(2003) 04 AHC CK 0131

In the Allahabad High Court

Case No : Income Tax A. No. 286 of 1999

K.M. Sugar Mills Ltd. — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 17-04-2003

Acts Referred:
Income Tax Act, 1961 — Section 32

Citation : (2003) 184 CTR 42 : (2003) 262 ITR 70

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : S.K. Garg, Amit Shukla and R.S. Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—This is an Income Tax appeal u/s 260A of the Income Tax Act, 1961.

2. Heard learned counsel for the parties.

3. The petitioner has challenged the impugned order of the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, dated April 29, 1999, copy of which is annexure 4 to this appeal.

4. The relevant assessment year is 1986-87.

5. The assessee-company had purchased gas cylinders worth Rs. 39,44,650 and had claimed depreciation on such assets, at the rate of 100 per cent., which was the rate, applicable to such kind of assets.

6. In relation to the said- claim, the assessee placed on record, besides other things, the following facts :

(a) the cylinders in question had been purchased for use in the manufacture of oxygen gas, a step that had been taken by the assessee-company in the direction of diversification of its existing business activities.

(b) As the plant for manufacturing of oxygen gas could not come up, the cylinders (so purchased by the assessee at a cost of Rs. 39,44,650) were let out to two parties on September 29/30, 1985, and rental as had been earned from the said two parties had duly been credited to the profit and loss account.

7. The Assessing Officer while completing the regular assessment in terms of the order dated March 30, 1988, took the view that the said cylinders could not have been and had not been put to use during the accounting period ending on September 30, 1985, and on that reasoning rejected the claim for depreciation.

8. The Commissioner of Income Tax (Appeals) in first appeal reversed the order of the Assessing Officer on this issue and held as follows :

"(a) the assessee/respondent had purchased the cylinders and had thereby become the owner of the cylinders worth Rs. 39,44,650 ;

(b) the cylinders so purchased by it had duly been dispatched to the two parties on September 29, 1985, i.e., before the close of the relevant accounting year ;

(c) letting out of the cylinder in this case was a part of the overall business of the assessee, and for the reason that the cylinders had duly been dispatched to the hirers, it should be held that the same had been put to use by the lessor for business of hiring/letting out of the cylinders ;

(d) in the relevant accounting year itself the assessee/respondent company had received rental amount (which had been subjected to assessment also under the head ''Business income'') on the basis of which it could be said and held that the cylinders had been put to use by the assessee in the business of hiring/letting out; and

(e) thus all the requisite conditions for granting depreciation on cylinder stood fully satisfied."

9. Aggrieved the Department came in second appeal before the Tribunal and alleged that the Commissioner of Income Tax (Appeals) wrongly allowed 100 per cent. depreciation on gas cylinders particularly when they were not used during the year, and letting out for hire is not sufficient to conclude actual user in this accounting year, since the assessee''s business was not letting gas cylinders on hire. It was contended that the assessee had leased out these cylinders to the seller himself in a planned way only to claim 100 per cent. depreciation.

10. The Tribunal has held in the impugned order that the assessee has failed to establish hiring business, and the Commissioner of Income Tax (Appeals) had allowed the claim of the assessee without satisfying the conditions thereof.

11. Learned counsel for the appellant urged that the Tribunal omitted to consider the facts. Learned counsel for the appellant has relied on the decision of the Supreme Court in Commissioner of Income Tax, Karnataka, Bangalore Vs. M/s. Shaan Finance (P) Ltd., Bangalore,

12. This decision has been considered by the Tribunal and in our opinion it has

rightly been distinguished since the assessee in the present case failed to establish hiring business. In para. 20 of its order the Tribunal has held the cylinders were not purchased for leasing business and one of the parties to whom the cylinders were leased out is the manufacturer and seller of the cylinders. To the other party cylinders were dispatched only a day before the close of the accounting period. The findings in the order of the Tribunal are finding of facts and hence we cannot interfere in this appeal.

13. The appeal is rejected.

