

(1973) 07 GUJ CK 0006

In the Gujarat High Court

Case No : Sales Tax Reference No's. 3 and 4 of 1972

The State of Gujarat

APPELLANT

Vs

Premraj Ganpatram and Another

RESPONDENT

Date of Decision : 11-07-1973

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 61

Citation : (1974) 33 STC 159

Hon'ble Judges : B.K. Mehta, J;A.D. Desai, J

Bench : Division Bench

Advocate : G.N. Desai, Govt. Pleader, instructed by Bhaishanker Kanga and Girdharlal, Govt. Solicitors, for the Appellant; S.L. Mody, for the Respondent

Judgement

Mehta, J.—As both these references raise identical questions, we intend to dispose them of by this common judgment.

2. The facts giving rise to the Sales Tax Reference No. 4 of 1972 are as under :

The opponent-firm is a financing agency and carrying on business of supplying motor truck chassis to its customers on hire-purchase basis. It is registered as a dealer under the Bombay Sales Tax Act, 1959. It was assessed for the period commencing from 1st April, 1961, to 4th November, 1964. For the purposes of the assessment, the Sales Tax Officer included in the gross turnover of sales the total amount paid by the customers including the sums, which, according to the opponent-firm, were towards interest and finance service commission. The total amount of turnover for which the opponent-firm was assessed in the aforesaid period was to the tune of Rs. 27,30,723. The Sales Tax Officer allowed depreciation at the rate of 15 per cent on the said aggregate amount on the turnover and gave a deduction of Rs. 4,87,115. The depreciation was calculated as per straight line method. It should be noted, however, that the opponent-firm had claimed depreciation at the rate of 25 per cent per annum. The opponent-firm, therefore, took the matter in appeal before the Assistant Commissioner of Sales Tax. It contended in the said appeal that the depreciation should have been

allowed at the rate of 25 per cent as available under the Indian Income Tax Act. The second contention was that the interest and service charges should not have been included in the turnover as well as the additional interest charged for the late payment ought to have been further excluded. The Assistant Commissioner of Sales Tax rejected all these contentions by his order of 31st July, 1970. The opponent-firm, therefore, took the matter in second appeal before the Gujarat Sales Tax Tribunal. The Tribunal, for purposes of determining the sale price, relied on the decision of the Supreme Court in K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III, . It appears that the Tribunal was impressed with the illustration given in K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III, and on the basis of the rate which worked out in the said illustration the Tribunal was of the opinion that the reasonable rate of depreciation, which should be allowed to be deducted, should be 25 per cent per annum. However, the depreciation should be allowed for the actual period for which the hire-purchase agreement remained in force and up to the date the hirer exercises his option as a purchaser. On the second contention of the opponent-firm that the amount of interest, service charges as well as the additional amount of interest for committing default in paying instalments in due date should be excluded, the Tribunal held that the opponent-firm was not justified in claiming those deductions. The Tribunal was of the opinion that the gross price including the option price paid by the opponent-firm should be considered the basic price from which depreciation at the rate of 25 per cent should be deducted in order to arrive at a correct sale price following the decision in K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III, . At the instance of the State the following question is referred to us for our opinion :

"Whether, on the facts and in the circumstances of the case, there was any evidence before the Tribunal to justify the finding that the depreciation should be allowed at the rate of 25 per cent on the truck taken on hire-purchase ?"

3. As the Tribunal has rejected the contention of the opponent-firm that the amount of interest, finance service charges and additional amount of interest for default should be excluded, the opponent-firm prayed for reference and the Tribunal has, therefore, referred the following question to us as far as this contention was concerned :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in determining the "sale price" in case of hire-purchase transaction as "hire-purchase value", which is composed of real price of the vehicle and the amounts of interest on that price, finance service commission and extra interest for late payment of hire-purchase instalments ?"

