

(1991) 02 AHC CK 0088

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 1819 of 1988

Sri Janardan Prasad Ashok
Kumar

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Feb. 21, 1991**Acts Referred:**

- Income Tax Act, 1961 - Section 264
- Motor Vehicles Act, 1988 - Section 112, 123

Hon'ble Judges: R.K. Gulati, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

R.K. Gulati, J.

This writ petition is directed against an order dated 22-6-1988 passed by the Commissioner, Allahabad u/s 264 of the income tax Act, 1961 ("the Act"). By the impugned order the revision filed by the petitioner was dismissed. The petitioner had raised two contentions before the Commissioner which were considered. The first contention was in respect of unexplained investment in purchase of a bus which was brought to tax in the hands of the petitioner. The second contention pertained to the depreciation claim in respect of the said bus which had been disallowed. On both the grounds the petitioner's case was turned down by the Commissioner, hence, this petition. The learned counsels for the parties have been heard. The claim for depreciation was disallowed on the ground that the bus had not been put to use in the previous year relevant to the assessment year in question, inasmuch as the ITO had given for the first time a temporary permit for the period 14-4-1976 to 13-8-1976. For the petitioner it was urged that the findings recorded by the Commissioner are misconceived and are based ignoring the relevant material that was placed before him during the course of hearing. My attention was invited to Annexure 4 annexed to the writ petition which purports to

be a certified copy of the reply filed by Thana Incharge, Raniganj, State v. Sugeer Kumar [Original Case No. 138 of 1976, dated 16-1-1984]. The said case was instituted u/s 112/123 of the Motor Vehicles Act on 27th March, 1976 on the allegation that the petitioner was found plying the vehicle without permit. Relying upon this document the learned counsel for the petitioner urged that the bus in fact was plied prior to the end of the previous year, i.e., 31-2-1976 relevant to the assessment year 1976-77 with which the case concerned itself.

2. A perusal of the impugned order passed by the Commissioner reveals that the Commissioner has not addressed himself to the material that was alleged to have been filed before him contained in Annexure 4 to the writ petition. In the counter affidavit there is no denial that the papers relied upon by the petitioner had not been filed in revision proceedings before the Commissioner. It is a salutary principle of law that if a decision is arrived at by a quasi-judicial authority or court without taking into consideration the material which has bearing on the final decision, such decision is not liable to be sustained and is vitiated in law. For determination of the question whether the vehicle had been put to use during the relevant previous year entitling the assessee to claim depreciation, the material referred to in annexure 4 to the writ petition was very much relevant and ought to have been taken into consideration before reaching the final conclusion in one way or the other, as the material relied upon by the petitioner was not taken into account in refusing the claim for depreciation, the impugned order cannot be sustained in this score.

3. Coming to the second point about the unexplained investment, in my opinion, the petitioner has no case. The petitioner had failed to prove the source of investment to the satisfaction of the concerned authorities. In these circumstances, no interference is called for by this Court. In the result, the writ petition succeeds in part. The impugned order to the extent it concerns the depreciation allowance is quashed. The Commissioner is directed to restore the petitioner's revision to its original number and decide the claim for the depreciation afresh in the light of the observations made above and in accordance with law. There shall be no order as to costs.