Assistant Commissioner of Vs. Chaddha Wine Stores (P.) Ltd.

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Mar-11-1996

Reported in : (1996)57ITD507(Delhi)

Appellant : Assistant Commissioner of

Respondent : Chaddha Wine Stores (P.) Ltd.

Judgement :

1. This is a Departmental appeal for assessment year 1988-89 and it arises out of the order of the CIT(A), Bareilly dated 7-9-1990.

2. The only point involved in this appeal is whether depreciation on mini truck and car was rightly allowed by the CIT(A). According to the revenue, the learned CIT(A) ought to have followed in Parthas Trust v.CIT [1988] 169 ITR 334 (Ker.) and Kulpaka Tourist Home (P.) Ltd. v. CIT [1988] 172 ITR 364 (Ker.) and ought to have justified the disallowance of depreciation to the assessee on the ground that the assessee is not the owner of the above vehicles and hence not entitled to depreciation.

3. We have heard Mrs. Deepali Bahadur, the learned D. R. for the Department and none appeared for the assessee. Though notice through RAPD was sent to the assessee on 15-11-1995 itself for the dated of hearing fixed on 13-12-1995. We treat it that there is sufficient notice to the assessee and the assessee's absence on 13-12-1995 is intentional. We, therefore, proceeded to hear the case in the absence of the assessee, we came across the following decisions in CIT v. Mirza

Ataullaha Baig [1993] 202 ITR 291 (Bom.) CIT v. Dilip Singh Sardarsingh Bagga [1993] 201 ITR 995 (Bom.), CIT v. Nidish Transport Corpn. [1990] 185 ITR 669 (Ker.) and CIT v. Salkia Transport Associates [1983] 143 ITR 39 (Cal.) supporting the case of the assessee, let us know the exact ground on which the depreciation was disallowed to the assessee by the Assessing Officer. The assessment the following facts. The assessee which is a private limited company had been using mini truck and car for purposes of its business. They were taken over from Chaddha Liquor Contractors which is a partnership firm. The audit report Chaddha Liquor Contractors which is a partnership firm. The audit report prepared for the accounting year ending with 31-3-1988 relevant for assessment year 1988-89 with which we are concerned the car and mini truck were truck were acquired from the vendor firm and they were shown as fixed assets belonging to the company. However, the audit report made it clear that they have not been transferred in the name of the assessee-company. The AAC of Income-tax, Circle Moradabad rightly inferred thereby that both the car and mini truck were not registered with the R. T. O. in the name of the assessee-company and hence he treated the assessee-company as not the owner of the above assets in law. Since the above assets ar not owned by the assessee-company, he felt that no depreciation is allowable.

4. In the appeal before the learned CIT(A), it was found that the assets have been made use for the purpose of business of the assessee-company. The previous firm was purchased by the assessee as a going concern for adequate consideration. Therefore, he held that the ownership of both the car and mini truck would undisputedly vest in the assessee company. The learned CIT(A) further found that there are movable assets and that they have been purchased for consideration. He felt that the transfer of registration with the Transport Authority was only a consequential formality and the purchase is not vitiated against time taken in making consequential changes in the document or registration. He came to a considered view that it cannot be said that the assessee-company was not the owner of the vehicles. Thus he reversed the denial of depreciation by the Assessing Officer. Both the decisions cited on behalf of the revenue are distinguishable. In Kalpaka Tourist Home (P.) Ltd.'s case (supra) the Kerala High Court was dealing with a claim of depreciation on a hotel building which is an immovable asset. The Tribunal found in that case that there is no registered deed

