

(2010) 01 KL CK 0114

High Court Of Kerala

Case No: Income Tax Appeal No's. 657, 675, 850, 867, 1061, 1080, 1186, 1199 and 1575 of 2009

Commissioner of Income Tax

APPELLANT

Vs

Manappuram General Finance
and Leasing Ltd.RESPONDENT

Date of Decision: Jan. 13, 2010**Acts Referred:**

- Income Tax Act, 1961 - Section 32, 32(1)
- Kerala Motor Vehicles Taxation Act, 1976 - Section 2(30), 51, 51(1), 51(4)

Citation: (2010) 191 TAXMAN 313**Hon'ble Judges:** V.K. Mohanan, J; C.N. Ramachandran Nair, J**Bench:** Division Bench**Advocate:** P.K.R. Menon and Jose Joseph, for the Appellant; Joseph Kodianthara, Terry V. James and P. Balakrishnan, Advs, for the Respondent**Final Decision:** Allowed

Judgement

C.N. Ramachandran Nair, J.

The sole question raised in all the appeals filed by the revenue is whether the Income Tax Appellate Tribunal was justified in holding that the respondents/assesseees, which are engaged in financing of vehicle purchases, are entitled to higher rate of depreciation applicable to motor vehicles used in the business of running them on hire. Rightly or wrongly, the Assessing Officer allowed depreciation at the rate of 20 per cent which is the rate applicable to motor vehicles used in business or profession by the assesseees. When the appeals came up for hearing in the earlier occasion, this Court expressed doubt about the correctness of the facts stated before the lower authorities including the Tribunal and therefore, the Assessing Officer was directed to conduct enquiry about ownership and nature of transaction between the respondents/assesseees and customers purchasing vehicle on availing loan from them. The Standing Counsel pointed out that pursuant

to interim order of this Court dated 30-11-2009, though notices were issued to some of the respondents, they declined to furnish details. We do not think, there is any need to call for details from them, because this Court had occasion to consider the factual position in the case of motor vehicle financiers in another batch cases decided, vide judgment of this Court in CIT v. Kerala State Financial Enterprises Ltd. (2008) 175 Taxman 13. It is seen from the said judgment that this Court has examined the true nature of the hire purchase agreement, lease agreement etc. between the financiers and the vehicle owners and noticed that the transaction is a real loan transaction against security of the vehicle and what is done is endorsement of hypothecation in the R.C. Book in terms of Section 51 of the Kerala Motor Vehicles Act, 1988. If the facts found in that judgment are applied to the respondents herein in these cases, then the respondents are not entitled to depreciation u/s 32 of the Income Tax Act, 1961 (for short "the Act") because they were neither owners of the vehicle nor have they used the vehicle in their business or profession.

2. Counsel for the respondents/assesseees have relied on a decision of the Delhi High Court in CIT v. Bansal Credits Ltd. (2003) 259 ITR 69 : 126 Taxman 149, where the Delhi High Court held that the assesseees, which were engaged in the business of leasing out commercial vehicles, were entitled to depreciation at the higher rate of 40 per cent, as provided in item III(2)(n) of Part A of Appendix I to the Income Tax Rules, 1962. We notice that this judgment is rendered by the Delhi High Court following the decision of the Supreme Court in [Commissioner of Income Tax, Karnataka, Bangalore Vs. M/s. Shaan Finance \(P\) Ltd., Bangalore](#), wherein the Supreme Court held that when hiring out or leasing out of machinery itself is the business of the assessee, such hiring or leasing of machinery for use by the lessees would entitle the finance company to claim depreciation. The Supreme Court has clearly stated that while the lessee company, using the machinery in the manufacture of goods, is entitled to deduction of hire charges paid as revenue expenditure, depreciation on cost of machinery is available to the company which purchases the machinery and hires out to the lessee company. We are in complete agreement with the above judgment of the Delhi High Court rendered on the facts of that case, following the decision of the Supreme Court. However, before granting depreciation, the question to be considered first is whether the assesseees are owners of the vehicles, who have hired out or leased out the same to other persons for use in their profession or business. The Standing Counsel appearing for the Department contended that pursuant to the interim order of this Court, none of the assesseees have produced the R.C. Book or any particulars to show that they are the registered owners who have given the vehicle on hire or made lease arrangement entitling them to claim depreciation. In the decision of this Court above referred, we had occasion to examine the nature of transactions in vehicle financing. We have noticed that though the transaction is styled as hire purchase agreement, it is nothing, but financing of the vehicle purchase fully or partly and the vehicle is

purchased and registered in the name of the borrower, who is entitled to depreciation at the applicable rate depending on whether the vehicle is used in profession or let on hire. Keeping in mind the factual position which is not the same as projected before the lower authorities even including the assessing authority, the assessee's counsel submitted before us that "the owner" takes in not only the registered owner, but the person in whose favour hypothecation agreement is entered into. We are unable to accept this contention because the definition "owner" as contained in Section 2(30) of the Motor Vehicles Act, 1988 (for short "the Act") is as follows:

2(30) "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

What is clear from the above is that the ownership of the motor vehicle is always with the registered owner and even in respect of motor vehicle which is the subject-matter of hire-purchase agreement or an agreement of hypothecation, the person in possession of the vehicle under that agreement shall be the owner. Admittedly, the respondents/assesseees are neither the registered owners nor are they in possession of the vehicle. On the other hand, they are only the financiers in whose favour hypothecation is endorsed in the R.C. Book in terms of Section 51(1) of the Act which requires the registering authority to make an entry in the certificate of registration regarding the existence of hire-purchase, lease or hypothecation agreement. However, Sub-section (4) of Section 51 states that before entering transfer of ownership in the R.C. Book of the vehicle, the consent of the person in whose favour hypothecation, hire-purchase or lease agreement endorsed, is required.

3. On examining the decision of the Supreme Court above referred, the admitted position is that the leasing companies purchased the machinery and retained their ownership during the period of lease and in that context, the Supreme Court declared their eligibility for depreciation because leasing was found to be their business. So far as the decision of the Delhi High Court is concerned, there was no controversy on facts because the vehicles were stated to be given on lease which means that the lessor retained ownership and the vehicles were leased out on collection of lease rents only. In these cases, the respondents/assesseees are only financiers engaged in financing of vehicles partly or fully and the amount repaid under the agreement by the registered owner is essentially repayment of loan in instalment together with agreed rate of interest. We have explained in detail the nature of transaction in the interest tax case referred above. If the respondents/assesseees have only financed or purchased the vehicle and the borrowers are the registered owners, then the respondents/assesseees are not

entitled to claim any depreciation because they are neither the owners of the vehicle nor have they used the vehicle in their profession or business entitling them for depreciation u/s 32(1) of the Act. Similarly, the repayment made by the borrowers are essentially repayment of loan amount with agreed rate of interest. Therefore, even if the purchaser, who purchased the vehicle, with borrowed fund is running the vehicle on hire, as a business, such borrower is not entitled to deduction of entire monthly instalments paid to the respondents because such payment does not represent hire charges or lease rental of the vehicle. On the other hand, in the computation of borrower's income, he is entitled to deduction of interest paid on borrowed funds and is entitled to depreciation if the vehicle is used in the profession or business. 20 per cent depreciation granted in the case of respondent certainly would have led to depreciation being allowed in the hands of not only the financier, but also in the hands of vehicle owners, which is a mistake. In any case, what is important is not to look at the terminology used in the agreement such as hire-purchase agreement or lease agreement, but it is for the Assessing Officer to find the true nature and character of the agreement and the arrangement between the financier and the vehicle owners. If it is found to be a loan transaction, as found by this Court in the judgment above referred, then the respondents/assesseees will not be entitled to depreciation much less higher rate claimed by them and allowed by the Tribunal. On the other hand, if the vehicles are purchased by the respondents/assesseees and retained their ownership with registration in their name and the vehicles were either given on lease or given under hire-purchase agreement giving an option to the hirer to purchase it after the payment of lease rentals or hire charges during the agreed period, then the respondents/assesseees will be entitled to depreciation at the higher rate. The Assessing Officer can easily find out the factual position because if the respondents/assesseees have continued as registered owners of the vehicle, they would have been involved in large number of compensation cases under the Motor Vehicles Act in which case, they would have incurred large amounts towards the insurance of the vehicle and payment of compensation which would have been claimed as deduction in the Income Tax assessment itself. In any case, we find no justification for the Tribunal to allow higher rate of depreciation without verifying as to whether the respondents/assesseees are even owners of the vehicle and are really leasing out the vehicles in hire-purchase agreement as claimed. We, therefore, allow the appeals setting aside the orders of the Tribunal and that of the first appellate authority and remand the matter for verification of factual position by Assessing Officers and to grant depreciation, if found eligible.

4. Even though notices sent were not returned in IT Appeal Nos. 675/09 and 1199/09, at our request, counsel appearing in the connected cases took notice for the respondents. The issue involved in IT Appeal No. 675/09 is one and the same decided above and our judgment above referred in the case of the assessee applies to this case also. IT Appeal No. 675/09 will stand allowed. So far as IT Appeal No.

1199/09 is concerned, even though issue involved is same, ie., rate of tax on vehicles, the higher rate only alleged is withdrawn by the Assessing Officer by reopening the assessment. Here again, we feel, if the findings of the officer after remand are in favour of the assessee, then the assessee is entitled to higher depreciation. Consequently, challenge against reopening is only academic in nature. We therefore allow the appeal in the same lines, setting aside of the orders of the Tribunal and remand the matter to the Assessing Officer for revision of assessment after enquiry as stated above.