name of the three partners, who initially owned the vehicles.

7. In Additional Commissioner of Income Tax Vs. U.P. State Agro Industrial Corporation Ltd., , this court held that the expression "building owned by the assessee" in Section 32 of the Income Tax Act, 1961, has not been used in the sense of property, complete title in which vests in the assessee, The assessee will be considered to be an owner of the building u/s 32 if he is in a position to exercise the rights of the owner not on behalf of the person in whom the title vests, but in his own right.

8. Applying the ratio of the aforesaid decisions, we are of the considered view that the Appellate Tribunal rightly reached the conclusion that the assessee owned and used the three vehicles within the meaning of Section 32 of the Act

9. We, therefore, answer the aforementioned question in the affirmative, that is, in favour of the assessee and against the Revenue.