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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 4th July, 2013

\+ **Income Tax Appeal 6/2000**

COMMISSIONER OF INCOME TAX, DELHI ..... Petitioner
Through Mr. Sanjeev Sabharwal, Sr. Standing Counsel.

versus

H.B. LEASING & FINANCE LTD. ..... Respondent
Through Mr. Santosh K. Aggarwal, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (Oral)

The present appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short) relates to the assessment year 1986-87.

2. The following substantial questions of law were framed while admitting the present appeal vide order dated 6th September, 2000:-

> "A) Whether a tanker mounted on the chasis of the truck can be separated for the purposes of depreciation, qua the truck and can it be equated with LPG cylinders for having a claim of depreciation @ 100% on such tanker?
>
> B) Whether in law there can be a segregation of the parts of the truck for the purpose of claiming depreciation at the different rates on different parts?

C) Whether tribunal was correct in holding that the assessee was eligible for depreciation at a rate of 40% on leased vehicles instead of normal rate of 30% even though the assessee was not carrying on the business of running them on hire?

D) Whether the order passed by ITAT is perverse in not appreciating
(i) the real nature and character of the business of the assessee;
(ii) that the assessee was carrying on the business of leasing of vehicles and not engaged in running them on hire;
(iii) that there is a distinction between 'lease rental' and 'hire charges'."

3. It is stated by the counsel for the parties that the first two questions i.e. questions A and B are covered by the decision of this Court in ***CIT Vs. Goyal MG Gases Ltd.***, (2008) 296 ITR 72 (Delhi) wherein a similar controversy had arisen and it was held that a tanker or a gas cylinder attached to the body of a truck continues to be a gas cylinder and is accordingly entitled to depreciation as applicable to gas cylinder in Appendix I to the Income-tax Rules. In other words, the gas cylinders even in such cases are entitled to 100% depreciation.

4. As far as question C is concerned, we note that the assessee is engaged in the business of leasing and financing and had entered into lease agreements with third parties. The assessee claimed depreciation @ 40% which was restricted to 30% by the Assessing Officer observing that higher rate of depreciation was applicable if the vehicle in question was being used for running them on hire and there was no

evidence to show that the vehicles were being actually used for hire. He recorded that the assessee was not in the business of hiring and had not shown that the vehicles were in fact hired. The lessee had taken the vehicles and were using them in their normal business. The said disallowance was upheld by the first appellate authority observing that the assessee himself was not in the business of hiring. These trucks were leased out to Indian Oil Corporation for their business purpose.

5. Income Tax Appellate Tribunal reversed the said finding relying upon their earlier decisions in the case of Oriental Leasing Co. and N.G.T. Leasing and Finance Ltd. The question of law is covered by the decision of this Court in ***CIT Vs. Bansal Credits Ltd.*** (2003) 259 ITR 69 (Delhi). In the said case the assesses had given the vehicles on lease to several persons who used them for actually running them on hire. It was held that the assessees were entitled to higher rate of depreciation. The Court rejected the contention that it was the business of the assesses which determined the rate of depreciation and observed that it was the actual use of the vehicles, which would determine the rate of depreciation. It was held:-

> "In our opinion, on a plain reading of the section and the relevant entry in the Appendix, it is clear that it is the end user of the specified asset which is relevant for determining the percentage of depreciation. The section requires that the asset should be used for the purposes of the assessee's business and the entry in the Appendix refers to the

> user it should be put to. Apart from the fact that the leasing out of the vehicles is by itself tantamount to hire of vehicles, we are unable to read into any of the aforenoted provisions the requirement that the assets are to be used by the assessee for the purposes of "his" business or profession. Once it is accepted that the leasing out of the vehicles is one of the modes of doing business by the assessee and in fact the income derived from such leasing is treated as business income of the assessee, it would be clearly contradictory in terms to hold that the vehicles in question were not used wholly for the purpose of the assessee's business, which, as noted above, is one of the requisites stipulated in section 32, apart from the other two conditions indicated above, which all the assessees indubitably fulfil."
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> (emphasis supplied)

6. Recently, the Supreme Court in ***I.C.D.S. Ltd. Vs. Commissioner of Income-tax and Another*** (2013) 350 ITR 527 (SC) affirmed the said view observing:-

> "Finally, learned senior counsel appearing on behalf of the assessee also pointed out a large number of cases, accepted and unchallenged by the Revenue, wherein the lessor has been held as the owner of an asset in a lease agreement. [Commissioner of Income-Tax Vs. A.M. Constructions; Commissioner of Income- Tax Vs. Bansal Credits Ltd.; Commissioner of Income-Tax Vs. M.G.F. (India) Ltd.; Commissioner of Income-Tax Vs. Annamalai Finance Ltd. In each of these cases, the leasing company was held to be the owner of the asset, and accordingly held entitled to claim depreciation and also at the higher rate applicable on the asset hired out. We are in complete agreement with these decisions on the said point.
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> There was some controversy regarding the invoices issued by the manufacturer - whether they were issued in the name of the lessee or the lessor.

> For the view we have taken above, we deem it unnecessary to go into the said question as it is of no consequence to our final opinion on the main issue. From a perusal of the lease agreement and other related factors, as discussed above, we are satisfied of the assessee's ownership of the trucks in question.
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> Therefore, in the facts of the present case, we hold that the lessor i.e. the assessee is the owner of the vehicles. As the owner, it used the assets in the course of its business, satisfying both requirements of Section 32 of the Act and hence, is entitled to claim depreciation in respect of additions made to the trucks, which were leased out.
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> With regard to the claim of the assessee for a higher rate of depreciation, the import of the same term "purposes of business", used in the second proviso to Section 32(1) of the Act gains significance. We are of the view that the interpretation of these words would not be any different from that which we ascribed to them earlier, under Section 32 (1) of the Act. Therefore, the assesseefulfills even the requirements for a claim of a higher rate of depreciation, and hence is entitled to the same."

7. Learned counsel for the appellant-revenue has submitted that the Assessing Officer and the appellate authorities have not gone into the question of actual use of the vehicles by the lessees and whether the vehicles were being used for running them on hire. Prima facie there appears to be some merit in the said contention, but we are not inclined to remit the matter to the Assessing Officer. We do not think that the appellant is entitled to raise this contention at this stage as the Assessing Officer himself did not go into the said question and examine the same. The Assessing Officer and the appellate authorities

have not dealt with or gone into the question or observed that the lessees had not used the vehicles for hiring. That apart, we have quoted above the observations of the Supreme Court in ***I.C.D.S. Ltd.*** (supra) and the Delhi High Court in ***Bansal Credit*** (supra) wherein on identical factual matrix the question of law was answered in favour of the assessee.

8. In view of the findings recorded above, we do not think that question D is required to be answered.

9. In view of the aforesaid, questions A, B and C are answered in affirmative and in favour of the assessee and against the Revenue-appellant. Question D is left unanswered. No costs.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

JULY 04, 2013
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