IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

INCOME TAX APPEAL NO. 65 OF 2015

The Commissioner of Income Tax .. Appellant

Versus

M/s Sunder Automobiles Dhule .. Respondent

Shri Alok Sharma, Advocate for the Appellant.

CORAM : S. V. GANGAPURWALA AND
ARUN M. DHAVALE, JJ.
DATE : 23RD JANUARY, 2018.

FINAL ORDER :

. Present appeal is filed to the extent of disallowing the addition made on account of depreciation claimed by the assessee. The appeal pertains to assessment year 1998-1999.

2. Mr. Sharma, the learned counsel for the appellant submits that, the appeal has been filed on following substantial questions of law.

> A. Whether on the facts and circumstances of the case and in law the ITAT is justified in deleting the addition made by the A. O. on account of disallowance of assessee's claim of depreciation on truck at Rs. 13,03,920/- for A. Y. 1998-99?

B. Whether on the facts and circumstances of the case and in law the ITAT is justified in ignoring the fact that it is only during the survey action u/s 133A of I. T. Act that it was found that the agreements made for the hiring out the trucks it not mentioned any quantum about taking of deposit from the hirers and further the assessee subsequently later on sold these trucks to the hirers on the nominal price ?

C. Whether on the facts and circumstances of the case and in law the ITAT is justified in ignoring the fact that, the assessee has given colourful shape to the transaction to escape from tax liability and in view of Apex Court decision in the case of McDowell and Co. Vs. CTO 154 ITR 148 that tax planning is legitimate, being within the framework of law. Colourable devices can not be part of tax planning and it would be wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods since every citizen of the country is under obligation to pay taxes honestly without resorting to deceptions ?

3. According to the learned advocate, the transaction entered into by the assessee i. e. hire of truck at the rate of Rs. 2,000/- per month was at lower side. The assessee claimed depreciation at the rate of 40% i. e. Rs. 7,61,859/- and received rent amount of only Rs. 5,62,066/- for Akola. Same was the position with regard to the goods carriage given on hire for Daman unit. According to the learned advocate, assessing officer has considered that, the details are not provided by the assessee U/Sec. 44AE of the

Income Tax Act thereby raising the doubt about the transaction. The Commissioner Appeals and the Tribunal failed to consider said aspect in its correct perspective.

4. We have gone through the judgment of the Assessing Officer, Commissioner Appeals and the Tribunal. The assessing officer has disallowed the depreciation of the truck. The assessee has shown hire charges of Rs. 24,000/- per truck per annum and also claimed depreciation. The assessing officer has observed that, the assessee is taking disadvantage of provisions of Sec. 44AE of the I. T. Act by showing receipt of Rs. 2000/- per truck and claimed full depreciation of these trucks. The assessee is giving colourable shape to the transaction.

5. The Commissioner Appeals and the Tribunal have concurrently held that, hire charges were low was not relevant since assessee had received substantial interest free huge deposits for hire of truck. The assessee owned fifteen trucks, nine from Akola unit and six from Daman unit. The Tribunal has observed that, the assessing officer could not have termed the transaction of hire of trucks as sale of truck. It is observed that, the hire charges were less was not relevant since assessee has received substantial interest free deposit, which helped assessee to reduce his dependence from the interest bearing funds.

6. The reasonings adopted by the Commissioner Appeals and the Tribunal is plausible one. In view of that, no substantial question of law arises. The appeal as such is disposed of. No costs.

[ARUN M. DHAVALE, J.] **[S. V. GANGAPURWALA, J.]**

bsb/Jan. 17