

(1990) 11 RAJ CK 0042

In the Rajasthan High Court

Case No : Income Tax Reference Case No. 73 of 1987

The Commissioner of Income Tax

APPELLANT

Vs

Sultan Akhtar

RESPONDENT

Date of Decision : 22-11-1990

Acts Referred:

Income Tax Act, 1961 — Section 143, 256, 260

Citation : (1990) 1 RLW 598 : (1990) 2 WLN 394

Hon'ble Judges : S.C. Agrawal, J;B.R. Arora, J

Bench : Division Bench

Judgement

B.R. Arora, J.—The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, has referred the following question of law for the opinion of this Court:

Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee is entitled to depreciation at the higher rate of 40% and not 30% on the trucks and dumpers used by the assessee for its business?

2. The assessee M/s Sultan Akhtar of Ramganjmandi was engaged in the business of mining. The assessee was using dumpers for excavating the mines and using the trucks for carrying the stones from the mines to their godowns or to the sales depot. For the assessment year 1981-82, the assessee claimed depreciation on the dumpers and the trucks @ 40%, which was allowed by the Income Tax Officer, while completing the assessment, u/s 143(1) of the Income Tax Act, but later-on, it was noticed by the Income Tax Officer that the depreciation has wrongly been allowed to the assessee @ 40% and he, therefore, issued a notice to the assessee u/s 143(2) of the Income Tax Act and revised the assessment order and allowed the depreciation on the dumpers and the trucks @ 30% only. Dissatisfied with the order passed by the Income Tax Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who, by his order dated September 5, 1985, dismissed the appeal so far as allowing the depreciation @ 30%, but partly allowed the appeal on other

grounds, i.e., on the ground that the dumpers used by the assessee are mining machinery and should have been allowed depreciation at the rate applicable to the mining machinery. Aggrieved with the order passed by the Commissioner of Income Tax (Appeals), directing the Income Tax Officer to treat the dumpers as mining machinery and to allow depreciation on this ground, the Revenue filed an appeal before the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur. The Tribunal, treating the dumpers as the trucks, allowed the depreciation @ 40%, both for trucks and dumpers. Dissatisfied with the order passed by the Tribunal, the Revenue moved an application u/s 256(1) of the income Tax Act before the Income Tax Appellate Tribunal, requesting the Tribunal to refer the question of law mentioned in the application for the opinion of the High Court, which, according to the Revenue, arises out of the order passed by the Tribunal and the Tribunal, by its order dated June 16, 1987 referred the question of law, mentioned in Para No. 1 above, for the opinion of this Court.

3. The dumpers were used by the assessee for excavating the stones from the mines and it is an admitted position that they are not used for hiring and it is not even the case of the assessee that the dumpers were used for hiring. The trucks were also used for carrying the stones from quarry to go down or to the sale depot.

4. We have heard the learned Counsel for the petitioner as well as the counsel for the assessee. The question which requires consideration is whether the assessee is entitled to. Depreciation @ 40% or @ 30% on the trucks used by it is its business?

5. Rates at which the depreciation is admissible have been provided in the "Depreciation Table" given in Appendix-1 Part I of the Income Tax Rules 1962. In the table of Rates of Depreciation, there are two entries relating to the motor buses, and motor lorries, which provide the "Rate of Depreciation" allowable on these items and which read as under:

(ii) D(9)--Motor buses and motor lorries other than those used in a business of running them on hire (NESA) = 30% "111(H)E(1-A)-Motor buses, motor lorries and motor taxis used in a business or running them on hire (N.E.S.A.) = 40%

6. The Central Board of Direct Taxes issued instruction in the year 1973 declaring that the dumper and forklift trucks would be classified under item III (ii) D (9) of Appendix-1 to the Income Tax Rules, 1962 and would be entitled to depreciation at the rate of 30%.

7. The same question came-up for consideration before us in D.B. Income Tax Reference Case No. 77/1985 (Vie Commissioner of Income Tax, Jaipur v. Manjeet Stone Company, Kota), which we have decided today, wherein, while answering the question in favour of the Revenue, we have held that as the truck has been used by the assessee in its business, therefore, the case of the assessee is covered by Entry No. III (ii) D (9) and not by Entry No. III (ii) E (1-A) of Part I of Appendix-1 appended to the Income Tax Rules, 1962 and as such, the assessee

is entitled for depreciation @30% and not @ 40%.

8. For the reasons given in D.B. Income Tax Reference Case No. 77/1985 (The Commissioner of Income Tax, Jaipur v. Manjeet Stome Co., Kota), we are of the opinion that the assessee is entitled for depreciation @ 30% and not @ 40% on the trucks used by it for its business. The question referred is, there for, answered in negative, i.e., in favour of the Revenue and against the assessee. No order as to costs.

9. Let the answer be returned to the Tribunal in accordance with Section 260(1) of the Income Tax Act.