(2003) 05 DEL CK 0117

In the Delhi High Court

Case No : IT Ref. No. 150 of 2003 & IT Ref. No. 150 of 2003 2 May 2003

Commissioner of Income Tax APPELLANT

Vs

Suidu Trade Links Ltd. RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:

Citation : (2003) 131 TAXMAN 302

Hon'ble Judges : Madan B. Lakur, J;D.K. Jain, J

Bench : Full Bench

Advocate : Sanjeev Khanna and Subhash C. Sharma, for the Revenu, for the Appellant;

Final Decision : Dismissed

Judgement

This appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by the revenue is directed against order dated 6-9-2002, passed by the Income Tax Appellate Tribunal (hereinafter referred to as ''the Tribunal'') in ITA No. 4893 (Dei) 1997, pertaining to the assessment year 1995-96.

2. The short issue sought to be raised by the revenue in this appeal, is as to whether an assessed, who has leased out the vehicles to a third party for running them on hire, is entitled to depreciation at a higher rate or not.

3. A similar issue came up for consideration of this court in Commissioner of Income Tax Vs. Bansal Credits Limited, Pratap Singh, MGF Limited, Motor and General Finance Ltd., MGF India Limited, Rungta Irrigation Ltd. and Anuvrat (P) Limited, , and it was held that where the vehicles have been leased out by the assessed for running them on hire, he is entitled to a higher rate of depreciation. In view of the said decision, the issue raised by the revenue in the appeal does not survive for our consideration.

However, relying on our observations in Bansal Credits Ltd.''s case (supra) to the effect that before granting depreciation at higher rate, it has to be examined whether the leased out vehicles are actually being used in the business of hire or not. Mr. Sanjeev Khanna, learned senior standing counsel for the revenue, would submit that in the present case, without examining the said aspect, the Tribunal has directed grant of depreciation at a higher rate only on the ground that the vehicles had been leased out by the assessed.

4. We do not agree with learned counsel for the revenue for the simple reason that no such plea was sought to be raised on behalf of the revenue before the Tribunal. As a matter of fact, it was not even assessing officer''s case that the vehicles had not been used by the lessee on hire.

5. In this view of the matter, we decline to entertain the appeal. Dismissed.

