
(1979) 07 MAD CK 0056

In the Madras High Court

Case No : Tax Case No. 435 of 1975 (Reference No. 332 of 1975)

Dasaprakash Bottling Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 10-07-1979

Acts Referred:

Income Tax Act, 1961 — Section 28, 29, 32, 34

Citation : (1980) 14 CTR 323 : (1980) 122 ITR 9

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : K.R. Ramamani, of Subbaraya Iyer, Padmanabhan and Ramamani, for the Appellant; J. Jayaraman, for the Respondent

Judgement

This Judgment has been overruled by : Commissioner of Income Tax Vs. Mahendra Mills, AIR 2000 SC 1960 : (2000) 159 CTR 381 : (2000) 243 ITR 56 : (2000) 3 JT 405 : (2000) 2 SCALE 384 : (2000) 3 SCC 615 : (2000) 2 SCR 465 : (2000) AIRSCW 1016 : (2000) 3 Supreme 102

Sethuraman, J.—The following question has been referred at the instance of the assessee u/s 256(1) of the I.T. Act, 1961.

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in allowing depreciation even though the particulars were not furnished in the appropriate part of the return of income but they were furnished in the course of the assessment proceedings before the Income Tax Officer at the latter's requisition ?"

2. The assessee is a registered firm and for the assessment year 1970-71, filed a return on a total income of Rs. 1,93,080. In the return form, the assessee did not fill up the particulars relating to depreciation. Nor did it claim any depreciation allowance. The profit and loss account also did not contain any deduction for depreciation.

3. The ITO issued a notice calling upon the assessee to give specific reasons in

writing as to why depreciation was not claimed and why the prescribed particulars were not furnished. The notice stated also that if the assessee failed to furnish the required information, there would be an ex parte assessment. In response to this notice and to avoid any ex parte assessment and penalty proceedings, the assessee furnished particulars relating to depreciation under protest. In the letter dated 29th March, 1971, in furnishing these particulars, the assessee stated that the depreciation allowable under the Act has not been claimed inasmuch as it felt that it was not necessary having regard to the facts and circumstances of the case, and that in view of the above decision not to claim depreciation, the particulars normally required to be furnished for substantiating the claim for depreciation allowance were not given. The ITO allowed a depreciation of Rs. 1,27,589 and taxed the assessee on the balance of Rs. 65,491. As the firm is registered, only the registered firm's tax was demanded from the firm.

4. The assessee appealed to the AAC contending that the ITO should not have allowed depreciation as the assessee had not claimed the allowance. The AAC dismissed the appeal holding that, as the assessee had furnished the information subsequently, it was not open to it to claim that depreciation could not have been granted. The assessee thereafter took the matter on appeal to the Tribunal. The Tribunal was of the opinion that the ITO had acted properly in granting the allowance. It was held that it would be open to the ITO to deny the allowance whenever particulars were not furnished, but when the ITO obtained the information, he could give the deduction as envisaged under the law. It is this order of the Tribunal that has given rise to the present reference.

5. The learned counsel for the assessee submitted that, so long as the assessee did not furnish the particulars and claim the allowance, it was not open to the ITO to grant the depreciation allowance. In his submission, the particulars furnished were under protest and, therefore, should not have been taken as having been furnished by the assessee. It was also submitted that the grant of depreciation allowance is conditional on the furnishing of the particulars and the particulars not having been furnished, the assessee could not have been granted depreciation.

6. Even now it is not clear as to why the assessee is indulging in this kind of self-denial of a statutory deduction available under the law. However, we may approach the point in the light of the language of the relevant provisions. Section 28 provides that the profits and gains of any business or profession carried on by the assessee at any time during the previous year shall be chargeable to Income Tax under the head "Profits and gains of business or profession". The income referred to in Section 28 has to be computed u/s 29, in accordance with the provisions contained in Sections 30 to 43A. Section 32 provides for the allowance of depreciation in respect of bindings, machinery, plant or furniture owned by the assessee and used for the purpose of the business. This allowance is subject to the provisions of Section 34. Section 34 provides that the deductions referred to

in Sub-section (1) of Section 32 shall be allowed only if the prescribed particulars had been furnished.

