

Chawla Architects and Vs. Assistant Commissioner of

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Mar-05-1995

Reported in : (1995)54ITD330(Mum.)

Judge : M Chaturvedi, G Veerabhadrapa

Appellant : Chawla Architects and

Respondent : Assistant Commissioner of

Judgement :

1. This appeal by the assessee arises out of the order dated 30-9-1994 of the Commissioner of Income-tax (Appeals) for the assessment year 1990-91.
2. The main ground of appeal relates to disallowance of depreciation of Rs. 10,07,016 in respect of gas cylinders.
3. The assessee is a company mainly engaged in the profession of Architects and Consultants. From the previous year relevant to the assessment year 1982-83, the assessee claimed to have started a leasing business. The leasing activity is in connection with gas cylinders. The assessee claimed 100 per cent depreciation on gas cylinders. It has been the case of the assessee that all along the department has allowed the depreciation on gas cylinders except in the assessment year under appeal. In the year under appeal, the Assessing Officer found both from the past records and subsequent records that the assessee had purchased and sold gas cylinders. From this, it was concluded that the gas cylinders are nothing but

the stock-in-trade of the assessee and, therefore, it was concluded that the assessee was not entitled to depreciation on gas cylinders. The learned Commissioner of Income-tax (Appeals) agreed with the conclusion reached by the Assessing Officer and the assessee is aggrieved.

4. The learned counsel for the assessee submitted that the gas cylinders were part of its plant and machinery and the assessee is in the leasing business and has earned substantial rentals from leasing these cylinders and from year to year the rentals are accepted by the department as business income and in all the earlier years the department has granted the depreciation. The assessee, the learned counsel submitted, is in the business of leasing of gas cylinders and not in the business of dealing in gas cylinders. The assessee's learned counsel also pointed out that the assessee had made substantial investment in the leasing activity of gas cylinders. The total investments made in gas cylinders right from the assessment year 1982-83 are filed in the paper book at page 85. As regards the rent received, our attention was drawn to the details placed at page 86 of the paper book. The learned counsel for the assessee drew our attention to the findings of the Assessing Officer in the assessment year 1982-83 wherein the Assessing Officer found that a new business of giving cylinders on rental basis was started in the assessment year 1982-83 (page 32 of the paper book). The assessee had also filed the Memorandum and Articles of Association of the company. Our attention was drawn to Clause 26 of the objects clause of the Memorandum of Association, which specifically authorises the company to do the business of leasing. The learned counsel pointed out that inasmuch as the cylinders are used in the business of leasing, the assessee is entitled to depreciation at the rate prescribed in Appendix I to the Income-tax Rules. The learned counsel for the assessee pointed out that a number of items of plant and machinery are entitled to depreciation @ 100 per cent. The learned counsel for the assessee pointed out that the assessee's case falls under item III(3) v) of the depreciation Schedule. Therefore, the assessee should be granted depreciation as per its entitlement. The learned counsel for the assessee pointed out that the department is not justified in denying the deduction by holding the gas cylinders as stock-in-trade. The learned counsel for the assessee pointed out that assessee also makes sale of these gas cylinders whenever they have outlived their utility

and has offered the whole of the sale proceeds to taxation. The learned counsel for the assessee pointed out that there is no device or tax planning just to avoid the payment of tax.

5. The learned departmental representative, on the other hand, strongly supported the order of the CIT (Appeals). According to him, the assessee is not entitled to the depreciation as the gas cylinders are only in the nature of stock-in-trade. The learned departmental representative further contended that gas cylinders are different from cylinders. He took an analogy of matchbox and an empty matchbox to argue that the assessee has only dealt in cylinders and not the gas cylinders, i.e., cylinders filled with gas and, therefore, under the item III(3)(v), the assessee is not entitled for any depreciation at 100 per cent. According to him, what are referred to in that item are cylinders filled with gas. Drawing our attention to page 85 of the assessee's paper book, it was argued by the learned departmental representative that it is clear from the sale proceeds of the cylinders that the assessee, in fact, made profit on sale of the cylinders.