4. In Sales Tax Reference No. 3 of 1972 the facts shortly stated are as under :

The opponent-firm is a financing agency dealing in supply of motor trucks and cars on hire-purchase basis to its customers and is duly registered under aforesaid Act. The Sales Tax Officer Assessed the opponent-firm by his common

order of 22nd July, 1963, for the period commencing from 1st January, 1969, to 29th July, 1963, as a dealer in motor vehicles. Being aggrieved with this order, the opponent-firm took the matter before the Assistant Commissioner of Sales Tax where the question of the depreciation only was raised. Though the Assistant Commissioner partially allowed the appeal, he did not accept the claim of the opponent-firm that the depreciation at the rate of 25 per cent on trucks and 20 per cent on cars should be allowed to be deducted.

The opponent-firm, therefore, took the matter in second appeal before the Tribunal. One of the contentions before the Tribunal was that the Sales Tax Officer has erred in granting depreciation at the rate of 12 per cent on trucks and 10 per cent in the case of cars and on the principle of the earlier decision of the Tribunal in *M/s. Premraj Ganpatram Finance Department v. State of Gujarat*, Second Appeal No. 258 of 1970 decided on 29th January, 1971 (out of which Sales Tax Reference No. 4 of 1972 has arisen), the depreciation at the rate of 25 per cent should have been allowed. The Tribunal accepted the contention of the opponent-firm, which was the appellant before it, and allowed the depreciation at the rate of 25 per cent. However, as regards the supply of cars the Tribunal was of the opinion that the same rate of depreciation allowable in cases of trucks cannot be granted and, therefore, the Tribunal was of the opinion that having regard to the rate of depreciation allowed for trucks, namely, 25 per cent, the depreciation at the rate of 20 per cent should be allowed in the case of supply of cars. At the instance of the State, therefore, the following question has been referred to us for our opinion :

"Whether, on the facts and in the circumstances of the case, there was any evidence before the Tribunal to justify the finding that the depreciation should be allowed at the rate of 25 per cent on the motor trucks and 20 per cent on the motor cars taken on hire-purchase ?"

5. The next question, therefore, which arises in both these references is what should be the rate of depreciation and the quantum of sale price which is to be the basis of taxation; whether the entire hire should be taken as a sale price or the sum which the hirer pays at the time of exercising option should be taken as the basis. It appears from the order of the Tribunal that the Tribunal was very much impressed with the rate of depreciation which had worked out in the example taken by the Supreme Court in its decision in *K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III*, . The Supreme Court, after considering the particular example given before it in a hire-purchase agreement, where the original price Rs. 5,000 and where the hirer was to pay hire-purchase price of Rs. 6,487-6-0 in seventeen instalments, the court observed as under :

"The real position in our opinion as to the price of the vehicle when the option is exercised would be this. Its value at that time is neither Re. 1 which is the nominal amount to be paid for the option nor the entire amount which is paid as hire including Re. 1. The value must be something less than the original price, which in the example mentioned by us above was Rs. 5,000. In order to arrive at

the value at the time of the second sale to the hirer, the sales tax authorities should take into consideration the depreciation of the vehicle and such other matters as may be relevant in arriving at such price on which the sale can be said to have taken place when the option is exercised, but that price must always be less than the original price (which was Rs. 5,000 in the example given above by us)."

6. However, the Supreme Court, after following the decision in *Darngavil Coal Company v. Francis* ((1913) 7 Tax Cas. 1), held as under :

