IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 15013 of 2012 (B)

PETITIONER:

KOTTINATTU TRANSPORTS
THROUGH ITS PARTNER, K.P.SHINCE, POOCHACKAL
CHERTHALA, ALAPUZHA DISTRICT.

BY ADVS.SRI.P.SREEKUMAR
SRI.P.S.SIDHAN
SRI.V.K.RAJANANDAN

RESPONDENT(S):

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1. **COMMISSIONER OF INCOME TAX**
   OFFICE OF THE COMMISSIONER OF INCOME TAX
   PUBLIC LIBRARY BUILDING, SHASTRI ROAD
   KOTTAYAM 686 001.

2. **DEPUTY COMMISSIONER OF INCOME TAX**
   CIRCLE 1, ALLEPPEY 688 001.

R1 & 2 BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 15013 of 2012

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1: TRUE COPY OF THE AGREEMENT DATED 6TH JUNE 2005.

EXHIBIT P2: TRUE COPY OF THE ASSESSMENT ORDER PASSED BY DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 1, ALAPPUZHA.

EXHIBIT P3: TRUE COPY OF THE REVISION PETITION FILED BY THE PETITIONER DATED 20.01.2012

EXHIBIT P4: TRUE COPY OF THE ADDITIONAL GROUNDS FILED BY PETITIONER IN REVISION PETITION.

EXHIBIT P5: TRUE COPY OF THE ORDER PASSED BY THE COMMISSIONER OF INCOME TAX IN REVISION PETITION FILED BY THE PETITIONER DATED 20.03.2012.

RESPONDENTS' EXHIBITS :NIL

/TRUE COPY/

P.A. TO JUDGE

SKV

P.V.ASHA, J.

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W.P.(C). No.15013 OF 2012

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Dated this the 25th day of June, 2015

JUDGMENT

The petitioner is challenging Exts.P2 and P5 orders denying depreciation allowance at the rate of 30% for the vehicles given on hire.

2. Petitioner is doing the business of letting out lorries owned by him on hire under the name and style of "Kottinattu Transports". Based on Ext.P1 agreement with M/s KSE Ltd., petitioner has been letting out trucks to them for their use and has been submitting the returns regularly. In the returns filed, petitioner had claimed depreciation allowance at the rate of 30%. By Ext.P2, the Deputy Commissioner of Income Tax (Circle -1) Alappuzha, while assessing the income tax, under Section 143(1) of that Act, allowed depreciation allowance only at the rate of 15%. In the assessment order Ext.P2 it was held that the assessee is a contractor employed by/engaged in supply/transport of goods and in the TDS certificate, the nature of payment was

noted as “Payment to Contractor”. The Assessing Authority held that the payment received by petitioner was not hire charges but it was only a contract receipt for letting out lorries on hire and therefore depreciation allowance at the rate of 30% is not admissible.

3. The petitioner submitted a revision petition before the Commissioner of Income Tax. The Commissioner of Income Tax by Ext.P5 rejected the same and upheld the findings of the Assessing Authority. The contention of the petitioner before the Commissioner was also that the petitioner was engaged in the business of letting out lorries and therefore depreciation allowance at the rate of 30% should have been allowed. However, the Commissioner of Income-tax (Appeals), without going into the contentions, held that the finding of the Assessing Officer is correct. Petitioner has filed this Writ Petition aggrieved by these orders claiming depreciation allowance in terms of Appendix 1 2(ii) under the Income Tax Rules.

4. The respondents have filed a statement stating that the firm was engaged in the business of letting out

lorries and the main source of income was the contract receipts from M/S KSE Ltd. Irinjalakuda and the TDS certificate issued by M/s KSE Ltd. shows that the payment made to the assesee in the nature of supply of goods/ lorries. It is stated that under Appendix 1-Cl. III(3)(ii), motor buses, motor lorries and motor taxies used in the business of running them on hire alone are eligible for 30% depreciation. In the case of the petitioner he was engaged in contract business of transporting goods and not in the business of running lorries on hire. Therefore the firm was entitled only for depreciation allowance @ 15%.

