

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3342 OF 2008
(Arising out of SLP(C) No.12846 of 2007)

Commr. of Income Tax, Gujarat

... Appellant(s)

Versus

Gupta Global Exim (P) Ltd.

... Respondent(s)

ORDER

Leave granted.

This Civil Appeal is filed by the Department against the judgment of the Gujarat High Court in Tax Appeal No.203 of 2006.

The short question which arose for determination before the High Court was : Whether the respondent-assessee was

entitled to depreciation at the rate of 40% on trailers and loaders?

Briefly, the facts are as follows:

The assessee is a private limited company engaged in the business of importing timber logs from abroad and selling them in India. During the previous year relevant to the Assessment Year 1998-99, the respondent-assessee had purchased trailers and loaders and put them to use on hire.

The Assessment Officer (AO) took the view that the assessee was, during the relevant assessment year, in the business of timber trading and it is only occasionally that the trucks owned by the assessee were given out on hire to outside parties and, therefore, the assessee was not in the business of running the trucks on hire and, therefore, the assessee was not entitled to claim higher rate of depreciation at 40%. This finding of the AO was reversed by CIT(A) vide order dated 29th October, 2004. It was held by CIT(A) that transportation income of Rs.12,50,639/- by was of running

the subject vehicles on hire was an integral part of the assessee's business and that its inclusion under the head 'Business Income' was not disputed even by the AO. This finding of CIT(A) was affirmed by the Tribunal. By the impugned judgment, the High Court has refused to interfere on the ground that the matter involved essentially questions of fact. Hence, this Civil Appeal by the Department.

Generally, this Court does not interfere with the concurrent finding of facts recorded by the authorities below. However, we are of the view that in this case, a neat substantial question of law arose for determination which needed interpretation of the Depreciation Table given in Appendix-I to the Income-tax Rules, 1962. The said Table gives rates at which depreciation was admissible.

We quote herein-below clause III which reads as under:

"Block of assets	Depreciation allowance as percentage of written down value
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III. Machinery and Plant	
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(i) Machinery and plant other than those covered by sub-items (1A), (2) and (3) below 25

(1A) Motor cars, other than those used in a business of running them on hire, acquired or put to use on or after the 1st day of April, 1990 20

(2)(i) Aeroplanes-Aeroengines I
I
(ii) Motor buses, motor lorries I 40
and motor taxis used in a I
business of running them on I
hire." I

Under sub-item 2(ii) of Item III, higher rate of depreciation is admissible on motor trucks used in a business of running them on hire. Therefore, the user of the same in the business of the assessee of transportation is the test.

In the present case, none of the Authorities below (except the AO) has examined the matter by applying the above test. The AO has given his finding that the assessee was not in the business of transportation as he was only in the business of

trading in timber logs. That, the burden was on the assessee to establish that it is the owner of motor lorries and that it used the said motor lorries/trucks in the business of running them on hire.

In our view, the entire approach of CIT(A) was erroneous when he has stated that the transportation income of Rs.12,50,639/- by way of running the subject vehicles on hire is an integral part of the appellant's business and its inclusion in the head 'business income' is not disputed even by the AO. In our view, mere inclusion of Rs.12,50,639/- in the Total Business Income is not the determinative factor for deciding whether trucks were used by the assessee during the relevant year in a business of running them on hire. In our view, the CIT(A) had erred in relying upon the accrual of income as a determinative factor for coming to the conclusion that trucks were used in a business of running them on hire.

What is relevant for consideration under sub-item 2(ii) of Item III of Appendix I to the Income-tax Rules, 1962 is

whether the assessee was in the business of hiring out his trucks in addition to his business of trading in timber. The order of assessment clearly indicates that the assessee was only in the business of trading in timber. We do not have the Returns filed by the assessee before us. We do not have the constitution of the assessee Company before us. There is no evidence to indicate that the assessee was in the business of hiring out motor lorries for running them to earn business income. The entire inference is drawn by CIT(A) only on the footing that the AO had treated Rs.12,59,639/- as part of Total Business Income which is not determinative of the above test, viz., whether the trucks were used in the transportation business as claimed by the assessee.

For the aforestated reasons, we set aside the impugned judgment of the High Court and we remit the matter to Commissioner of Income Tax (Appeals) for de novo examination of the case in accordance with law. Needless to add that before deciding the matter afresh, the CIT (A) would give opportunity to the assessee to present its case and, if so

advised assessee herein can seek amendments of grounds of appeal to which the Department may put its additional say.

However, we make it clear that we express no opinion on the merits of the case as to whether the assessee was in the business of running the motor lorries on hire. In that regard contentions are kept open.

Accordingly, the Appeal stands allowed with no order as to costs.

.....J.

(S.H. KAPADIA)

.....J.

(B. SUDERSHAN REDDY)

New Delhi;
May 06, 2008.

JUDIS