

(2002) 05 DEL CK 0209

Delhi High Court

Case No: IT Reference No"s. 305 and 306 of 1984 18 May 2002

Commissioner of Income Tax

APPELLANT

Vs

Basti Sugar Mills Co. Ltd

RESPONDENT

Date of Decision: May 18, 2002

Citation: (2002) 123 TAXMAN 693

Hon'ble Judges: S.B. Sinha, C.J; A.K. Sikri, J

Bench: Full Bench

Advocate: R.C. Pandey and Ajay Jha, for the Revenu, for the Appellant;

Judgement

S.B. Sinha, C.J.

These references were made at the instance of the revenue u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act) by the Tribunal, Delhi Bench "B", Delhi, for opinion of this court on the following question :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that depreciation on a vehicle which is not registered in the name of the assessed was an allowable deduction in the hands of the assessed ?"

2. The basic fact of the matter as has been stated by the Tribunal is as follows :

"2. The assessed is a company engaged in the manufacture of sugar and having two units, one at Basti and the other at Waltergang, a few kilometers away from Basti. The relevant assessment year is 1976-77 and the previous year ended on 30-4-1976.

3. During the year under consideration, the assessed claimed deduction in the profit and loss account of a sum of Rs. 12,300 on account of pension paid to Smt. Satwant Narang, wife of late Shri Des Raj Narang who was brother of Shri Dev Raj Narang, Managing Director of the company. The Income Tax Officer rejected the claim of the assessed on the basis of the order for assessment year 1974-75 wherein it was held that such payment was not the common practice of the assessed and pension in the

case of Smt. Satwant Narang was an exception covered under sections 40(c)(z), 40 (Aii) and 37(1). On appeal, the Commissioner (Appeals) confirmed the disallowance.

4. On further appeal, the Tribunal relying on its order for assessment year 1974-75, allowed the claim of the assessed.

5. On the above facts the Tribunal rejected the earlier reference application of the revenue on the ground that it was a finding of fact. For similar reasons we reject the reference application of the revenue for this year also.

6. During the year under consideration, the assessed claimed remuneration of the Managing Director at Rs. 56,412 which was not allowed by the Income Tax Officer. The Commissioner (Appeals), however, allowed the claim in full and as the payment was below Rs. 72,000, it was held to be allowable and justified in the earlier assessment year 1974-75. The Tribunal upheld the order of the Commissioner (Appeals) in accordance with the earlier order of the Tribunal.

7. On similar facts the Tribunal rejected the reference application of the revenue for assessment year 1974-75. For the reasons fully discussed in the order dated 7-7-1983 with which we agree we reject the present application of the revenue also.

8. During the course of the assessment proceedings, the Income Tax Officer objected to the consumption of the lubricants in the Basti and Walterganj units. According to the Income Tax Officer, the value of lubricating oil consumed by the assessed at the Basti unit Rs. 137 per qtl. was excessive as compared to Rs. 69 per hundred litre last year. Having regard to the production during the year, the Income Tax Officer was of the view that the expenditure claimed was excessive. He, Therefore, recalculated the allowable exemption on this account at Rs. 55 per hundred litre and disallowed Rs. 80,419 out of Rs. 1,34,222. Similarly, he made objections in the Walterganj unit and disallowed Rs. 1,25,000 out of Rs. 1,59,005 claimed by the assessed. On appeal, the Commissioner (Appeals) went into the details of consumption from assessment year 1973-74 up to the present assessment year. After carefully looking into the various aspects including the production, etc., he deleted the addition.

9. On appeal, the Tribunal upheld the order of the Commissioner (Appeals) in the light of the Tribunal's order for assessment year 1975-76. The above order, in our opinion, is a pure finding of fact and no referable question arises out of the said order of the Tribunal.

10. During the preceding year under consideration the assessed purchased a car for Rs. 18,000. The car was insured under the Motor Vehicle Act with effect from 22-1-1976. The car was utilized by the company. The assessed, Therefore, claimed depreciation which, however, was rejected by the Income Tax Officer on the reasoning that the benefit of depreciation can be allowed only to the owner of the car. On appeal, the Commissioner (Appeals) confirmed the order of the Income Tax

Officer."

3. The Tribunal on an appeal made to it allowed the claim of the assessed in the following terms :

"6. Identical cases came up before the Delhi Income Tax Appellate Tribunal in the case of Indure Malleable and Alloy Costing (P) Ltd. in IT Appeal No. 1496 (Del) of 1978-79. In that case the assessed claimed depreciation on motor-cycle which was not registered in the name of the assessed. The Tribunal vide its order dated 7-7-1980 granted depreciation in the light of the order of the Bombay Bench of the Tribunal in the case of SBC (P) Ltd. in (IT Appeal No. 6 (Bom) of 1974-75. Since vehicle in question is a movable asset, the Tribunal held that registration as required in the case of transfer of immovable property is not a condition precedent for legal ownership. Respectfully following the above decisions, we held that the assessed is entitled to depreciation on the car which was owned by it but not registered in its name."

4. Keeping in view the factual matrix, it appears that the question is covered by several case laws, i.e. Commissioner of Income Tax Vs. Salkia Transport Associates ; Continental Construction Ltd. Vs. Commissioner of Income Tax ; Commissioner of Income Tax Vs. Dilip Singh Sardarsingh Bagga,) and CIT v. Mirza Ataullah Baig (1993) 202 ITR 291 (Bom).

5. Having regard to the aforementioned authoritative pronouncements, we are of the opinion that the question must be answered in the affirmative, i.e., against the revenue and in favor of the assessed.

6. These references are, accordingly, disposed of.