(1986) 12 AHC CK 0014

In the Allahabad High Court

Case No : Income-tax Reference No. 92 of 1978

Saraya Engineering Works APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 16-12-1986

Acts Referred:
Income Tax Act, 1961 — Section 32

Citation : (1987) 60 CTR 51 : (1987) 168 ITR 455 : (1987) 31 TAXMAN 165

Hon'ble Judges : V.K. Khanna, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : K.B. Bhatnagar, for the Appellant; Standing Counsel, for the Respondent

Judgement

K.C. Agrawal, J.—At the instance of the assessee, the following question has been referred to us under Sub-section (2) of Section 256 of the Income Tax Act, 1961 :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in rejecting the claim of depreciation amounting to Rs. 1,44,669 on new trucks purchased in the year under consideration and also on written down value of the old trucks, etc., when full details were filed in the shape of Nos. of trucks and date of purchase ? "

2. This reference is confined to the year 1969-70.

3. The assessee is a private limited company and the gross receipt was shown at Rs. 5,46,805 against which the profit shown was Rs.34,527. In the explanation, the assessee claimed that on account of bad condition and hilly area, abnormally high expenses were incurred for the operation and repairs of vehicles. The Income Tax Officer was not satisfied with the explanation and the accounts submitted by the assessee and, as such, he made an addition of Rs. 20,000 to the contract work to bring the rate to 10%. The assessee claimed depreciation on the vehicles purchased. The Income Tax Officer disposed of this claim by

observing :

" No depreciation is allowed as the assessee has not furnished full details."

4. The assessee went up in appeal to the Appellate Assistant Commissioner of Income Tax and urged that this disallowance of Rs. 1,44,669 as depreciation was unjustified. This claim was negatived by the following observations,

" This matter has been agitated in the grounds of appeal but in the contract work, the income has been estimated and, therefore, the depreciation appears to have been considered. The point is decided against the appellant."

5. In the second appeal taken by the assessee before the Income Tax Appellate Tribunal, the Appellate Tribunal has said :

"The last ground relates to depreciation claimed at Rs. 1,44,669. The Appellate Assistant Commissioner has observed that in the contract work, the income had been estimated and the depreciation had been considered. He, therefore, decided this ground against the assessee. Learned counsel for the assessee could not show anything to us which may enable us to take a contrary view and, hence, we reject the ground."

6. Learned counsel for the assessee urged before us that the Appellate Assistant Commissioner as well as the Tribunal committed an error in not going into the merits of the claim of the assessee on depreciation and in disposing of it cursorily. The submission made by the assessee is not correct. It appears from the judgment of the Appellate Assistant Commissioner as well as that of the Tribunal that the claim of the assessee with regard to depreciation was not accepted as the same had been taken care of while dealing with the profit earned by the assessee in the contract work. In the contract work of the assessee, the income had been estimated and while estimating the income, depreciation was also taken into consideration. Once depreciation had been taken into consideration, the assessee could not get double advantage by claiming it separately from the contract work. The same is the view of the Income Tax Appellate Tribunal.

7. We have already extracted the finding of the Appellate Assistant Commissioner and the Tribunal on this point.

8. Learned counsel for the assessee invited our attention to the order of the Income Tax Officer extracted for the submission that full details had not been furnished for the entitlement of Rs. 1,44,669 as depreciation. The Income Tax Officer should have called for the same and should not have rejected the claim on a mere finding that full details had not been given. To us, it appears that if the whole of the order of the Income Tax Officer is read, a possible view to be taken is that as the depreciation had been allowed on the contract work, no claim for further amount on this head was entertainable. If the observations of the Income Tax Officer relied upon by the assessee''s counsel and extracted are read in isolation, the same would lead to an incorrect result. The Income Tax Officer

also has rejected the claim of depreciation of the asses-see on the same grounds which found favour with the Appellate Assistant Commissioner and the Tribunal. We, therefore, find no merit in this submission.

9. Consequently, we hold that the Tribunal was justified in rejecting the claim of depreciation on the new trucks purchased in the year under consideration.

10. The question is answered in favour of the Revenue and against the assessee with costs which is assessed at Rs. 300.