7. The learned counsel for the assessee would submit that, unless the prescribed particulars had been furnished by the assessee in the return itself, the allowance could not have been granted validly by the tax officer in the present case. In requiring that the prescribed particulars should have been furnished by the assessee himself, the learned counsel for the assessee appears to read some more words in the provision which are not contained therein. Section 34 is in the nature of an enabling provision. Having u/s 29 made it a mandate on the part of the ITO to compute the income in accordance with provisions of Sections 30 to 43A, Section 34 enables the ITO not to grant the allowance if the prescribed particulars had not been furnished. It is a far cry from Section 34 to state that, unless the prescribed particulars had been furnished by the assessee, the allowance for depreciation could not under the law be granted. Reading Sections 32 and 34 together, we consider that the allowance of depreciation is available to the assessee in all cases. The ITO can disallow the claim, if the assessee did not furnish the prescribed particulars. However, it would be open to the ITO to grant depreciation even if the assessee had not furnished the prescribed particulars, as the computation of income under the Act is the computation of the real or proper statutory income; This income could be arrived at only after allowing the deductions available under the law.

8. In *Ascharajlal Ram Parkash Vs. Commissioner of Income Tax*, , the ITO allowed depreciation on a truck purchased by the assessee and used for his business. The assessee contended before the AAC that, as he had not furnished the prescribed particulars in the return for allowance of depreciation, the ITO should not have allowed depreciation. This plea was rejected by the AAC and also by the Appellate Tribunal on further appeal. The Allahabad High Court considered the legality of the allowance and pointed out at page 478 :

"In the form of return there is a section which refers to the various particulars required u/s 34(1) when a claim is made for depreciation. Now, merely because the form of the return provides for a place where the statement of such particulars should be set out does not mean that in the absence of such statement the Income Tax Officer has no power to allow the depreciation. A deduction by way of depreciation is necessary in order to arrive at the true profits or gains of the business or profession. The Income Tax Officer is bound to arrive at the true figure of such profits and gains and if in the course of assessment proceedings he comes to know of the relevant particulars necessary for the grant of deduction, he is bound to give effect to it..... We are not satisfied that merely because the assessee did not file the necessary particulars in the return filed by him, the Income Tax Officer did not have the jurisdiction to grant the allowance by way of depreciation."

9. The above passage disposes of all the contentions urged on behalf of the assessee before us and we respectfully adopt it in the present case.

10. The learned counsel for the assessee, however, submitted that there is an earlier decision of a Special Bench of this court in (sic) PR. AL. M. MUTHUKARUPPAN CHETTIAR Vs. COMMISSIONER OF Income Tax, MADRAS., and that we are bound by the said decision. In the said decision the question that arose for the consideration of this court was (p. 88):

"Is the assessee entitled in law to a deduction of Rs. 1,875 in respect of depreciation of machinery in the Wakema mill, he having leased the mill?"

11. From the question it will be clear that the owner of a mill claimed deduction in respect of the machinery which had been leased out. The disallowance was because the mill had been worked by the lessee and not by the owner. The High Court held that the disallowance was nevertheless proper and pointed out at page 89 :

"When claiming a deduction an assessee must give the particulars required by proviso (a) of Section 10(2). This he admittedly failed to do and, therefore, he was not in a position to claim the deduction. The answer to the second question is that, in the circumstances the assessee is not entitled in law to the deduction."

12. In that case, the question as to whether the ITO could grant the allowance when the assessee had not furnished the relevant particulars in the return was not in issue. The only question, that was agitated before the I.T. authorities was whether the owner of the mill was entitled to the depreciation when the mill had been granted on lease and had been worked by someone else and when the figures had not also been furnished. This court sustained the disallowance. In the view of this court, it was open to the ITO to disallow the claim for depreciation in case the assessee had not furnished the prescribed particulars. We do not understand this decision as in any manner laying down as a universal proposition of law that the ITO cannot allow depreciation in all cases where the figures had not been furnished by the assessee in the return. In the present case, it has also to be remembered that, though the figures have not been furnished in the return as such, still the figures were furnished by the assessee and the fact that it was done under protest is of no significance as far as the requirements of Section 34 are concerned. Section 34 does not state that the particulars should be furnished in the return and that too the assessee should do so on his own without any prompting by the officer. The result is, the question referred to us is answered in the affirmative and in favour of the revenue. The Commissioner will be entitled to his costs. Counsel's fee Rs. 500.