According to him, the depreciation is normally granted to an asset which depreciates or loses its value on account of user of the asset.

There is no depreciation but there is an appreciation in the value of the asset by the lapse of time. Therefore, according to him, the assessee is not entitled for any depreciation. Drawing our attention to page 84 of the assessee's paper book further argued that it is a tax planning device by Chawla group of companies. According to the learned departmental representative, it is an arrangement whereby the income is distributed between the different family concerns of Chawla group.

According to him, the assessee, under these circumstances, is not entitled for any depreciation.

6. The assessee's learned counsel, in reply, contended that gas is a consumable item and it is not entitled for any depreciation. Only the cylinders are entitled for depreciation. The cylinders, according to him, are used in the assessee's business of leasing and, therefore, the assessee is entitled for claim of depreciation. Our

attention was drawn to the contextual references of the other items of plant and machinery, which are found in Appendix I. According to him, the motor car, for the purpose of claim of depreciation, need not be filled with petrol and should be motor able at the relevant point of time. In the business of hiring of motor car, it is sufficient if the motor car is let on hire.

Even if the lessee does not use it but keeps it idle, the lessor is entitled to claim depreciation. As regards the contention that the asset has, in fact, appreciated and, therefore, no depreciation should be allowed, the learned counsel for the assessee pointed out that the actual wear and tear is not necessary for the purpose of allowing depreciation. It was pointed out many old motor cars are sold at a profit and that does not mean such motor cars when they are used for the purpose of business are not entitled for depreciation. The right to depreciation is dependent on the usage of the asset in the business and is independent of the actual diminution or appreciation in the value of the assets. As regards the charge of tax planning, it was pointed out by the learned counsel for the assessee that there is no avoidance of tax. The Chawla group had invested nearly Rs. 47 lakhs in the cylinders in pursuance of the undertaking given by Shree Alang Gases and Air Products Pvt. Ltd., in which the assessee had 50 per cent share, to Gujarat State Financial Corporation. When the appreciation on sale of gas cylinders are realised, the sale price is offered to taxation. Our attention was also drawn to the copy of the lease agreement placed at pages 88 to 92 of the paper book.

7. We have carefully considered the rival submissions in the light of the material to which our attention was drawn at the time of hearing of the appeal. The assessee had purchased the gas cylinders from Government and semi-Government undertakings and had used them in the business of leasing. The Assessing Officer has given this finding when for the first time the assessee started this new business. The said order of assessment for the assessment year 1982-83 has clearly recognised that the assessee was in the business of giving cylinders on rental basis. In all the assessment years, the department itself gave the depreciation as claimed by the assessee on the gas cylinders used in the assessee's business. The theory that the entire object of doing business in gas cylinders is with a view to avoid taxes and income of the group concerns, it may be

observed that it is not the angle from which the Assessing Officer has built up the case. Therefore, we are of the opinion that it is not proper for the departmental representative to now build up a case where we should look behind the transactions to negative the assessee's claim for depreciation. The assessee had used these cylinders in its leasing business and the assessee had earned substantial rental income from the lease of cylinders right from the assessment year 1982-83 and such lease rental income was assessed in each year. The only ground on which the Assessing Officer and the Commissioner of Income-tax (Appeals) have rejected the assessee's claim for depreciation is that the assets are stock-in-trade. In the assessment year 1986-87, the assessee, for the first time, sold 200 gas cylinders for Rs. 3,94,000. In that year, it had purchased 285 gas cylinders. In the assessment year 1987-88, it had sold 325 gas cylinders for Rs. 6,25,625 as against the purchase of 938 gas cylinders. In the assessment years 1988-89 and 1989-90, it has not sold any cylinders. Only in the year under appeal, the assessee had sold 320 gas cylinders for Rs. 4,48,000 as against the purchase of 500 gas cylinders during the year. In all, the assessee had purchased 3,408 gas cylinders between the period 1-4-1981 to 31-3-1990 and had sold 845 cylinders. We have now to examine whether, on these facts, the department is justified in coming to the conclusion that the gas cylinders are really in the nature of stock-in-trade. A stock-in-trade is something in which a trader or a businessman deals, whereas his capital asset is something with which he deals. It is possible that the same commodity may in the case of one assessee be stock-in-trade whereas in the case of another assessee be capital asset. For example, in the case of an assessee who carries on the business of buying and selling land, the land may be his stock-in-trade. But in the case of an assessee who has invested his savings in land and gets income from the land or the structures put up on the land, the land is his capital asset. Therefore, one of the indications for deciding as to what is stock-in-trade is whether a particular assessee is buying or selling the goods or commodity or whether he has merely invested his money with a view to earn further income or with a view to carry on his other business. In the case before us, the gas cylinders are purchased and huge investments are made therein with a view to earn rental income from leasing them. The cylinders are kept with a view to earn further income therefrom. Stock-in-trade, in our view, cannot

