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**(2001) 09 DEL CK 0160**

**Delhi High Court**

**Case No:** Income-tax Reference No. 253 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Delhi Airport Service

RESPONDENT

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**Date of Decision:** Sept. 10, 2001

**Acts Referred:**

- Income Tax Act, 1961 - Section 32

**Citation:** (2001) 170 CTR 534 : (2002) 255 ITR 91 : (2002) 120 TAXMAN 792

**Hon'ble Judges:** Dr. Arijit Pasayat, C.J; D.K. Jain, J

**Bench:** Division Bench

**Advocate:** R.C. Pandey and Prem Lata Bansal, for the Appellant; None, for the Respondent

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### **Judgement**

Arijit Pasayat, C.J.

At the instance of the Revenue, the following questions have been referred for the opinion of this court u/s 256(1) of the Income Tax Act, 1961 (for short the "Act"), by the Income Tax Appellate Tribunal, Delhi Bench "E", New Delhi (for short the "Tribunal") :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in law in holding that the air-conditioning plant is an integral part of a bus ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in law in holding that depreciation on air-conditioner fixed in a bus was allowable at the rate applicable to the bus, instead of the rate applicable to air-conditioner when separate rates of depreciation have been provided for motor vehicles and air-conditioning plant ?"

2. The dispute relates to the assessment year 1977-78.

3. The factual position in a nutshell is as follows.

4. The assessed, a partnership firm at the relevant point of time, was carrying on business of transport bus service. The buses were air-conditioned. It was claimed before the Income Tax Officer that the entire vehicle was one and the air-conditioner was an integral part thereof and consequently it was entitled to depreciation at 30 per cent, admissible on such vehicles. The Assessing Officer was of the view that the value of air-conditioning machinery is to be separately ascertained and depreciation at 15 per cent, admissible on air-conditioning machinery was to be allowed. Accordingly, he determined the value of the air-conditioning machinery separately and allowed a lower depreciation at 15 per cent, while allowing higher depreciation at 30 per cent, on the remaining value of the vehicles. The assessed preferred an appeal before the Commissioner of Income Tax (Appeals) (in short "the CIT(A)"), who accepted the assessed's contention and directed allowance of depreciation at 30 per cent, on the aggregate value of the bus and the air-conditioning machinery. The Revenue preferred an appeal before the Tribunal. Relying on its earlier decision in the case of Smt. Urmila Goel in I. T. A. Nos. 4887 (Delhi) of 1979 and 1247 (Delhi) of 1977-78, the Commissioner of Income Tax (Appeals)" views were upheld. On being moved for reference the questions as set out above have been referred for the opinion of this court.

5. We have heard learned counsel for the Revenue. There is no appearance on behalf of the assessed in spite of notice. According to learned counsel for the Revenue the air-conditioning plant is not an integral part of the bus and a bus can operate even without the air-conditioning plant and, Therefore, the conclusions of the Commissioner of Income Tax (Appeals) and the Tribunal are not in order. We find that the Revenue had moved for reference u/s 256(1) of the Act so far as Smt. Urmila Goel is concerned. The same was turned down. An application u/s 256(2) of the Act also did not bring any relief to the Revenue, as appears from the decision in CIT v. Smt. Urmila Goel. In view of what has been stated in the said decision, so far as the first question is concerned, we answer the same in the affirmative, i.e., in favor of the ass'essee and against the Revenue. The obvious answer to the second question is also on similar lines, i.e., in the affirmative, in favor of the assessed and against the Revenue.

6. The reference stands disposed of.