"This case in our opinion brings out the true nature of the payment made as hire in hire-purchase agreement. Part of the amount is towards the hire and part towards the payment of price, and it would be for the sales tax authorities to determine in an appropriate way the price of the vehicle on the date the hirer exercises his option and becomes the owner of the vehicle after fulfilling the terms of the agreement. There is no legislative guidance available as to how this should be done and perhaps it would be better if the Legislature gives guidance in such matters. But even in the absence of legislative guidance it would be for the sales tax authorities to decide as best they can the value of the vehicle on the date the option is exercised, and the property passes to the hirer. There may be two ways of doing it. The sales tax authorities may split up the hire into two parts, namely, the amount paid as consideration for the use of the vehicle so long as it was the property of the owner, and the payment for the option on a future date to purchase the vehicle at a nominal price. If the first part is determined the rest would be towards the payment of price. The first part may be determined after finding out the proper amount to be paid as hire in the market for a vehicle of the type concerned, or in such other way as may be available to the sales tax authorities. The second method may be to take the original price fixed in the hire-purchase agreement and to calculate the depreciation and all other factors that may be relevant in arriving at the price when the second sale takes place to the hirer including the condition of the vehicle at the time of the second sale. It is therefore for the sales tax authorities to find out the price of the vehicle on which tax has to be paid in either of the ways indicated by us above or such other way as may be just and reasonable."

7. In our opinion, though the Supreme Court has indicated three methods for purposes of determining sale price, which should be the basis for the liability of taxation, the sales tax authorities can determine the same by adopting any of the three methods. In the case before us, it appears that the Tribunal has selected the second method of allowing deduction on account of depreciation from the amount of the entire hire to be paid for the period for which the vehicle was in use, so that the sale price may not, in any case, exceed the original price of the vehicle. The Tribunal, however, while actually deciding what should be the rate of depreciation, has been impressed solely by the rate of depreciation which worked out in an illustration taken in the case of *K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III*, by the Supreme Court. Not only

that, but the Tribunal has, as it clearly appears from the order, ruled as if that rate, namely, 25 per cent, is the reasonable rate of depreciation for all vehicles such as trucks in the case of hire-purchase agreement for purposes of deduction from the entire amount of hire so as to work out the sale price. On behalf of the opponent-firm a serious attempt was made in Sales Tax Reference No. 4 of 1972 to impress upon us that the Sales Tax Tribunal has not solely on the rate of depreciation that worked out in the illustration before the Supreme Court in K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III, , but has, as a matter of fact, taken into consideration the entire evidence which included the claim of the assessee, the figures worked out at different rates for depreciation on the price of the vehicle, the other material in that connection placed on the record before the taxing authorities and also the rate of depreciation that worked out in the illustration before the Supreme Court in the above referred case. Now, we must state frankly that we are not at all impressed by this contention of Mr. Mody for the simple reason that in the order of the Tribunal, we have not found in the discussion as to the evidence on the basis of which the Tribunal reached the conclusion that the rate of 25 per cent would be a reasonable rate of depreciation in the particular case before it. Not only there is no discussion but there is no finding to that effect, either made expressly or which we can spell out impliedly from reading the order as a whole. On the contrary, we are of the opinion that the Tribunal has ruled, as if the rate of 25 per cent is a reasonable rate of depreciation for vehicles such as trucks in hire-purchase agreements for purposes of determining the sales tax liability. It should be noted that on behalf of the opponent-firm it was urged before the Tribunal that the Sales Tax Officer should have given depreciation at the rate which may be prevalent from time to time under the Indian Income Tax Act. That contention was positively ruled out by the Tribunal because in its opinion that rate cannot be relevant consideration for purposes of determining the sale price. The Tribunal then proceeded to consider the effect of the illustration given in the decision of the Supreme Court in K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III, and it held in paragraph 6 of its order as under :

"... In the example given by the Supreme Court in the case relied upon by Mr. Shah a vehicle costing Rs. 5,000 is given on hire for Rs. 6,487-6-0 to be paid in 17 monthly instalments. It was observed that the depreciation value on the day of exercise of the option to purchase the vehicle should be less than Rs. 5,000. Considering the cost price, the instalments and the period, the depreciation in the said illustration comes to 25 per cent per year and that on the depreciated value at 25 per cent per annum for the further period which comes in 5 months. It would, therefore, appear that the rate of 25 per cent per annum would be reasonable rate of depreciation for vehicles. This should be allowed on the basis of the actual period of use and not at the flat rate on the total amount of hire-purchase ..."