therefore include a commodity which is acquired for the purpose of being let on hire. In *H. Mohmed & Co. v. CIT* [1977] 107 ITR 637 (Guj.), the assessee, a partnership firm, derived income from hiring out furniture for marriage ceremonies, circus shows and other public functions. There was a deficit in the stock of furniture to the extent of Rs. 25,127 in the assessment year 1962-63 and that was claimed as a loss. The Income-tax Officer rejected the claim of the loss but allowed depreciation on furniture according to the normal rules. The assessee claimed that the loss should be allowed inasmuch as the furniture, which was let out for various functions, would get destroyed or spoiled and the depreciation allowed under the normal rules was inadequate. The assessee was partially successful before the first appellate authority. In further appeal, the Tribunal held that the furniture was not the stock-in-trade of the assessee but was a capital asset. So far as the claim of higher depreciation was concerned, the Tribunal held that the assessee was not entitled to more than what is admissible under the normal rules. The Hon'ble High Court of Gujarat held that the essential characteristics of stock-in-trade are: It must be a commodity in which there is a dealing, i.e., which is bought and sold as distinguished from the commodity with which the business is carried on, viz., from the exploitation of which the income is derived. On the basis of these tests, the Gujarat High Court held that the furniture employed in the business of hiring out the furniture did not constitute the stock-in-trade of the assessee. In the case before us also, the mere fact that some cylinders are sold during the previous year does not convert the plant and machineries into stock-in-trade. Whatever has been sold has been fully offered to tax. The assessee had sold the cylinders after having used them in the business of hiring. From these facts it is clear that the gas cylinders dealt by the assessee are not the stock-in-trade but the equipments by keeping which it had regularly earned the income. We, therefore, are of the opinion that the tax authorities are not justified in denying the assessee the benefit of depreciation to which it is entitled according to the rules. In our view, the item "gas cylinder" referred to in item III(3)(v) deals with the cylinders that are capable of containing gas. It is not necessary that the cylinders should be filled with gas for claiming depreciation.

Probably for a person who uses the gas cylinder, it may be a consumable store or a raw material depending upon the business of the ultimate user. The mere fact

that the gas cylinders are ultimately sold for a profit cannot be a ground for denying the depreciation to which the assessee is entitled. We, therefore, accept the assessee's contention and direct the Assessing Officer to allow the depreciation on the gas cylinders used in the assessee's business of leasing.

8. The next ground relates to the assessee's claim for deduction under Section 80M. We have heard the parties and perused the details. The assessee has earned the dividend income of Rs. 17,762 gross and the net dividend income is Rs. 14,209 (after deducting Rs. 3,553 as expenses).

Therefore, the assessee is entitled to deduction under Section 80M on the net at 60 per cent of Rs. 14,209. We, therefore, direct the Assessing Officer to allow deduction under Section 80M as worked out by the assessee at 60 per cent of the net dividend income.

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