

***THE HON'BLE MR JUSTICE B. PRAKASH RAO,**

***THE HON'BLE MR JUSTICE R.KANTHA RAO,
AND**

***THE HON'BLE MR JUSTICE NOUSHAD ALI**

+R.C.No. 238_of 1996

AND

+R.C.No. 100_of 1996

-

% Date: 28.04.2011

Between:

#Commissioner of Incometax, A.P. II, Hyderabad

...Applicant

And

\$M/s Anantha Gas Suppliers, Nizamabad

...Respondent

! Counsel for Applicant: Sri C.P.Ramaswami

^ Counsel for respondents: Sri G.Pavan Kumar

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>HEAD NOTE:

? Cases referred:

1 (2002) 256 ITR 50 (GUJ)

2 (2008) 296 ITR 72 (Delhi)

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R.C.No. 238 of 1996

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COMMON JUDGMENT: (Per Hon'ble Sri Justice R.Kantha Rao,J)

We have heard Sri V.R. Badri, the learned counsel representing Sri S.R. Ashok, learned counsel for the Revenue and Sri C.P. Ramaswamy, the learned for the assesses.

In fact R.C. No. 238 of 1996 came up for consideration before two of us (Justice B Prakash Rao and Justice R Kantha Rao) in the Division Bench. The reference involved the following questions.

1. *Whether on the facts and in the circumstances of the case, the ITAT was correct in law in treating the transport vehicle as consisting of two parts viz. Cylinder and vehicle and allowing depreciation on the cylinder at 100% and not at 40%?*

2. *Whether, on the facts and in the circumstances of the case, the ITAT was correct in holding that the cylinder mounted on the vehicle which was used for the transport of liquefied petroleum gas was liable for depreciation at 100% and not at 40%?*

3. *Whether on the facts and in the circumstances of the case, the ITAT ought to have held that the transport vehicle was inseparable and two different rates of depreciation cannot be applied for a single*

vehicle?

As the judgements relied upon by the learned counsel on either side laid down conflicting views and the questions under reference sought to be answered are likely to arise for consideration in cases relating to the assesses similarly placed, we thought it appropriate to have an authoritative pronouncement and referred the very same questions to be answered by Full Bench.

These references, thus, therefore, now before this Full Bench for consideration.

Although the Income Tax Appellate, Hyderabad Bench "A" formulated the aforementioned three questions for reference to this Court for the opinion, the crux of the issue for consideration before us is in the matter of claiming depreciation under Sec. 32 of the Income Tax Act, 1961 in respect of a gas cylinder mounted on a chassis of a truck whether the assesses can claim depreciation at 100% treating it as gas cylinder including

valves and regulators or whether the depreciation can be claimed at 40% treating the entire item as a heavy transport vehicle?

The short facts necessary for considering the reference is that the assessee-firm is a dealer in liquefied petroleum gas of Hindustan Petroleum Corporation of India, Nizamabad. The LP gas cylinders were fitted to the chassis of transport vehicles. For the purpose of claiming depreciation, the assesses treated the entire item as consisting of two parts i.e. Cylinder/tanker, chassis and cabin. As per the Appendix 1 of Income tax Rules, 1962, the depreciation allowable U/s 32 of the Income Tax Act, 1961 for gas cylinders including valves and regulators is 100%, whereas for transport vehicle, it is 40% at the relevant time.

The arguments advanced on behalf of the assesses, is the entire item shall be treated as the cylinder and the argument of the revenue, is that the entire

item is transport vehicle since it is registered as motor vehicle under the Motor Vehicles Act.

As per item III (ii) F (4) Appendix-1 read with Rule 5 of Income Tax Rules depreciation allowable at relevant time for gas cylinders including valves and cylinders is 100%, but if the gas cylinder/tanker is treated as internal part of the truck, only 40% of depreciation would be allowable.

On the premise that the vehicle on which the cylinder was mounted is registered with transport authority as a transport vehicle, the Assessing Officer held that the assessee is entitled for depreciation at 40% only. On the assessee's appeal, the Commissioner of Income Tax (Appeals) confirmed the order of the Assessing Officer. On the Second Appeal therefrom, the Income Tax Appellate Tribunal (for short "ITAT") set aside the order of CIT (Appeals), allowed the assessee's appeal. However, at the request of the Commissioner of Income Tax, the Tribunal referred the disputed question under Section 256

of the Income Tax Act, 1961 to this Court for consideration and opinion.

