
(1996) 08 AP CK 0080

In the Andhra Pradesh High Court

Case No : Case Referred No. 116 of 1988

Commissioner of Income Tax

APPELLANT

Vs

Orient Longman (P) Ltd.

RESPONDENT

Date of Decision : 08-08-1996

Acts Referred:

Income Tax Act, 1961 — Section 28, 32, 34

Citation : (1997) 227 ITR 68

Hon'ble Judges : S.S. Mohammed Quadri, J;B.S. Raikote, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—The following question is referred to this court for opinion, at the instance of the Revenue, u/s 256(1) of the Income Tax Act, 1961, for short "the Act"

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the assessee was entitled to depreciation u/s 32 of the Income Tax Act, on a flat which was not transferred in its name ?"

2. The question arises out of the order of the Tribunal in I.T.A. No. 701/Hyd./14-85, dated February 3, 1987. The respondent-assessee purchased flats but the conveyance was not executed in its favour. It claimed depreciation on the said flats u/s 32 of the Act. The claim was disallowed by the Income Tax Officer. On appeal the Commissioner of Income Tax (Appeals) accepted the plea of the respondent-assessee and granted depreciation by order dated February 15, 1985. The Revenue went in appeal before the Income Tax Appellate Tribunal against the said order of the Commissioner (Appeals). The Tribunal, by its order dated February 3, 1987, confirmed the order of the Commissioner and dismissed the appeal.

3. Learned standing counsel for Income Tax submits that for purposes of claiming

relief u/s 32 of the Act, the assessee must be the owner of the property and as title has not been conveyed to the assessee of the flats in question, the Tribunal ought not to have granted relief to the assessee.

4. To appreciate the contention of learned counsel for the Revenue it is useful to read section 32 of the Act in so far as it is relevant for our purpose :

"32. (1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of section 34, be allowed ..."

5. A plain reading of the provision, extracted above, shows that to claim depreciation in respect of buildings, machinery, plant or furniture, they must be owned by the assessee and they must be used by the assessee for the purpose of his business or profession. As to the fulfilment of the second requirement, viz., that the flats must be used for the business of the assessee, there is no dispute. The controversy here relates to the compliance with the first requirement. The submission of learned counsel for the Revenue is that the assessee is not the owner of the flats as no conveyance deed has been executed in favour of the respondent-society (assessee).

6. For purposes of claiming benefit u/s 32 of the Income Tax Act, the requirement of ownership by the assessee will be deemed to be fulfilled if the assessee has the dominion and control over the property in his own right and not in the right of others. Where the assessee has paid full consideration and has been put in possession of the property and has been in exclusive possession and enjoyment of the property as absolute owner thereof, the mere fact that no title deed has been executed in his favour, will not deprive him of the right to claim depreciation u/s 32 of the Act.

7. In *Additional Commissioner of Income Tax Vs. U.P. State Agro Industrial Corporation Ltd.*, , the assessee-corporation (hereinafter referred to as the Corporation) was a company registered under the Companies Act. The State Government transferred possession of its agricultural workshop to the Corporation in consideration of some cash and equity shares. The Corporation claimed depreciation u/s 32 of the Act in respect of the building taken over by it from the State Government. The claim was disallowed by the Income Tax Officer on the ground that no sale deed has been executed by the State Government in favour of the Corporation, so it was not the owner. That order was confirmed by the Appellate Assistant Commissioner on appeal. On second appeal before the Income Tax Appellate Tribunal, it was held that as the State Government transferred the building in question in favour of the Corporation and put it in possession, the Corporation would be deemed to be the owner for the purposes of section 32 of the Income Tax Act. On a reference of the question whether, in the facts and circumstances of the case, the assessee was entitled to depreciation on the building which it purchased from the Government of Uttar

Pradesh, the Division Bench of the Allahabad High Court had pointed out that the State Government had received the amount of consideration in the form of equity shares and also in the form of cash the State Government has also put the Corporation in possession of the property in question and the Corporation has performed its part of the contract and it was only for the State Government to execute the sale deed and convey the title in favour of the Corporation, that the Corporation, which has been put in possession of the property in part performance of the contract of sale, can even dispose of the property in the same way as if it was owned by it and the State Government could not object to it; it could realise the income from the property and appropriate the same for itself. It was observed that the dealing with the property by the Corporation in such circumstances would have to be on its own behalf and not on behalf of the State Government, which u/s 53A of the Transfer of Property Act stands debarred from enforcing any rights in respect thereof against the Corporation. It was laid down that the Corporation had, even though the ultimate title in the property had not by then vested in it, become the owner thereof in the sense in which the expression has been used in section 32 of the Act and, therefore, the assessee-Corporation was entitled to depreciation u/s 32 of the Act on the building.

8. A similar question fell for consideration before a Division Bench of our High Court in Commissioner of Income Tax Vs. Sahney Steel and Press Works (P.) Ltd., . There, during the assessment year 1973-74, the assessee purchased a building but the conveyance deed in respect thereof was not registered in that year. The assessee claimed depreciation in respect of the building but it was rejected by the Income Tax Officer on the ground that no sale deed was executed and registered in favour of the assessee, so he was not the owner of the building. But the Appellate Assistant Commissioner on appeal upheld the claim of the assessee and on further appeal to the Income Tax Appellate Tribunal, the Tribunal held that the assessee was entitled to depreciation. On a reference to the High Court, the Division Bench held that the assessee was the owner of the property in the relevant previous year, though the legal title was not complete for want of a registered conveyance deed and that the assessee was entitled to depreciation since the building was owned and used by it for the purpose of its business. We may also note here that the same view is taken by a Division Bench of the Madras High Court in Commissioner of Income Tax Vs. Tamil Nadu Small Industries Development Corporation Ltd., .

9. For the above reasons, in our view, as the assessee was exercising the right of ownership in his own right as owner thereof, the Tribunal was justified in holding that the assessee was entitled to depreciation u/s 32 of the Income Tax Act.

10. For the aforementioned reasons, we answer the question in the affirmative, i.e., in favour of the assessee and against the Revenue.

11. The R. C. is accordingly answered.