(1992) 10 BOM CK 0058

Bombay High Court

Case No: Income-tax Reference No. 357 of 1987

Commissioner of Income Tax		APPELLANT
	Vs	
Mirza Ataullaha Baig and another		RESPONDENT

Date of Decision: Oct. 14, 1992

Acts Referred:

- Income Tax Act, 1961 - Section 295(4), 32

Citation: (1993) 202 ITR 291

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

Bench: Division Bench

Advocate: P.N. Chandurkar, for the Appellant; L.S. Dewani, for the Respondent

Judgement

Dr. B.P. Saraf J.

1. By this reference u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal, Nagpur Bench, Nagpur, has referred the following two questions of law to this court for opinion :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the assessee would be entitled to depreciation on trucks even though the said trucks were not registered in the assessee''s name ? 2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the assessee would be entitled to depreciation at 40 per cent. in respect of truck No. MHG 7405 which was purchased during the year under consideration ?"

2. The assessee was carrying on transport business. He purchased two trucks, namely, Nos. MHB 5375 and MHG 7586, for Rs. 70,000 and Rs. 1,01,388, respectively, during the accounting year. In respect of the first truck, he paid Rs. 35,000 on October 12, 1978, and the balance of Rs. 35,000 on November 27, 1978, by taking a

loan from Messrs Jaika Automobiles, which was repaid in 15 monthly instalments. The Income Tax Officer found that four instalments amounting to Rs. 10,000 were paid towards repayment of loan during the previous year. As regards the second truck, Rs. 20,000 were paid by the assessee on May 10, 1978. The balance of Rs. 81,388 was paid by taking a loan from Messrs Telco Limited which was repayable in 34 instalments. During the relevant previous year, the assessee repaid only Rs. 44,000 towards this loan. The trucks were not registered in the assessee''s name during the year ending March 31, 1979, though the assessee''s was plying the trucks during this period. In the assessment for the assessment year 1980-81, the assessee claimed depreciation in respect of these trucks. The claim was disallowed by the Income Tax Officer on the ground that the right of full ownership of the truck had not passed to the assessee and the same remained with the seller till full payment was effected and the transfer registered in the books of the R. T. O. On appeal by the assessee, the Appellate Assistant Commissioner of Income Tax reversed the findings of the Income Tax Officer and allowed the claim of the assessee for depreciation. The order of the Appellate Assistant Commissioner was confirmed by the Tribunal on appeal. Under these facts and circumstances, the first question has been referred by the Tribunal at the instance of the Commissioner of Income Tax.

3. The second question portions to the rate of depreciation. The assessee claimed depreciation at the rate of 40 per cent. in accordance with item No. (1A) appearing under heading III(ii)E of Appendix I to the Income Tax Rules, 1962, as amended by the Income Tax (Fifty Amendment) Rules, 1980, with effect from July 24, 1980. By this amendment, the rate of depreciation was raised from 30 per cent. to 40 per cent. The assessment year in the instant case was 1980-81. The Income Tax Officer held that the higher rate of depreciation was not applicable to the assessment in question on the ground that the said higher rate came into force only with effect from July 24, 1980. On appeal, the Appellate Assistant Commissioner took a contrary view. He agreed with the assessee and allowed depreciation at the higher rate. The decision of the Appellate Assistant Commissioner was confirmed by the Tribunal. Hence the second question.

4. So far as the first question is concerned, from a perusal of the facts of the case, it is clear that the vehicles in question had been purchased by the assessee. The property in the vehicles passed on to the assessee. The fact that the full price was not paid at the time of purchase but only a part was paid and the balance was to be paid in instalments does not militate against the passing of property to the purchaser. The law is well-settled that in a case of sale in which the price is to be paid by instalments, the property passes as soon as the sale is made, even though the price has not been fully paid and may later be paid in instalments. So far as the controversy regarding the effect of non-registration of the vehicle with the Registering Authority under the Motor Vehicles Act in the name of the assessee is concerned, the controversy stands concluded by a judgment of this Bench of our court delivered on September 25, 1992, in Income Tax Reference No. 78 of 1983,

Commissioner of Income Tax Vs. Dilip Singh Sardarsingh Bagga, , wherein it was held that an 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 vehicle stood in the name of the vendor in the records of the authorities under the Motor Vehicles Act. Following this decision, question No. 1 has to be answered in the affirmative and in favour of the assessee.

