(1996) 05 RAJ CK 0036

In the Rajasthan High Court

Case No : DB IT Ref. No. 83 of 1987, May 1, 1996.

COMMISSIONER OF INCOME TAX APPELLANT

Vs

PEER KHAN CHAND KHAN. RESPONDENT

Date of Decision : 01-05-1996

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (1996) 136 CTR 308

Hon'ble Judges : V. K. Singhal, J

Bench : Division Bench

Judgement

JAIPUR BENCH

V. K. SINGHAL, J. :

The Tribunal has referred the following question of law arising out of its order dt. 14th March, 1986 in respect of the asst. yr. 1983-84 under s. 256(1) of the IT Act :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled to depreciation at 40% and not 30% on the truck and dumpers used by it in its business and also for plying them on hire" ?

2. The facts of the case as stated are that the assessee is carrying on the business of exploiting the mines and taking out stones with the help of dumpers. On these vehicles the assessee claimed depreciation at 40%. The ITO had held that special rate of depreciation at 40% was not applicable inasmuch as the assessee did not use the vehicles for any public transport business. They were being used for its own business. The depreciation was, therefore, restricted to 30%. In appeal, the AAC enhanced the rate to 40% relying on the decision in the case of Manjeet Stone Co. vs. ITO (1985) 21 TTJ 266.

3. Arguments of the learned counsel for the parties have been heard. The

decision which has been relied upon by the learned counsel for the assessee has already been overruled by this Court in the case of Commissioner of Income Tax Vs. Manjeet Stone Co., Learned counsel for the assessee has submitted that the Tribunal in respect of asst. yrs. 1981-82 and 1984-85 has accepted the contention of the assessee in this regard. From a perusal of the assessment order shows that no such point was raised and so is the position of the order of appellate authority. The Tribunal has observed that the assessee is carrying on the business of exploiting the mines and taking out stones with the help of dumpers on which the depreciation was claimed at the rate of 40%. The contention of the Revenue was that the vehicles were not used for public transport and were used by the assessee for its own business. In view of the factual position as stated, we do not feel that the assessee is entitled to raise this point at this stage, since the decision given in the case of Manjeet Stone Company relied upon, has already been reversed. It is accordingly held that the Tribunal was not justified in holding that the assessee is entitled to depreciation at 40% and not 30% on the trucks and dumpers used by it in its business and also for plying them on hire.

4. Learned counsel for the assessee has also relied upon the decision in the case of CIT vs. Champalal 1993 (1) Tax World 15. It is also stated that the Tribunal in subsequent years has considered the assessee as running on the business of truck on hire. It has also been prayed that the matter should now be remitted back to the Tribunal in the light of the decision in the case of CIT vs. Champalal (supra).

As observed above, at no point of time this contention was raised by the assessee and the ITO recorded a finding that the assessee is not engaged in the transport business and the vehicles are used for giving on hire only when they are not needed. Before the AAC this contention was not raised and the order in the case of Manjit Stone Co. (supra) was relied upon. The decision in the case of Champalal (supra) is on the application under s. 256(2) of the IT Act and it was said that the Tribunal has not applied its mind on the facts and circumstances of the case as referred to in the statement of case. Unless the question has been framed under s. 256(1) the Court cannot travel beyond what has been stated in the statement of case. The question which has been referred was decided by the Tribunal on the basis of its decision given in the cases of Manjit Stone Co. against which this Court has taken the view that the assessee is not entitled for depreciation at the rate of 40%. In these circumstances, this contention has no force.

5. Consequently, the question is answered in the negative and in favour of the Revenue and it is held that the Tribunal was not right in holding the assessee is entitled to depreciation at 40% and not 30% on the truck and dumpers used by it in its business and also for plying them on hire.