8. From the above conclusion, Mr. Mody was asked to point out from any of the paragraphs of the order of the Tribunal, where the evidence has been discussed

or where the reasons might have been assigned for reaching the aforesaid conclusion, and he has not been able to point out from the above or any other part of the order from which such a conclusion can be justifiably arrived at on some evidence.

9. Mr. Mody, however, made a strenuous effort to urge before us that this is entirely a question of fact and by no stretch of imagination it can be said a question of law and, therefore, this court should not, in exercise of its jurisdiction u/s 61 of the Bombay Sales Tax Act, interfere with the order of the Tribunal. It is no doubt true, as held in *SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS.*, that finding on pure questions of fact arrived at by the Tribunal cannot be disturbed by the High Court on a reference unless it appears that there was no evidence before the Tribunal upon which they, as reasonable men, could come to the conclusion to which they have come; and this is so, even though the High Court would on the evidence may come to a conclusion entirely different from that of the Tribunal. It is also true, as held in *SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS.*, that when a conclusion has been reached on an appreciation of a number of facts established by the evidence, whether that is sound or not must be determined, not only by considering the weight to be attached to each single fact in isolation but by assessing the cumulative effect of all the facts in their setting as a whole. In other words, it is an established position of law that the jurisdiction of the court in a reference is not to disturb a finding of pure fact arrived at by the Tribunal unless on the ground that there is no evidence whatsoever to support it or that it is preserve. As stated by us above, we have not been pointed out any part of the order where the Tribunal has discussed the evidence; much less it reached the conclusion on legal evidence, which can be said to have been established by facts. As stated by us above, the Tribunal was very much impressed by the rate of depreciation, which worked out in the illustration before the Supreme Court, which in the particular case, having regard to the actual period of user as well also the period under the particular hire-purchase agreement worked out at a rate of 25 per cent. On the plain reading of that part of the order, namely, paragraph 6 of the order of the Tribunal, we are of the opinion that the Tribunal has ruled, as a matter of principle, that in cases of hire-purchase agreements of trucks 25 per cent is the reasonable rate of depreciation. Mr. Mody, therefore, pointed out to us a decision of the Supreme Court in *Gouri Prasad Bagaria and Others Vs. Commissioner of Income Tax, West Bengal*, where an assessee was sought to be assessed for a sum of Rs. 72,523 as income from undisclosed source. It was an admitted position in that case that the assessee got that amount by sale of gold. But it was contested that the assessee had gold with him since 1918, which he claimed to have been purchased in Bombay when that metal was cheap. The Income Tax Officer, therefore, assessed that amount as an income from undisclosed sources. In the appeal before the Tribunal, the Tribunal was satisfied by the statement of the assessee which, in their opinion, has a bearing of truth and, therefore, excluded