Learned counsel appearing for the Revenue sought to rely on **GUJCO CARRIERS v. COMMISSIONER OF INCOME TAX**^[1] wherein the Division Bench of Gujarat High Court held that a lorry i.e. truck adapted or designed to carry a crane, is meant for special services of lifting load, the mobile crane of the assessee which admittedly was registered as a heavy motor vehicle, clearly falls within the expression 'motor lorries' (which means motor trucks in heading//Entry III E(1A) of Part I of Appendix-I under Rule 5 since it was used by the assessee in its business of running the crane or hire and therefore the tribunal was wrong in holding that the assessee was not entitled to depreciation at 40% on crane mounted on motor truck.

The learned counsel therefore wishes us to apply the same analogy and to treat the gas cylinder as

transport vehicle for which allowable depreciation is 40%.

We are unable to agree. The context in which the Division Bench of Gujarat High Court expressed the view in the judgment afore-cited is not similar or analogous to the present context. It was the case where cranes are not mentioned specifically as an independent item in the schedule which lead the Tribunal to categorise the same generally as a machinery.

The Gujarat High Court disapproved the approach of the Tribunal terming it as over simplification of the matter. We do not think proper and just to import the same analogy in to the present case where the “gas cylinders including valves and regulators” has been mentioned as a specified item in the Schedule (Appendix –I, Rule 5 of Income Tax Rules, 1962).

We are also not persuaded by the judgments of Division Bench of this Court in (i) Referred Case No.116 of 1996 which expressed the view that each item of

shuttering material cannot be treated as one whole shuttering material forming one plant eligible for 100% depreciation under the first proviso to 32(1)(ii) of the Income Tax Act and (ii) in R.C.Nos.135 of 1997, 53 and 107 of 2001, and ITTA Nos.178, 186, 376, 607, 674, 763,765, 773 of 2006 wherein the view taken is that the poultry shed is not a “plant” enabling the assessee at higher rate of depreciation as applicable to a ‘Plant’ and that the assessee is entitled to claim depreciation as applicable to a building only.

We quite see that the factual and contextual basis for rendering the above two decisions by the learned Judges of the Division Bench is altogether different and the analogy therein cannot be imported to the case in hand.

Before expressing our opinion on the issue under reference, we would like to refer to the judgment in

COMMISSIONER OF INCOME TAX v. GOYAL MG

GASES LTD^[2] wherein the Division Bench of Delhi High Court dealing with identical facts and having regard to the situation similar to one in the present case held as follows:

“There is no dispute that the item in question was gas cylinder, though no doubt a big one, the expression gas cylinder used in Appendix I to the Income Tax Rules does not mention the size of the gas cylinder nor does it say that the gas cylinder should be only for cooking purpose or for any other particular purpose. Hence, all gas cylinders are entitled to depreciation @ 100%. If we interpret the gas cylinder to mean “cooking gas cylinder”, we will be really adding words to the statute which is not permissible.”

In the instant case before us the container mounted on the chassis of the truck is nothing but a gas cylinder

and it fits in the description of the gas cylinder mentioned in Appendix-I Part-III (ii) F4 of the Rule 5 of the Income Tax Rules, 1962 as the description makes it clear gas cylinder include valves and regulators. The mere fact that the container is mounted on the chassis of the truck does not deprive it of the character of the gas cylinder. It has all the attributes of the cylinder and it will not be divested of its basic character as cylinder on account of the fact that the item registered as a transport vehicle. The basic purpose for which the container is intended to be used has to be taken into consideration. For the purpose of moving the container from one place to the other it is annexed to the chassis of the truck. In the absence of any ambiguity, we have to take into consideration the plain language of the statutory provision and the obvious intention of the Legislature in using such a plain language. The Legislature merely said “gas cylinders

including valves and regulators”, it has not spelt out any qualification as to the size of the gas cylinder so as to entitle to claim depreciation @ 100%. The decisive factor being the language employed in the statutory provision, we are unable to accede to the view that on account of the container which is in fact a cylinder being mounted on the chassis of the truck, the entire item has to be treated as transport vehicle for which the depreciation can be claimed at 40%. If we resort to such an interpretation, it is nothing but adding words to the statute and conveying a different meaning contrary to the legislative intent.

For the foregoing reasons, we affirm the view taken by the learned Income Tax Appellate Tribunal, Hyderabad, Bench “A” and hold that the liquefied petroleum cylinder mounted on the chassis of the truck for all purposes is a gas cylinder including valves and regulators as defined in

Appendix-I Part-III (ii) F4 of the Rule 5 of the Income Tax Rules, 1962. The assessee is therefore entitled to claim depreciation at 100%.

We accordingly answer the reference in terms stated hereinabove. There shall be no order as to costs.

B.PRAKASH RAO,J

R. KANTHA RAO,J

NAUSHAD ALI,J

Date: 28-04-
2011

Note:

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