(2001) 03 KL CK 0056

In the High Court Of Kerala

Case No : Income Tax R. No. 44 of 1996

Commissioner of Income Tax — APPELLANT

Vs

Parthas Trust — RESPONDENT

Date of Decision : 05-03-2001

Acts Referred:
Income Tax Act, 1961 — Section 22, 32, 32(1)

Citation : (2001) 168 CTR 245 : (2001) 249 ITR 120

Hon'ble Judges : S. Sankarasubban, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : P.K.R. Menon and George K. George, for the Appellant; C. Kochunni Nair and Dale P. Kurien, for the Respondent

Judgement

S. Sankarasubban, J.—The question of law referred in this case is whether, on the facts and in the circumstances of the case, the Tribunal was right in law and fact in holding that the assessee is entitled to depreciation. The facts are as follows : The assessee is a private trust. While completing the assessment, the Assessing Officer disallowed the assessee''s claim for depreciation on certain buildings. According to the Assessing Officer, the buildings had not been registered in the name of the assessee-trust. On appeal, the first appellate authority held that the assessee was entitled to depreciation on the buildings as they were constructed by the trust (though the land in which they stood were not registered in their name). The Tribunal held that even if the land does not belong to him, the assessee would be entitled to depreciation. The Tribunal also held that there is nothing in Section 32 which bars such a claim being made.

2. Learned counsel for the Department, Sri P. K. Ravindranatha Menon, brought to our notice the following decision in Kalpaka Tourist Home (P.) Ltd. Vs. Commissioner of Income Tax (Central), , wherein it was held that the depreciation cannot be claimed by someone without any real connection with the asset and the claimant must be one with much more than some threads of rights. Depreciation is claimable only by the owner who uses the assets in

question. In that case this court held that the Tribunal was justified in disallowing the claim for depreciation of the assessee in respect of its building on the ground that the assessee was not the owner of the building. Another decision cited was in Parthas Trust Vs. Commissioner of Income Tax, . Learned counsel for the assesses brought to our notice a decision of the Supreme Court in Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., and another decision of the Supreme Court in M/s Mysore Minerals Limited, M.G. Road, Bangalore Vs. The Commissioners of Income Tax, Karnataka, Bangalore, . In Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., , the Supreme Court has held as follows (headnote) :

"though under the common law ''owner'' means a person who has got valid title legally conveyed to him after complying with the requirements of law such as the Transfer of Property Act, the Registration Act, etc., in the context of Section 22 of the Income Tax Act, 1961, having regard to the ground realities and further having regard to the object of the Income Tax Act, namely, to tax the income, ''owner'' is a person who is entitled to receive income from the property in his own right. The requirement of registration of the sale deed in the context of Section 22 is not warranted."

3. In M/s Mysore Minerals Limited, M.G. Road, Bangalore Vs. The Commissioners of Income Tax, Karnataka, Bangalore, , the Supreme Court was considering the depreciation u/s 32 of the Income Tax Act. The Supreme Court held as follows (headnote) :

"Section 32 of the Income Tax Act, 1961, confers a benefit on the assessee. The provision should be so interpreted and the words used therein should be assigned such meaning as would enable the assessee to secure the benefit intended to be given by the Legislature to the assessee. It is also well-settled that where there are two possible interpretations of a taxing provision the one which is favourable to the assessee should be preferred.

Section 32 of the Act allows certain deductions, one of them being depreciation of buildings, etc., owned by the assessee and used for the purposes of the business or profession. The terms ''own'', ''ownership'' and ''owned'' are generic and relative terms. They have a wide and also a narrow connotation. The meaning would depend on the context in which the terms are used. Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., , is a case under the Income Tax Act and has to be taken as a trend setter in the concept of ownership. Assistance from the law laid down therein can be taken for finding out the meaning of the term ''owned'' as occurring in Section 32(1) of the Act. The term owned as occurring in Section 32(1) of the Income Tax Act must be assigned a wider meaning. Anyone in possession of property in his own title exercising such dominion over the property as would enable others being excluded therefrom and having the right to use and occupy the property and/or to enjoy its usufruct in his own right would be the owner of the building though a formal deed of title may not have been executed and registered as contemplated by the Transfer of Property Act, the Registration Act, etc. ''Building owned by the assessee'', the expression as occurring in Section 32(1) of the Income Tax Act, means the person who having acquired possession over the building in his own right uses the same for the purposes of the business or profession though a legal title has not been conveyed to him consistently with the requirements of laws such as the Transfer of Property Act and the Registration Act, etc. Generally speaking, depreciation is an allowance for the diminution in the value due to wear and tear of a capital asset employed by an assessee in his business. The very concept of depreciation sug-gusts that the lax benefit on account of depreciation legitimately belongs to one who has invested in the capital asset and is utilising the capital asset and thereby losing gradually the investment caused by wear and tear, and would need to replace the same by having lost its value fully over a period of time. It is well-settled that there cannot be two owners of the property simultaneously and in the same sense of the term. The intention of the Legislature in enacting Section 32 of the Act would be best fulfilled by allowing deduction in respect of depreciation to the person in whom for the time-being vests the dominion over the building and who is entitled to use it in his own right and is using the same for the purposes of his business or profession. Assigning any different meaning would not subserve the legislative intent."

4. In this case there is no dispute that the assessee has put up the structure. It is also a well-known concept that the property may belong to one person and the structure may belong to another person.

5. In view of the above facts and in the light of the Supreme Court decisions, we answer the question in the affirmative and in favour of the asses-see.

6. Income Tax reference is disposed of as above.