

Arvind Construction Co. Ltd. Vs. Assistant Commissioner of

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jul-12-1994

Reported in : (1994)51ITD79(Delhi)

Judge : R Mehta, B Saluja

Appellant : Arvind Construction Co. Ltd.

Respondent : Assistant Commissioner of

Judgement :

1. The assessee-company has filed the present appeal against the order dated 30-10-1989 of the Commissioner of Wealth-tax (Appeals)-IX, New Delhi on the following ground : The learned Commissioner of Wealth-tax (Appeals) erred in law and on facts of the case in holding that the jeeps and jongs are motor cars for the purpose of Section 40 of the Finance Act, 1983 and, therefore, includible in computing the net wealth liable to tax.

The assessee-company filed a return on 24-8-1984 showing a wealth of Rs. 5,76,400. The assessing officer issued a notice and required the assessee to show cause why the value of jeeps may not be included in the net wealth of the assessee since motor car includes jeeps. Relying on the decision of the Kerala High Court in the case of Commissioner of Agricultural Income-tax v. Good Hope Plantation [1988] 170 ITR 173, the assessing officer included the value of jeeps in the taxable wealth of the assessee-company.

2. The CWT (Appeals), following the said Kerala High Court judgment confirmed the action taken by the Assistant Commissioner of Wealth-tax in including the value of jeeps in the taxable wealth of the assessee company. Aggrieved by the orders of the first appellate authority, the assessee has filed the present appeal before the Tribunal.

3. The learned counsel for the assessee company invited attention to the decision of the Tribunal, Delhi Bench "S" in the case of Kudos International v. IAC 1987 SOT 1.137-1.139. In the said decision the dispute related to working of disallowance under Section 37(3A) of the I.T. Act read with Explanation (c) thereto. It has been observed in the said decision that "the intention behind the insertion of Section 37(3A) was to disallow part of only car expenses as was apparent from Explanation (c) where also the reference had been made for expenditure on hire charges for engaging cars. Jeeps were not normally plied on hire. In Webster's Encyclopaedia 'jeep' had been defined as a light motor utility truck designed in the World War-II. Further, our attention was drawn to a judgment of the Allahabad High Court in Gopal Enterprises v. CST [1979] UPTC 1129 wherein the dispute related to the rate of sales-tax on Matador station wagon and his Lordship held that the words 'motor car' must be given a restricted meaning. Station wagon sold by the assessee although used by passengers would fall in residuary category of the notification as they were not vehicles commonly used by the passengers like other cars. A copy of the relevant provisions and of the U.P. Sales-tax Act was also produced to show that motor-cars and jeeps were treated as separate items for various purposes". In para 3 of the said decision the Tribunal further observed that "running of jeep would not be a wasteful expenditure keeping in view the nature of the assessee's business. Travelling by jeep could not be considered to be an amenity granted to any employee or a partner availing of the same for making him more comfortable. Since the Allahabad High Court had already drawn a distinction between a motor-car and similar other vehicle plying on the roads for the purposes of sales-tax classification, we are of the opinion that keeping in view the spirit of this provision and the nature of the assessee's business, the expenses incurred on running and maintenance of jeep should not be subjected to disallowance under Sub-section (3A) of Section 37". Regarding the decision of the Kerala High Court in the case of Good Hope Plantation (supra),

the learned counsel pointed out that the said decision was for interpretation of entry IIIB(i) of Rule 9 of the Kerala High Court Agricultural Income-tax Rules, 1951 for the purpose of allowing deduction and that the said decision should not be relied upon for including "jeep" within the expression "motor-car". The learned counsel also submitted that the purpose of Section 40 of the Finance Act, 1983 should be kept in view while interpreting the expression "motor-car".