5. I heard the learned counsel appearing for the petitioner and the learned Standing Counsel for the Income Tax Department.

6. It is clear from the order Ext.P2 that the assessment has been made on the basis of the TDS issued and Ext.P1 agreement entered into between the petitioner and the KSE Ltd. As per the agreement it is seen that the contractor had submitted a quotation offering rates for supply of trucks for a period of one year with effect from

10.6.2005 to 9.6.2005 and the company has accepted the same on the terms and conditions fixed therein. Clause (1) of the agreement provides for the rates of charges per metric tonne and the number of daily requirement of such trucks for each destination as well as the distance from Swaminathapuram to the destination as follows:

Sl. No.	*From*	*To*	*K.M.*	*No. of daily requirement of trucks*	*Rate per M.T.*
1	Swaminathapuram	Palakkad	33	1	Rs.180.00
2	Swaminathapuram	Iringalakuda	165	2	Rs.250.00
3	Swaminathapuram	Vedagiri	274	6	Rs.365.00
4	Swaminathapuram	Kozhikode	220	3	Rs.390.00

It was further stated that the number of trucks indicated may increase or decrease depending upon the production and market conditions.

7. Appendix 1 under Rule 5 of the Income Tax Rules provide for the rates of depreciation allowance. Clause (III)(2) under Part A tangible assets of the New Appendix I, provides for depreciation allowance for 'motor cars other than those used in a business of running them on hire, acquired or put to use on or after1st April 1990 as : 15%. Clause III (3) (ii) provides for percentage of depreciation as 30% for motor

buses, motor lorries and motor taxis used in a business of running them on hire. The relevant provisions in the Appendix I read as follows:

Block of Assets	**Depreciation Allowance as percentage of written down value**
Part A Tangible Assets	
I. Buiding:	
xxxxx	
II. Furniture and Fittings:	
xxxxxx	
III.Machinery and Plant	
(1) Machinery and plant other than those covered by sub items (2), (3) and (8) below: (2) Motor cars, other than those used in a business of running them on hire, acquired or put to use on or after the 1st day of April 1990.	15
(3) (i) Aeroplanes- Aeroengines (ii) Motor buses, motor lorries and motor taxies used 30 in a business of running them on hire.”	30

8. In Ext.P2 assessment order the assessing authority limited the depreciation allowance to 15% in respect of the petitioner, only because of the TDS certificate in which the nature of payment was shown as payment to contractor and not as hire charges. The contention of the learned Standing counsel is that Ext.P1 agreement provides for the rate of charges for the vehicles per metric tonne, whereas the usual procedure is to show the charges at the rate per kilo metre. But there is no provision which provides that the hire charges for vehicles should be provided per kilometer or that it cannot be provided depending upon the capacity of the vehicle i.e per metric tonne.

9. Merely on the basis of the TDS certificate furnished by M/s KSE Ltd. and the hire charges received per metric tonne, the claim of petitioner should not have been rejected. It is pertinent to note that the assessing authority as well as revisional authority, while rejecting the claim of petitioner refers to the contract receipt as one "for letting out lorries on hire". When they themselves admit that the petitioner firm was "letting out lorries on hire" the petitioner

firm comes under Clause III(3)(ii) of Appendix I to the Income Tax Rules and is entitled to depreciation allowance @ 30%, It was engaged in the business of hiring trucks and those trucks cannot be treated as 'motor vehicles other than those used in the business of running them on hire' so as to limit the depreciation allowance to 15%.

Accordingly, the orders Exts.P2 and P5 are quashed to the extent the depreciation allowance at the rate of 30% is denied to the petitioner. It is declared that the petitioner will get the benefit of depreciation allowance at the rate of 30% .

Accordingly, this writ petition is disposed of.

Sd/-
P.V.ASHA, JUDGE

SKV