

(1992) 09 BOM CK 0072

Bombay High Court

Case No: Income-tax Reference No. 78 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Dilip Singh Sardarsingh Bagga

RESPONDENT

Date of Decision: Sept. 25, 1992

Acts Referred:

- Income Tax Act, 1961 - Section 32, 33

Citation: (1993) 201 ITR 995

Hon'ble Judges: V.A. Mohta, J; B.P. Saraf, J

Bench: Division Bench

Advocate: P.N. Chandurkar, for the Appellant;

Judgement

Dr. B.P. Saraf, J.

This is a reference u/s 256(1) of the Income Tax Act, 1961. At the instance of the Commissioner of Income Tax, the following two questions of law have been referred by the Income Tax Appellate Tribunal, Nagpur Bench, Nagpur, for our opinion :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in upholding the order of the Appellate Assistant Commissioner allowing depreciation on the trust which was registered in the name of another person ?

2. Whether the depreciation was admissible u/s 32 of the Income Tax Act, 1961, to the beneficial owner of the truck and the decision of the Tribunal was in accordance with the provisions of la ?"

3. The relevant assessment year is 1976-77. The facts giving rise to the reference are briefly as follows : The assessee had purchased a truck from on Shri Ashokkumar Rajaram Agrawal. The truck was originally allotted as a brand new truck to the said Shri Agrawal (hereinafter referred to as "the vendor"). Since the vendor did not have sufficient funds to purchase the truck, he made an offer to the assessee to finance

the purchase of the said truck and to operate the said truck on licence as owing to the restrictions under the Motor Vehicles Act the truck in question could not be registered immediately in the name of the assessee. From the various documents filed before the Income Tax Officer, it was amply clear that although the vendor lent his name for the purchase of the truck, for obtaining loans for the said purpose from the banks, for obtaining the licence for plying it as a public vehicle for hire, etc., the truck was all along being used beneficially by the assessee. The taxes, etc., were also paid by the assessee. The assessee was fully responsible for operation of the truck. The assessee claimed that the truck was beneficially owned by him for his business of transportation for hire. The income from the running of the truck was shown by the assessee as his income in his return of income. The assessee also claimed depreciation on the truck as per law. The Income Tax Officer included the income from the truck in the total income of the assessee but disallowed the claim of the assessee for depreciation on the ground that the truck was not registered in the assessee's own name. The assessee went in appeal against the order of the Income Tax Officer. It was contended before the Appellate Assistant Commissioner that though due to certain restrictions under the Motor Vehicles Act, the truck stood in the name of the vendor and the same could not be transferred in the assessee's name, in fact, it was owned by the assessee. It was pointed out that the loan from the bank was obtained by the assessee, the instalments to the bank were paid by the assessee and that all the repairs and maintenance were also done by the assessee. It was also pointed that eventually the truck was actually sold to the assessee himself and, therefore, the assessee was the beneficial owner thereof and entitled to depreciation in respect thereof u/s 32 of the Act. The Appellate Assistant Commissioner of Income Tax accepted the contention of the assessee and allowed the appeal with a direction to the Income Tax Officer to allow depreciation in respect of the truck as claimed by the assessee. This order of the Appellate Assistant Commissioner was affirmed by the Income Tax Appellate Tribunal by its order dated December 14, 1982, and the appeal of the Revenue was dismissed. The Commissioner of Income Tax filed an application u/s 256(1) of the Income Tax Act for reference to this court and, accordingly, the Tribunal has referred the aforesaid two questions for our opinion.

4. Section 32 of the Act provides for depreciation in respect of building, machinery, plant or furniture "owned by the assessee" and "used" for the purposes of the business or profession. There is no dispute in the instant case that the asset in question, namely, the truck was used by the assessee for the purposes of his business. The controversy is in regard to its ownership. The contention of the assessee is that he is the owner of the truck and that the mere fact that it is not registered under the Motor Vehicles Act in his name, by itself is not sufficient to hold the contrary. The factual position as stated by the assessee is not disputed by the Revenue. The contention of the Revenue is that unless the vehicle is registered in the name of the assessee under the Motor Vehicles Act, the assessee cannot be said

to be its owner and, as such, he would not be entitled to depreciation allowance in respect thereof.

