(2006) 07 DEL CK 0091

In the Delhi High Court

Commissioner of Income Tax APPELLANT

Vs

Span Holdings Ltd. RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:

Citation : (2007) 294 ITR 83 : (2007) 158 TAXMAN 32

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

Bench : Division Bench

Judgement

1. In this appeal u/s 260A of the Income Tax Act, 1961, the revenue has challenged an order dated 20-12-2004 passed by the Income Tax Appellate Tribunal, Delhi Bench ''A in ITA No. 3/Del./2002 relevant for the assessment year 1993-94.

2. For the relevant assessment year, the assessed filed its return claiming depreciation of Rs. 50,000 in respect of bio-gas plant purchased from M/s. Western Paques India Ltd. The claim was accepted by the assessing officer in the assessment u/s 143(3) of the Act. Subsequently, a notice was issued u/s 148 of the Act on the basis that the depreciation claimed was not as per law and facts. The assessed participated in the reassessment proceedings. Written submissions were also filed before the assessing officer.

3. It appears that without giving any reason, the assessing officer disallowed the entire depreciation of Rs. 50,000. Feeling aggrieved, the assessed preferred an appeal, which was taken up for consideration by the Commissioner (Appeals). In the meanwhile, the assessing officer also initiated penalty proceedings u/s 271(1)(c) of the Act.

4. The Joint Commissioner of Income Tax imposed a penalty on the assessed against which an appeal was filed by the assessed.

5. In the appeal against the penalty proceedings, the Commissioner (Appeals) recorded several findings in favor of the assessed, which have been mentioned in paragraph 5 of the impugned order of the Tribunal. In the appeal, the

Commissioner held in favor of the assessed and set aside the penalty proceedings. Feeling aggrieved, the revenue preferred an appeal before the Tribunal, which has led to the impugned order being passed.

6. It transpires that during the reassessment proceedings, the assessing officer had required the assessed to produce the Managing Director of M/s. Western Paques India Ltd. to show the genuineness of the sale and lease back of the bio-gas plant.

7. The assessed informed the assessing officer that the Managing Director of M/s. Western Paques India Ltd. was not traceable and, Therefore, it was not possible for the assessed to comply with this requirement. The assessed then put up an alternate case of the financial transaction of the bio-gas plant.

8. We find from a perusal of the impugned order that the Tribunal has considered the findings arrived at by the Commissioner, as mentioned above in paragraph 5 of the order. The Tribunal has also taken into consideration the fact that more than five years had gone by between the original assessment and the reassessment proceedings and it was under these circumstances that the assessed was unable to produce the Managing Director of the lessee company, that is, M/s. Western Paques India Ltd. The Tribunal also noted that the assessing officer has merely stated after referring to the assesseds submission that the entire depreciation is disallowed. There was no material or evidence to show that the transaction of sale and lease back was not genuine or was bogus nor was any material brought on record in the course of the reassessment proceedings. Under the circumstances, the Tribunal declined to set aside the order of the Commissioner and, Therefore, dismissed the appeal.

9. Having perused the impugned order of the Tribunal, we are of the view that in the absence of any material having been produced by the revenue to show that the transaction of sale and lease back was not genuine or was bogus, there is no reason to interfere with the concurrent findings arrived at both by the Commissioner as well as by the Tribunal.

10. The assessed was required to produce the Managing Director of M/s. Western Paques India Ltd. after a gap of five years, which it could not do for reasons beyond its control.

11. We are of the view that under the circumstances, no substantial question of law arises for our determination.

12. Dismissed.