of conveyance of the property in favour of the assessee. In those circumstances, the Hon'ble Kerala High Court held the following as per the head note : "Depreciation cannot be claimed by some one without any real connection with the asset and the claimant must be one with much more than some threads of rights. Depreciation is claimable only by the owner who uses the assets in question." In that case the depreciation was claimed by the company whereas the hotel building was constructed in the name of two shareholders of the said company. In our opinion, a clear distinction is to be drawn between immovable property on the one hand and the movable assets on the other hand. In the case of a transfer of immovable property a registered deed is a must, if its value exceeds more than Rs. 100, both under sections 17 & 49 of the Indian Registration Act. However, the same is not the case with movable property and title to movable property passes as soon as it is purchased and delivery of the possession of property takes place. Therefore, in our opinion, the Kerala High Court decisions relied upon by the revenue do not apply. In Parthas Trust's case (supra) the Kerala High Court's Full bench similarly concerned itself only with immovable property and not with movable property. The question concerning the Bench was when does a title of immovable property validly passes. Now we are not concerned with the similar situation. We are concerned with the transfer of movable property. The formalities required to be fulfilled before a completed sale movable property are quite different from the formalities which are required to be fulfilled in the case of immovable property. The transfer of movable property takes place, if only conditions under the sale of Goods Act are complied with whereas the provisions of Registration Act are to be complied with for completion of transfer of immovable property. Thus we hold that the two decisions relied upon by the revenue even in their grounds of appeals do not apply to the facts of the case. On the other hand, the authorities already listed above which were found in favour of assessee are directly dealt with cars and trucks and grant of depreciation thereon.

In Mirza Ataullaha Baig's case (supra), the first question referred to the Bombay High Court was the following : "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the assessee would be entitled to depreciation on trucks even though the said trucks were not registered in the assessee's name?" The following is what is found to be the ratio of the Hon'ble Bombay High Court decision as per head note : "The law is well settled that in a case of sale in which the price is to be paid by instalments, the property passes as soon as sale is made, even though the price has not been fully paid and may later be paid in instalments. An assessee who has purchased a motor vehicle for valuable consideration and used the same for his business, cannot be denied the benefit of depreciation thereon on the ground that the transfer was not recorded under the Motor Vehicle Act or that the vehicle stood in the name of the vendor in the records of the authorities under the Motor Vehicles Act." Again, Dilip Singh Sardarsingh Bagga's case (supra) deals with the question of grant of depreciation on a motor vehicle, the transfer of which was not recorded in favour of the vendee under Motor Vehicles Act. The Bombay High Court approved by quoting Calcutta High Court decision in Salkia Transport Associates; case (supra) and the Kerala High Court decision in Nidish Transport Corpn.'s case (supra). In the Calcutta High Court decision their Lordships of the Bombay High Court found the Calcutta High Court laying down the law saying that registration is not an essential pre-requisite for the acquisition of ownership of the Motor Vehicle but an obligation cast upon the owner of the vehicle for the purpose of running the vehicle in public places.

Hence it was immaterial whether the buses were registered in the assessee's name or the original owner's name. On the facts of that case, it was held that the assessee was the owner of the vehicles though the same were not registered in its name under the Motor Vehicles Act and that it was entitled to depreciation in respect thereof. Now in the Kerala High Court decision, Their Lordships found that the law was that the Motor vehicle being a movable property, the transfer of ownership thereof is by sale of Goods Act and not by the Motor Vehicles Act. Between the transferor and the transferee the same is complete even before the transfer is effected in the registered certificate. The failure to report the sic but it does not effect the passing of the title in the vehicle. Having followed the above decisions, the Hon'ble Bombay High Court held the following as per head note of the decision : "Registration under the Motor Vehicle Act is not an essential prerequisite for the acquisition of ownership of the motor vehicle but is an obligation cast upon an owner of the vehicle for the purpose of running the vehicles in any public place.

From a plain reading of section 31 of the Motor Vehicle Act, 1939 (corresponding to sec. 50 of the Motor Vehicle Act (1988), it is clear that the section does not deal with transfer of ownership of any motor vehicle nor does it impose any restriction on transfer of such ownership. It simply obligates the transferor and the transferee to report within the specified time from the date of transfer the fact of transfer to the registering authority. This section, the fact, presupposes transfer of ownership of a motor vehicle. It is only after the actual transfer is effected that the obligation contemplated by this section comes into operation.

Moreover, non-compliance with the requirement of this section does not in any way affect or invalidate the transfer of ownership of the vehicle - it only makes the transferor or the transferee liable to prosecution or penalty. Therefore, an assessee who had purchased a motor vehicle for valuable consideration and used the same for his business, cannot be denied the benefit of depreciation on the ground that the transfer was not recorded under the Motor Vehicles Act or that the vehicle stood in the name of the vendor in the records of the authorities under the Motor Vehicle Act." Therefore, we have no hesitation to come to the conclusion that the learned CIT(A) had decided the issue on correct appreciation of facts and by application of correct law. Therefore, his order is confirmed, the appeal of the revenue is dismissed.