5. As regards the second question, it may be observed that the law is well-settled that the Income Tax Act, 1961, as it stands amended on the 1st day of April of any financial year, applies to the assessment of that year. Any amendment in the Act or the rules which come into force after the 1st day of April of a financial year would not apply to the assessment of that year, even if the assessment is actually made after the amendments come into force (see Karimtharuvi Tea Estate Ltd. Vs. State of Kerala,). In the instant case, the assessment year is 1980-81. So, the law as it stood on the 1st day of April, 1980, will apply to the assessment for the assessment year 1980-81. The rate of depreciation according to the law as it stood on that date was 30 per cent. By amendment made in the relevant rules by the Income Tax (Fifty Amendment) Rules, 1980, the rate of depreciation was raised to 40 per cent. This amendment was made by Notification No. S. O. 562(E), dated July 24, 1980 (see Sarabhai M. Chemicals Private Ltd. Vs. P.N. Mittal Competent Authority, Inspecting Assistant Commissioner of Income Tax, Acquisition Range-II, Ahmedabad and another,). It was brought into force at once, i.e. on and from July 24, 1980. That being so, this amendment cannot apply to the assessment year 1980-81. The assessment for this year will be governed by the law as it stood on the 1st day of April, 1980. The rate of depreciation allowable under the law prevailing on 1st April, 1980, was 30 per cent. So that rate will apply.

6. The view taken by the Tribunal that as the amendment Rules, though published on July 24, 1980, came into force "at once" they shall apply to all assessments made thereafter is evidently contrary to the well-settled legal position set out above. Provision for allowance of depreciation, withdrawal of depreciation and enhancement or reduction of rates there of do not fall in the zone of procedural laws. There are in fact substantive laws which affect the liability of the assessee to taxation. As such, the law applicable in regard to depreciation will be the law as it sands on the first day of the assessment year.

7. However, before closing the discussion, it may be appropriate to briefly refer to some of the submissions made on behalf of the assessee. Firstly, it is submitted that the amendment made on July 24, 1980, should be deemed to the retrospective in its operation. We find it difficult to accept this submission because the Income Tax Act itself, while conferring rule making power on the Board, has empowered the Board by making specific provision in section 295(4), to give retrospective effect to any rule. This power is subject to the only restriction that no retrospective effect should

be given to any rule so as to prejudicially affect the interest of the assessee. Therefore, if the Board wanted to make the amendments in the rule made by it on July 24, 1980, applicable to the assessment year 1980-81, it could have made the amendments in the rules made by it on July 24, 1980, applicable to the assessment year 1980-81, it could have made the amendment Rules effective from 1st April, 1980, instead of bringing them into force "at once" thoughts from the date of notification which was July 24, 1980. The purpose of bringing the amendment into operation with immediate effect evidently was to make it known to the assessee that for the next assessment year they would be entitled to get depreciation at the rate of 40 per cent. and also to enable them to compute their advance tax liability accordingly.

8. The next submission on behalf of the assessee was based on the of repeated well-known principle of interpretation of fiscal statutes that in the event of any doubt in regard to interpretation, the benefit of doubt should be given to the assessee and the interpretation beneficial to the taxpayer should be accepted. We do not find any merit in this submission because this principle applies only when there is reasonable and genuine doubt in regard to the interpretation of a particular provision. It has no application to a case where the provision is clear and the law is well-settled. This principle cannot be stretched too far. It cannot be used to misinterpret a statutory provision which is otherwise clear and brooks no doubt about its meaning or interpretation just to give benefit to the taxpayer which the statute did not intend to give.

9. In view of the foregoing discussion, we are of the clear opinion that the law relating to depreciation as applicable on the 1st day of April, 1980, will apply to the assessment for the assessment year 1980-81. The amendment made with effect from July 24, 1980, will not be applicable. The assessee will, therefore, be entitled to depreciation only at the rate of 30 per cent. and not 40 per cent. The Tribunal was not right in allowing depreciation to the assessee at the rate of 40 per cent. The second question is, therefore, answered in the negative and in favour of the Revenue.

10. In the result, the first question is answered in the affirmative and in favour of the assessee and the second question is answered in the negative and in favour of the Revenue. No order as to costs.