5. The word "owner", as observed by the Supreme Court in [R.B. Jodha Mal Kuthiala Vs. The Commissioner of Income Tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala](#), has different meanings in different contexts and in certain circumstances even a lessee may be considered as the owner of the property leased to him. It was also held to be so by the Bombay High Court in [Commissioner of Income Tax, Poona Vs. Alpana Talkies](#). It was a case of a lease of a theatre for exhibiting films. Under the lease agreement, the lessee was to keep the theatre in good condition and make all repairs and the premises were to be surrendered with the fittings and fixtures and additions and alterations on the expiry of the lease period. The assessee demolished the theatre and constructed a new one during the period January-July, 1962. In respect of the assessment years 1964-65 to 1969-70, the assessee claimed depreciation in respect of the theatre building, furniture and fixtures, plant, etc. The claim was rejected by the Income Tax Officer on the ground that the lessor had not divested himself of the ownership of the land and the building. The Appellate Assistant Commissioner and the Tribunal decided in favour of the assessee and held that the assessee was entitled to depreciation. On a reference, this court (at page 1058) held :

"What is relevant for the purposes of the present case is that during the period of the lease the assessee was held to be the owner of the building. The Tribunal, in our view, was justified in holding that the assessee was the owner of the building, fixtures and fittings of Alpana talkies within the meaning of section 32 of the Income Tax Act. Consequently, the assessee would be entitled to depreciation u/s 32 of the Income Tax Act, 1961, on the above items."

6. The expression "owned by the assessee" also came up for interpretation before the Allahabad High Court in [Additional Commissioner of Income Tax Vs. U.P. State Agro Industrial Corporation Ltd.](#). In this case, depreciation was claimed by the U. P. State Agro Industrial Corporation Ltd., in respect of a building which stood in the name of the State of U. P. The claim was sought to be rejected on the ground that no sale deed had been executed by the State Government in favour of the assessee. The contention of the assessee was that even though the U. P. Government had not transferred the immovable property by a registered deed, the property for all practical purposes belonged to it. It was the beneficial and equitable owner of the property and was entitled to claim depreciation on it. It was held (at page 102) :

".... the expression "building owned by the assessee" in section 32 of the Income Tax Act, 1961, has not been used in the sense of the property, complete title in which vests in the assessee. The assessee will be considered to be an owner of the building u/s 32 if he is in a position to exercise the rights of the owner not on behalf of the person in whom the title vests but in his own rights."

7. Dealing with the contention of the Revenue regarding non-execution of a registered sale deed by the State Government as contemplated by section 54 of the Transfer of Property Act, 1882, and the effect thereof on the ownership of the purchaser for the purpose of claiming depreciation, it was observed that "even though in the absence of execution of a registered sale deed the ultimate title in the property had not vested in the assessee, it became the owner thereof in the sense in which the expression has been used in section 32 of the Income Tax Act."

8. In this connection, reference may be made to the decision of the Calcutta High Court in [Commissioner of Income Tax, Central-I Vs. Steelcrete \(P.\) Ltd.](#), . This too was a case of rejection of a claim to depreciation and development rebate under sections 32 and 33 of the Income Tax Act. The controversy was whether the assets in question were "owned by the assessee and used for the purpose of the business". There was no real dispute in regard to the user of the assets for the purpose of the business. The sole question for determination was whether the machinery in question could be considered to be owned by the assessee for the purpose of section 32 of the Act. Relying upon the observations of the Supreme Court in R. B. Jodha Mal Kuthiala [1971] 83 ITR 570, the High Court observed that though the machinery in respect of which the depreciation was claimed stood in the name of the Government of India, for all real intents and purposes and also for purposes of section 32 of the Income Tax Act, 1961, it was intended that the property and the goods should pass to the assessee at the relevant time. Read in this context, it was held that the assessee owned the machinery in question and was entitled to depreciation.

