

Cit Vs. Bhola Ram

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Court : Rajasthan

Decided On : May-11-2002

Reported in : (2002)177CTR(Raj)82

Appeal No. : IT Ref. No. 118 of 1995 11 May 2002 A.Y. 1986-87

Appellant : Cit

Respondent : Bhola Ram

Advocate for Pet/Ap. : Sandeep Bhandawat, *for the Petitioners*

Judgement :

N.N. Mathur, J.

The Tribunal, Jaipur Bench, has made the instant reference under section 256(1) of the Income Tax Act, seeking opinion of the following question :

'Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in confirming the order of the learned Commissioner (Appeals) and thereby directing grant of depreciation @ 30 per cent on rig machines not used for exploration of mineral oil as per item III-D(7) of depreciation schedule.'

2. The facts giving rise to the instant reference are that the respondent-assessee is engaged to the drilling work. He filed return for the assessment year 1986-87 on 1-2-1988, declaring income of Rs. 40,980. The case was selected for scrutiny and,

therefore, notice under section 143(2) was issued. A questionnaire was issued to the assessee. A notice was also given to produce regular books of account, if maintained by the assessee. The assessee was asked to furnish information on the following points :

'1. In drilling work, total number of holes done and charges per hole with names and complete addressees of the persons for whom job work was done.

2. Any record showing day-to-day consumption of diesel.

3. Record showing the spare parts replaced and the scrap value of the parts replaced.

4. Documentary evidence regarding sale of compressor.'

3. None of the above information were furnished by the assessee but he claimed depreciation @ 30 per cent on the cost of rig, i.e., Rs. 5 lakh. Income Tax Officer rejected, the claim observing that 30 per cent rate is allowable only in the case of mineral oil concerns. He allowed depreciation only at the rate of 15 per cent. The Commissioner (Appeals) relying on the decision CIT v. Super Drillers (1988) 73 CTR (AP) 97 and ITO v. Popular Borewell Semce (1986) 15 ITD 420 (Mad), etc., by the order dated 14-2-1990, partly allowed the appeal and granted the relief to the assessee directing the assessing officer to allow the depreciation on rig machine at the rate of 30 per cent. The Tribunal simply referred the aforesaid judgment of the Andhra Pradesh High Court and confirmed the finding of the Commissioner (Appeals). The Tribunal has made a instant reference at the instance of revenue seeking opinion on the question extracted above.

4. In order to appreciate the controversy involved, it would be convenient to refer the relevant entry being item III(ii)D(a) of Part I of Appendix I of the Income Tax Rules, which reads as follows :

III. Machinery and plant (not being a ship)

(ii) Special rates :

D. (1) to (8) (omitted)

(9) Motor buses and motor lorries, motor taxis, motor 30 per cent tractors (N.E.S.A.)

5. The 'rig machinery' does not fall in the category of motor buses and motor lorries. It is of course true that rig and compressor are mounted on a lorry used for drilling bore wells, It consists of three distinct items viz., rig, compressor and lorry. The rig and compressor do not form an integral part of the motor lorry. Merely, because the rig and compressor are mounted on a lorry to facilitate their easy and convenient transport from one place to another, it cannot be said that the rig and compressor either constitute integral parts of a lorry by themselves or can be appropriately called or known as a 'lorry'. Therefore, the rig and compressor used for drilling bore wells though mounted on a lorry, cannot held to fall under the category 'motor lorry' occurring in entry No. III(ii)D(9) of Part I of Appendix I to the Income Tax Rules, 1962. Thus, in our opinion the assessee is not entitled to depreciation at the special rate of 30 per cent in respect of such rigs and compressors. The view finds support from the decision of the Madras High Court in CIT v. Popular Borewell Service & Ors. (1991) 194 ITR 12 .

6. As far as the decision of Andhra Pradesh High Court is concerned, it was the case of rig used for drilling bore wells to extract mineral oil. Thus, the said case has no application to the facts of the instant case.

7. In view of the aforesaid, question referred by Tribunal is answered in favour of the revenue and against the assessee.

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