

Srf Ltd. Vs. Dy .Cit

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Court : Delhi

Decided On : Oct-23-2000

Reported in : (2002)74TTJ(Del)648

Appeal No. : ITA No. 2284 (Del)1998 23 October 2000 A.Y. 1994-95

Appellant : Srf Ltd.

Respondent : Dy .Cit

Advocate for Pet/Ap. : M.S. Syali & Satyen Sethi,for the assessed; Sharat Chandra, for the Revenue

Judgement :

ORDER

Sale and lease back transaction--Allow ability of depreciation

Catch Note:

Assessee purchased assets costing less than Rs. 5,000 from J and A and leased back to them--Hundred per cent depreciation allowed by assessing officer after verifying details-- On examining assessment record, Commissioner was of the view that order of assessing officer was erroneous and prejudicial to interest of revenue--Accordingly, matter was restored to file of assessing officer to decide issue after considering directions and observations of Commissioner--Same was not justified as there was just difference of opinion--Accounts were settled and

incorporated in regular books of account and the same were produced before assessing officer and after examining purchases and other agreements claim was allowed--There was no collusiveness in agreements entered by assessed with parties--Therefore, order under section 263 set aside.

Ratio:

In case of sale and lease back transaction, accounts were settled and incorporated in regular books of account and same were produced before assessing officer and after examining purchases and other agreements, depreciation claim was allowed, there was no collusiveness in agreements entered by assessed with parties therefore, order under section 263 directing assessing officer not to allow depreciation was set aside as this was case of mere difference of opinion.

HELD

Assessee had filed the details in regard to claim of depreciation before the assessing officer and the assessing officer after considering these details, then only allowed the claim of the assessee. therefore, it cannot be stated that assessing officer has not applied his mind. On examination of the assessment records, the Commissioner formed an opinion that the assessing officer has not applied his mind and Explanationn 3 of section 43(1) is applicable on the facts of the present case. For forming an opinion there was no material, except the assessment order before the Commissioner. therefore, the contention of the assessed seems to be correct that there was no material with the Commissioner (Admn.) for initiating proceedings under section 263. This is a case of difference of opinion only and where difference of opinion is found, then it cannot be stated that the order of the assessing officer is erroneous and, therefore, prejudicial to the interest of revenue. Assessing officer adopted one of the courses permissible in law, that was to verify the claim of the depreciation in regard to purchase of items and then allowed the claim of the assessee. There is no error in the order of the assessing officer. It is also not the case of the department that the assessed has not filed any detail before the assessing officer. The Department has not denied in filing these documents before the assessing officer or before the Commissioner.

therefore, there was no error in the order of the assessing officer. There was just a difference of opinion and in that case proceedings under section 263 cannot be approved. The consideration was paid to the respective seller. The bills were raised by the seller. The accounts were settled and incorporated in the regular books of account and the same were produced before the assessing officer and after examining the purchase and other agreements, then the claim was allowed. therefore, there was no material before the Commissioner (Admn.) to attract the provisions of section 263.

Case Law Analysis:

CIT v. Gabriel India Ltd. (1993) 203 ITR 100 (Bom) and Unimed Technologies Ltd. v. Dy. CIT (2000) 17 DTC 233 (Ahd-Trib) : (2000) 73 ITD 150 (Ahd-Trib) relied on.

Application:

Also to current assessment year.

Decision:

In favor of assessee.

Income Tax Act 1961 s.263

Income Tax Act 1961 s.32

In the ITAT, Delhi 'B' Bench R.K. Gupta, J.M. & C.L. Bokolia, A.M.

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