
(1970) 12 AHC CK 0008

In the Allahabad High Court

Case No : Income-tax Reference No. 562 of 1965

Commissioner of Income Tax

APPELLANT

Vs

Tireth Prakash

RESPONDENT

Date of Decision : 03-12-1970

Acts Referred:

Income Tax Act, 1961 — Section 43(6)

Citation : (1971) 81 ITR 27

Hon'ble Judges : V.G. Oak, C.J.;H.N. Seth, J

Bench : Division Bench

Advocate : B.L. Gupta and R.R. Misra, for the Appellant; Kameshwar and S.D. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

V.G. Oak, C.J.—This is a reference u/s 256 of the Income Tax Act, 1961 (hereafter referred to as "the Act"). The assessee is a railway contractor for building and general repair work under the Northern Railway. The assessment year is 1962-63. The relevant previous year ended on March 31, 1962.

2. The assessee had purchased a motor truck for Rs. 30,000 in May, 1958. For the assessment year 1962-63, the Income Tax Officer estimated the net income from this truck at Rs. 2,000. He observed that since net profit was being fixed, there was no question of allowing depreciation on the truck separately. At the same time the Income Tax Officer made calculation for ascertaining the written down value of the truck. According to the calculation, the written down value for the assessment year 1962-63 came to Rs. 13,360, and depreciation at the rate of 25 per cent. came to Rs. 3,340. The assessee claimed deduction on account of depreciation at the figure of Rs. 7,500 on the basis of the cost price of the truck (Rs. 30,000). The assessee's claim on this point was not accepted by the Appellate Assistant Commissioner. But, the Appellate Tribunal accepted the assessee's claim on this point. The Tribunal held that depreciation should be calculated on Rs. 30,000 which was the cost price of the truck.

3. At the request of the Commissioner of Income Tax, U.P., the Appellate Tribunal has referred the following question of law to this court:

"Whether, on the facts and in the circumstances of the case, the depreciation on the motor truck should be calculated on Rs. 30,000 or on the lower amount of Rs. 13,360 ?"

The matter is governed by Section 43(6)(b) of the Act. The expression "written down value" has been explained in Sub-section (6) of Section 43 of the Act :

" " Written down value means-- . . .

(b) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed to him under this Act, ..."

The question, therefore, arises whether depreciation was allowed to the assessee in the former assessment years either under this Act or under the Indian Income Tax Act, 1922. The department suggests that depreciation was actually allowed in former assessment years. The assessee, on the other hand, contends that depreciation was never actually allowed in earlier assessment years.

4. In VANKADAM LAKSHMINARAYANA Vs. COMMISSIONER OF Income Tax, ANDHRA PRADESH., it was held by the Andhra Pradesh High Court that written down value as provided in Section 10(5)(b) of the Indian Income Tax Act, 1922, requires depreciation actually allowed to the assessee, and not any notional allowance that might be permissible u/s 10(2)(vi) and (vii). The provision of Section 43(6)(b) of the Income Tax Act, 1961, is similar to the provision of Section 10(5)(b) of the Indian Income Tax Act, 1922. So, the principle laid down by the Andhra Pradesh High Court in Vankadam Lakshminarayana's case will govern the present case also.

5. Annexure "E" to the statement of the case is a copy of the Appellate Tribunal's order dated April 12, 1964. After referring to the decision of the Andhra Pradesh High Court the Tribunal observed that the principle of the case applies with equal force to the facts of the present case. It, therefore, appears that, according to the finding of the Tribunal, no depreciation was actually allowed in the present case in earlier assessment years, and possibly the present case is one of notional deduction.

6. Annexure "A" is a copy of the assessment order for 1962-63. The Income Tax Officer observed that since net profit had been determined, no question arose of allowing depreciation on motor truck and machinery separately. Nonetheless, he gave a calculation indicating that the written down value for the assessment year 1962-63 was Rs. 13,360, and depreciation at 25 per cent. came to Rs. 3,340.

7. Annexure "C" is a copy of the order of the Appellate Assistant Commissioner for 1962-63. In this order he referred to a previous decision of the Appellate Tribunal dated December 19, 1962, for the preceding year. The passage in the judgment of the Tribunal as quoted in annexure "C" ran thus :

"We consider that the net income of Rs. 2,000 from a truck, which was partly used as a public carrier, has not been high. As the net profit has been estimated, no question arises of allowing depreciation on the truck.. ."

That passage suggests that for the earlier year the Tribunal was not prepared to calculate a separate deduction on account of depreciation on the ground that the net profit had been fixed by estimate.

8. Both annexure "C" and annexure "E" indicate that in the earlier assessment years the assessee was not allowed any separate deduction on account of depreciation allowance. The authorities probably took into consideration some notional allowance for depreciation.

9. In Commissioner of Income Tax, Bombay City I Vs. Dharampur Leather Co. Ltd., it was held by the Supreme Court that the words "actually allowed" in Section 10(5)(b) of the Indian Income Tax Act, 1922, did not include any notional allowance. As explained above, the same principle should govern the interpretation of Section 43(6)(b) of the Income Tax Act, 1961.

10. In the present case notional allowance for depreciation appears to have been allowed to the assessee for the earlier assessment years 1959-60, 1960-61 and 1961-62. For none of these three years was any deduction actually allowed on account of depreciation. Consequently, there is no room for any deduction from the cost price as contemplated by Clause (b) of Subsection (6) of Section 43 of the Act. The written down value for the assessment year 1962-63 had to be accepted at the figure of the cost price (Rs. 30,000).

11. Our answer to the question referred to the court is, therefore, that depreciation on the motor truck had to be calculated on Rs. 30,000. The question is answered in favour of the assessee. The Commissioner of Income Tax, U.P., shall pay the assessee Rs. 200 as costs of this reference.