9. Reference may also be made to another decision of the Calcutta High Court in [Commissioner of Income Tax Vs. Salkia Transport Associates](#), . The dispute in this case was somewhat similar to the dispute in the case before us. Here also depreciation was claimed by the assessee in respect of motor vehicles claimed to be owned by it though not registered under the Motor Vehicles Act in its name. The Calcutta High Court held that the provisions of the Motor Vehicles Act, 1939, do not prevent a person from becoming the owner of the motor vehicles without registration. Registration is not an essential prerequisite for the acquisition of ownership of the motor vehicle but is an obligation cast upon an owner of the vehicle for the purpose of running the vehicles in any public place. Hence it was immaterial whether the buses were registered in the assessee's name or the original owner's name. On the facts of the case, it was held that the assessee was the owner of the vehicles though the same were not registered in its name under the Motor Vehicles Act and that it was entitled to depreciation in respect thereof.

10. To the same effect is the decision of the Kerala High Court in the case of [Commissioner of Income Tax Vs. Nidish Transport Corporation](#), . In this case also the sole question for determination was whether the assessee was entitled to depreciation on certain vehicles used by them in their business though vehicles

purchased by the assesseees had not been transferred in their names in the certificate of registration. The contention of the Revenue in this case also was that till the transfer of ownership is effected in the certificate of registration, the assesseees could not be considered to be owners. Repelling this contention of the Revenue, it was held that the motor vehicle being a movable property the transfer of ownership thereof is governed by the Sale of Goods Act and not by the Motor Vehicles Act. As between the transferor and the transferee, the sale is complete even before the transfer is effected in the registration certificate. The failure to report the same to the Registering Authority may entail levy of penalty but it does not effect the passing of the title in the vehicle. It was, therefore, held that the assesseees who purchased the vehicles were owners of the vehicles and were entitled to depreciation u/s 32 of the Act if the same has been used for the purpose of the business.

11. The various decisions including the decisions of the Calcutta High Court and the Kerala High Court which relate to the transfer of motor vehicles referred to above leave no scope for doubt that the transfer of ownership being recorded under the Motor Vehicles Act. Section 31 of the Motor Vehicles Act, 1939 (corresponding to section 50 of the Motor Vehicles Act, 1988), so far as relevant, reads :

"31. (1) Where the ownership of any motor vehicle registered under this Chapter is transferred, -

(a) the transfer shall -

(i) within fourteen days of the transfer, report the fact of transfer to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee;

(ii) within forty-five days of the transfer forward to the registering authority referred to in sub-clause (1) -

(A) a no objection certificate obtained u/s 29A; or

(B) in case where no such certificate has been obtained, -

(I) a receipt obtained under sub-section (2) of section 29A; or

(II) a postal acknowledgment received by the transferor if he has sent an application in this behalf by registered post acknowledgment due to the registering authority referred to in section 29A,

together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted;

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he resides, and shall forward the

certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration."

12. From a plain reading of this section, it is clear that this section does not deal with transfer of ownership of any motor vehicle nor does it impose any restriction on transfer of such ownership. It simply obligates the transferor and the transferee to report within the specified time from the date of transfer the fact of transfer to the registering authority. This section, in fact, presupposes transfer of ownership of a motor vehicle. It is only after the actual transfer is effected that the obligation contemplated by this section comes into operation. Moreover, non-compliance with the requirement of this section does not in any way affect or invalidate the transfer of ownership of the vehicle - it only makes the transferor or the transferee liable to prosecution or penalty. Under the circumstances, the reliance on section 32 of the Motor Vehicles Act, 1939, for determining the ownership of a vehicle is completely misplaced. This section has no bearing on the validity of the transfer of a motor vehicle which has to be decided in each case having regard to the facts and circumstances thereof.

13. In view of the foregoing discussion, we are of the clear opinion that the assessee, who had purchased the motor vehicle for valuable consideration and used the same for his business, cannot be denied the benefit of depreciation on the ground that the transfer was not recorded under the Motor Vehicles Act or that the vehicles stood in the name of the vendor in the records of the authorities under the Motor Vehicles Act.

14. Accordingly, both the questions referred to us are answered in the affirmative and in favour of the assessee and against the Revenue. Under the facts and circumstances of the case, we make no order as to costs.