that sum from the income of the assessee. In the reference to the High Court, the High Court called for a supplementary statement of facts as regards certain details, viz., whether the assessee was examined by the Appellate Bench of the Tribunal, whether there was any record of such examination, and if there was no record, whether in fact he was examined, and further, if there was no record, whether the members concerned were in a position to remember the oral statement of the assessee. After submission of the supplementary statement, the High Court was of the opinion that there was no evidence whatsoever to justify the conclusion reached by the Tribunal. In appeal before the Supreme Court, the court was of the opinion that there was no question of law, having regard to the fact that the Tribunal believed the assessee's word in view of his conduct and past history as they had been able to see, and, therefore, if the finding of the Tribunal was based upon good material on which it was based, no question of law arose. The appeal was, therefore, allowed and the order of the High Court was reversed. We have not been able to appreciate how this decision can be of any use to the case of the opponent-firm here as pressed into service by Mr. Mody. In that case before the Supreme Court, the Tribunal was convinced about the veracity of the statement of the assessee and reached its conclusion that the amount sought to be taxed was not from undisclosed sources, but was a regular income which could not be taxed as was sought to be done by the Income Tax Officer. As stated by us, in the present case, there is no discussion about the evidence, nor any conclusion reached as a result of the appreciation of such evidence. To repeat, what has been done by the Tribunal is to adopt and apply mechanically a rate of depreciation, which worked out in a particular illustration before the Supreme Court in *K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III*, . It is not only held that the rate of depreciation, namely, 25 per cent was reasonable as far as the opponent-firm in Sales Tax Reference No. 4 of 1972 was concerned, but on a reading of that part of the order of the Tribunal it appears clearly that the Tribunal laid it down, as a matter of principle for which, to say the least, there was no warrant. As stated by the Supreme Court in *K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III*, , that there is no legislative guidance available to determine in an appropriate way the price of the vehicle on the date the hirer exercises his option and becomes the owner of the vehicle. The court, therefore, suggested two alternatives to determine the price. The Supreme Court observed that the second method may be "to take the original price fixed in the hire-purchase agreement and to calculate the depreciation and all other factors that may be relevant in arriving at the price when the second sale takes place to the hirer including the condition of the vehicle at the time of the second sale". The taxing authorities have not merely to compute the depreciation at the fixed rate irrespective of the other relevant considerations, such as nature of vehicle, condition of vehicle, the use to which it is put to, etc. In that state of affairs, therefore, we do not think that we can answer this question in favour of the assessee.

10. The result is, therefore, that in Sales Tax Reference No. 4 of 1972, we

answer the first question as under :

"On the facts and in the circumstances of the case, there was no legal evidence before the Tribunal to justify the finding that the depreciation should be allowed at the rate of 25 per cent on the truck taken on hire-purchase."

11. The second question deals with what should be the basis for purpose of deduction of the depreciation; whether it should be the price agreed upon by the parties in the hire-purchase agreement so as to include the interest as well as the debt and finance charges or it should be the original price. Mr. Mody has submitted that the original price should be considered as basic price for purpose of working out the sale price by making suitable deduction on account of depreciation. We do not think that this contention is open to Mr. Mody in view of what has been held by the Supreme Court in *K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III*, . In other words, for purposes of determining sale price, the deduction on account of depreciation should be made from the entire hire price agreed upon between the parties under the hire-purchase agreement and not from the original price of the vehicle at which the financing agency or the hirer had agreed to purchase the vehicle from the original dealer. The second question, therefore, should be answered as follows :

"On the facts and in the circumstances of the case, the Tribunal was justified in determining the sale price in case of hire-purchase transactions as the hire-purchase value which is composed of real price of the vehicle and the amounts of interest on that price, finance service commission and extra interest for late payment of hire-purchase instalments."

12. In Sales Tax Reference No. 3 of 1972, the Tribunal has merely followed its earlier decision in *M/s. Premraj Ganpatram Finance Department v. State of Gujarat*, Second Appeal No. 258 of 1970 before it, decided on 29th January, 1971 (out of which Sales Tax Reference No. 4 of 1972 has arisen). It appears that the Tribunal has allowed depreciation at the rate of 20 per cent as far as cars were concerned, having regard to the nature of the said vehicles. For the same reasons, which we have discussed above, there was no evidence worth its name before the Tribunal to justify the finding of allowing the aforesaid rates of depreciation for different classes of vehicles. On the contrary, it has followed its own decision in *M/s. Premraj Ganpatram Finance Department's* case, referred to hereinabove, which in its turn has been decided merely by relying on the rate of depreciation which worked out in the illustration of the Supreme Court as stated above. Our answer, therefore, to the question in Sales Tax Reference No. 3 of 1972 is that :

"On the facts and in the circumstances of the case, there was no legal evidence before the Tribunal to justify the finding that the depreciation should be allowed at the rate of 25 per cent on motor trucks and 20 per cent on motor cars taken on hire-purchase."

13. In both the references, there should be no order as to costs.

14. References answered accordingly.