(2001) 10 RAJ CK 0113

In the Rajasthan High Court

Case No : IT Reference Application No. 187 of 1984

Commissioner of Income Tax — APPELLANT

Vs

Techno Centre (India) (P.) Ltd. — RESPONDENT

Date of Decision : 10-10-2001

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 256(2), 32

Citation : (2002) 122 TAXMAN 844

Hon'ble Judges : Rajesh Balia, J;Arun Madan, J

Bench : Division Bench

Advocate : J.K. Singhi, for the Appellant; Anant Kasliwal and Ashish Sharma, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Balia, J.—Heard the learned counsels for the parties. This is an application u/s 256(2) of the income tax Act, 1961 (''the Act'') at the instance of the revenue, the application u/s 256(1) having been rejected by the Tribunal to make a reference to this Court to refer the following questions said to be questions of law to this Court for its opinion:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in setting aside the order of the Commissioner (Appeals) and in restoring the case back to his file ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not confirming the findings of the Commissioner (Appeals) that in the absence of a registered deed of sale, the assessee-company could not be treated as owner of the property and that therefore the ITO was justified in rejecting the claim of depreciation?

2. Having heard the learned counsels for the parties, we are of the opinion that questions of law do arise out of the Tribunal''s order and the Tribunal was in error in rejecting the application u/s 256(1).

3. The assessee has claimed deduction on account of depreciation in respect of building in which it was carrying on its business though the building has not been transferred to the assessee by way of registered deed. The case of the assessee is that since the assessee has taken over the business of dissolved firm, no such transfer was required to be made by the registered deed by the firm which was the owner of the property in question, so as to be entitled to claim depreciation in respect of the asset in which business was carried on. It was used by it for carrying on its business.

4. The Assessing Officer has rejected the claim by holding that since the title to the property has not been transferred through a registered deed, the assessee is not the owner of the property in which business is carried on, therefore, it is not entitled to claim depreciation in respect of such property. Ultimately, this reason did not find favour with the Tribunal and the depreciation claimed by the assessee was allowed on the property in question.

5. The Tribunal has rejected the application u/s 256(1) by holding that since the Tribunal has followed its earlier order which was in consonance with the view taken by the Allahabad High Court in the case of Additional Commissioner of Income Tax Vs. U.P. State Agro Industrial Corporation Ltd., , no questions of law arise.

6. We are of the opinion that the question in the present case which calls for attention is interpretation of expression ''owned by the assessee during the previous year'' as has been used in section 32 as condition for allowing or not allowing depreciation on the assets used by the assessee for carrying on his business. This involves interpretation of statute as well as conceptual consideration of ownership in the context of the scheme of the Act. This question, in our opinion, cannot be said to be a question of fact. The question having not been decided by the highest Court of the land merely because one or more High Courts have taken one view, particularly when no decision of jurisdictional High Court has been rendered, it cannot be said that the answer to question of law raised is obvious or has been finally decided.

7. The Tribunal was not justified in declining the questions which arise out of Tribunal''s order.

8. We are of the further opinion that the questions framed by the revenue do not bring up the controversy in its right context. It needs to be modulated. In our opinion, following question of law arises for consideration: Whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing claim of the assessee for deduction on account of depreciation in respect of building in question, in respect of which no registered deed existed in its favour?

Accordingly, the application is allowed and the Tribunal is directed to state the case and refer the aforesaid question of law to this Court for its opinion.