4. The learned departmental representative mainly relied on the orders of the tax authorities. The learned departmental representative further stated that the Kerala High Court had actually gone into the meaning of the expression "motor-car" and followed the dictionary meaning as given in the Concise Oxford Dictionary, that is, "in common parlance, a jeep is understood as a sturdy motor-car". The said High Court also held that the said meaning is in harmony with the definition of "motor-car" under the Motor Vehicles Act [section 2(16)]. In order to meet the point raised by the learned counsel that the aforesaid decision of the Kerala High Court is distinguishable, the learned departmental representative also pointed out that the decision of the Tribunal in Kudos International's case (supra) is also distinguishable in the same manner and on the same plea.

5. We have carefully considered the rival submissions. The decision of the Kerala High Court relates to allowing deduction under Section 5 of the Kerala Agricultural Income-tax Act, 1950 and has considered the meaning of the word "jeep" keeping in view the said provisions.

Similarly, in the decision of the Tribunal mentioned above, which relates to disallowing wasteful expenditure, reliance has been placed on the decision of the Allahabad High Court in Gopal Enterprises' case (supra) wherein certain notifications relating to levy of sales-tax were interpreted. A perusal of the notification No.ST-II-2956/X-6(17)-76 dated 20-5-1976 shows that sales-tax at the rate of 7% was leviable on motor cars; sales tax at the rate of 9% was leviable on motor trucks and motor buses, including their chassis and motor bodies built thereon; and sales-tax at the rate of 12% was leviable on "all other motor vehicles" including their chassis and motor bodies of all shapes and designs. Thus "motor-car" was mentioned as a separate item for taxation purposes and naturally

vehicles like Matador station wagon would have attracted sales-tax at the rate of 12% as the same would fall in the residuary category of "all other motor vehicles". In view of the foregoing discussion, we are of the view that the said two decisions are clearly distinguishable. Present case falls under Section 40(3)(vii) of the Finance Act, 1983 where under value of motor cars is includible in the net wealth of a company so as to be taxable. Though in the case of a statute levying a tax strict meaning of the words used is to be applied yet such a rule of interpretation cannot curtail or cut down the plain meaning of the words used by the Legislature. Further, while interpreting the words "motor-car" it may also have to be seen as to what was the intention of Parliament in levying the wealth-tax on closely-held companies. In this connection a reference may be made to the relevant part of the Budget speech of the Finance Minister at the time of introduction of the Finance Bill, 1983.

The relevant extract as reported in ITR 140 at page 32 (Statutes) is reproduced here for facility of reference : It has come to my notice that some persons have been trying to avoid personal wealth-tax liability by forming closely-held companies to which they transfer many items of their wealth, particularly jewellery, bullion and real estate. As companies are not chargeable to wealth-tax and the value of the shares of such companies does not also reflect the real worth of the assets of the company, those who hold such unproductive assets in closely-held companies are able to successfully reduce their wealth-tax liability to a substantial extent. With a view to circumventing tax avoidance by such persons, I propose to revive the levy of wealth-tax in a limited way in the case of closely-held companies.

Since the expression "motor car" has not been defined in the Wealth-tax Act, the normal rule of interpretation would be to follow the dictionary meaning of the said expression. The expression "motor car" has been given meaning in the Shorter English Dictionary, Volume 2 (1973 Edition), at page 1362 as a carriage propelled by a motor, for use on ordinary roads. Similarly in Living Webster's Encyclopaedic Dictionary of the English Language (1977 Edition), at page 624, the expression "motor-car" has been given the meaning as "automobile".

Further at page 68 of this dictionary the expression "automobile", has been given the meaning as "a four-wheeled vehicle, esp. car for passengers carrying its own propelling mechanism usually an internal combustion engine; a motor car". Similarly in Concise Oxford Dictionary (1990 Edition), at page 167 the expression "car" has been given the meaning as "car - n. 1 (in full motor-car) a road vehicle with an enclosed passenger compartment, powered by an internal combustion engine". In view of these definitions and having regard to the intention of the legislation we hold that the expression "motor-car" as used in Section 40(3)(vii) of the Finance Act, 1983 will include jeeps and jongs and their value will be includible in the net wealth of the assessee-company. Accordingly, we confirm the order of the CIT (Appeals).

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