(1988) 12 BOM CK 0060

In the Bombay High Court

Case No : Income-tax Reference No. 85 of 1976

Shah Construction Co. Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 06-12-1988

Acts Referred:
Income Tax Act, 1961 — Section 33

Citation : (1991) 188 ITR 537

Hon'ble Judges : T.D. Sugla, J;S.P. Bharucha, J

Bench : Division Bench

Advocate : T.V. Khatri and V.B. Patel, for the Appellant; G.S. Jetley, Manjula Singh and K.C. Sidhwa, for the Respondent

Judgement

S.P. Bharucha, J.—Two questions are referred here at the instance of the assessee.

2. The first question reads thus :

"Whether, on the facts and in the circumstances of the case, the assessee is a ''manufacturing company'' ?"

3. Counsel are agreed that the answer to the first question is governed by the decision of this court in the assessee''s own case, CIT v. Shah Construction Co. Ltd. [1983] 142 ITR 696 and that the answer is in the negative and in favour of the Revenue. The first question is, accordingly, so answered.

4. The second question, as referred, reads thus :

"Whether, on the facts and circumstances of the case, the dumpers are ''road transport vehicles'' on which no depreciation is allowable u/s 33 of the Income Tax Act, 1961 ?"

5. It is agreed by counsel that the word "depreciation" in -the question should be substituted by the words "development rebate". The second question is refrained accordingly.

6. The second question is relevant in regard to the assessment year 1970-71. During the relevant previous year, the assessee purchased four Tata 1210 conventional control dumpers at a cost of Rs. 5,27,521 and claimed development rebate thereon on the ground that these formed part of the plant and machinery used in its construction business. The Income Tax Officer disallowed the claim. Before the Appellate Assistant Commissioner in appeal, the assessee referred to its business in public health engineering, intake wells for tapping underground water, asphaltic road concrete, high rise structures, low cost housing and dams and canals. It stated that it had purchased the dumpers for its heavy construction jobs for an efficient system of transport. The dumpers were not used for carrying human beings "nor are they used as carriers or as road transport vehicles (handling various types of items at a time)". The Appellate Assistant Commissioner noted that if these dumpers were road transport vehicles, they would not be entitled to development rebate, these being specifically excluded by the statute. Having regard to the material put before him as aforesaid and a brochure obtained by him from the manufacturers of the dumpers, the Appellate Assistant Commissioner concluded that they were, in the hands of the assessee, read transport vehicles.

7. The assessee carried the matter to the Income Tax Appellate Tribunal. The Tribunal noticed that the dumpers were registered as motor vehicles under the Motor Vehicles Act and had been shown in the assessee''s balance-sheet as vehicles. It also noticed that the assessee''s case was that the dumpers had been purchased to secure an "efficient system of transport". The Tribunal referred to the use to which the dumpers were put, as explained by the assessee before the Appellate Assistant Commissioner, and the manufacturer''s brochure which showed that, except for tipping arrangement activated by an oil pressure pump, the dumpers were identical to trucks. The Tribunal observed, rightly, that a road transport vehicle meant a vehicle intended to transport goods or material from one point to another by plying it on a road. It held that, in that sense, the dumpers in question, keeping in view the use to which they had been put by the assessee in the year under consideration and the purpose for which they had been purchased, were road transport vehicles.

8. The conclusion of the Tribunal is, essentially, a conclusion of fact arrived at upon a consideration of the relevant material. There is nothing in the conclusion which is unreasonable, let alone perverse. It is not, in these circumstances, for this court in a reference application to reassess the evidence.

9. The conclusion of the Tribunal must stand. The second question, reframed by us as aforesaid, is answered in the affirmative and in favour of the Revenue.

10. The assessee shall pay to the Revenue the costs of the reference.

