

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.02.2017

Pronounced on : 27.04.2017

Coram:

The Hon'ble Mr.Justice HULUVADI G.RAMESH

and

The Hon'ble Dr. Justice ANITA SUMANTH

T.C.A.Nos.613 and 614 of 2008

K.D.Madan .. Appellant in both appeals

Versus

Income Tax Officer,

Business Ward XV(4),

Chennai 600 034.

.. Respondent in both appeals

Prayer: Tax Appeals filed under Section 260A of the Income Tax Act,1961 against the common order dated 18.10.2007 passed by the Income Tax Appellate Tribunal, Chennai in I.T.A.Nos.945 and 946/Mds/2006 for the Assessment Years 1999-00 and 2000-01, 01.04.1995 to 31.3.2001.

For Appellant .. Mr. Lakshmi Ratan

For Respondent .. Mr.T. Ravikumar

Standing Counsel

COMMON JUDGMENT

(Judgment of this Court was delivered by ANITA SUMANTH, J.)

The assessee is an individual carrying on business as a shipping agent. In the financial year relevant to assessment years 1999-00 and 2000-01, the assessee sold motor cars at a cumulative loss of Rs.51,6,108/-. In the course of assessment, the assessing authority adopted the view that the loss would be 'capital' in nature liable to be set off only against capital gains. On the other hand, the stand of the assessee was to the effect that the loss was 'business' in nature, liable to be set off against business profits. While initially a stand was taken to the effect that the assessee was also engaged in the trading of cars, it was not pursued. The assessee sought the benefit of the provisions of section 32(1)(iii) of the Income Tax Act (Act), that read as follows:

‘32. (1) In respect of depreciation of
(i) Buildings, machinery, plant or furniture, being
tangible assets;
(ii) know-how, patents, copyrights, trademarks,
licences, franchises or any other business or
commercial rights of similar nature, being intangible

assets acquired on or after the 1st day of April, 1998,

Owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed.)

.....

.....

(iii) in the case of any building, machinery, plant or furniture in respect of which depreciation is claimed and allowed under clause (i) and which is sold, discarded, demolished or destroyed in the previous year (other than the previous year in which it is first brought into use), the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, fall short of the written down value thereof:

Provided that such deficiency is actually written off in the books of the assessee.'

2. The appellant would contend that the provisions of sub-clause (iii) of Section 32(1) permitted a write off of the loss arising from the sale of the foreign cars to the extent to which such sale consideration falls short of the written down value (in short 'WDV') of the asset. The assessing authority did not agree with the said contention, applying the provisions of section 50 of the Act and concluding that the loss arising from the sale of foreign cars

was a capital loss. An appeal was filed before the Commissioner of Income Tax (Appeals), (in short 'CIT(A)') that was allowed on the basis that the invocation of the provisions of section 50 of the Act by the assessing officer to the transaction in question was erroneous.

3. The arguments of the assessee were to the effect that no depreciation was provided for foreign cars for the relevant period and the written down value thus ought to be taken to be the cost of acquisition. The CIT(A) refers to the definition of 'written down value' (WDV) in section 43(6) and notes that the actual cost of an asset, would be the amount the asset actually cost, less depreciation actually allowed under the act. Upon examining the provisions of section 50 of the Act, the CIT(A) concludes that it would not be applicable to the transaction in question. Following the rationale of the decision of the Madras High Court in the case of the *Guindy Machine Tools Private Limited, Vs. Commissioner of Income Tax (254 ITR 780)*, the appeal of the assessee was allowed. We may also note that the definition of 'Plant' in Section 43(3) includes 'vehicles' and it was established as a fact before the CIT(A) that the foreign cars were indeed used in business

during the relevant period. This finding of fact was not challenged by the Revenue before the Income Tax Appellate Tribunal ('tribunal' in short) though the conclusion arrived at by the CIT(A) in favour of the assessee was assailed in appeal.

4. The order of the CIT(A) was reversed by the Tribunal by way of a short order without any discussion of either the relevant statutory provisions or precedents and merely holding that the loss cannot be treated as a business loss in view of the fact that the assessee was not a dealer in foreign cars. In doing so, the Tribunal fails to note that the use of the cars in its business by the assessee has been found as a fact by the CIT (A) and attained finality. The order of the Tribunal is in appeal before us in the present appeals raising the following substantial questions of law.

'1. Whether the Tribunal was right in law in holding that the loss claimed by the assessee on sale of foreign cars is not allowable?

2. Whether the Tribunal is right in holding that the foreign cars can be treated as capital asset of the assessee and any profit or loss arising of such cars can only be treated as capital gain or loss?'

4. We have heard the submissions of Sri. Lakshmi Ratan learned counsel appearing for the assessee and Mr. T.Ravikumar, learned Senior Standing Counsel appearing for the Revenue.

5. Section 50 of the Act invoked by the Revenue applies to a capital asset forming part of a block of assets, in respect of which, depreciation has been allowed. In the present case, the foreign cars do not form part of a block of assets and, admittedly, have not been granted depreciation in so far as depreciation was not allowable in respect of foreign cars for the relevant period. The provisions of section 50 of the Act are thus inapplicable to the present case.

6. Let us now examine the provisions of section 32(1)(iii). The clause, as relevant for the period in question was inserted by Finance Act 1998, effective 1.4.1998. The provision is applicable to the assets in question, being foreign cars used in the business of the assessee in terms of section 32 (1)(i) of the Act. The assessee sold the foreign cars and the sale consideration resulted

in a loss of an amount of Rs.51,6,108/-. Such loss has been written off in the books of accounts and claimed as a business loss. The extent of depreciation that could have been claimed would be the amount, by which the sale consideration falls short of the written down value. In the present case, Rs.51,6,108/-, the written down value as defined under section 43(6), would mean actual cost less depreciation actually allowed. In the present case, since no depreciation was allowed, the written down value would equal the actual cost. We refer in this regard to paragraph 8 of the decision of this court in *Guindy Machine Tools* case (supra), wherein the Bench states as follows;

‘8. Having regard to that position of law, the written down value of the assets in respect of which the assessee claims depreciation here is the cost of acquisition, as no depreciation had been claimed or actually allowed and, therefore, the deduction of any amount allowed as depreciation from the cost of acquisition was not possible. The cost of acquisition itself became, in this case, the written down value. Though the words used are "written down value" implying that the value written is something that is brought down from a higher figure, that expression is normally apposite only where the asset had depreciated and the value written down is less than the cost of acquisition. Having regard to the manner in which the term written down value has been

used in Section 32(1)(iii) of the Act and having regard to the definition thereof under Section 43(6), there is no reason why the cost of acquisition itself cannot be regarded as the written down value in a case like this.'

7. The loss suffered by the assessee on the sale of foreign is quantified at a figure of Rs.51,6,108/-. The only question that remains is to determine the nature of loss. In view of the categorical finding of the Commissioner of Income Tax (Appeals) that has attained finality, to the effect that the foreign cars were utilized in the business of the assessee, the loss arising out of their sale would be liable to be categorized as a business loss.

8. The Substantial questions are answered in the negative and in favour of the assessee. The appeal is allowed with no order as to costs.

(H.G.R.,J) (A.S.M.,J)
27 .04.2017

Speaking order/non-speaking order

Index: Yes/No

msr/msv

HULUVADI G.RAMESH, J
AND
Dr.ANITA SUMANTH,J

msr/msv

PRE DELIVERY JUDGMENT IN
T.C.A.NOS.613 AND 614 OF 2008

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