IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A.NO.17 OF 2012

Commissioner of Income Tax-I,
Chennai. ... Appellant

Versus

M/s.L&T Transportation
Infrastructure Limited,
Post Box No.979,
Mount Poonamallee Road,
Manapakkam,
Chennai – 603 089.
... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, “A” Bench, dated 22.07.2011 in I.TA.No.1696/Mds/2010 Assessment year 2007-2008.

Prayer in T.C.A.17/2012:-

Preferred against the order dated 30.07.2010 made in ITA.No.567/09-10/A-III on the file of the Commissioner of Income Tax (Appeals)-III, No.121, Mahatma Gandhi Road, Chennai-34, PAN No.AAACL1912F year of Assessment 2007-2008.

And against the order dated 18.12.2009 on the file of the Income Tax Officer, Company Ward II(1), Room No.515, New Block, No.121, M.G.Road, Chennai-34, GIR.No./PAN.AAACL1912F and Assessment Year 2007-2008.

For Appellant : Mr.Karthik Ranganathan,
Senior Standing Counsel

For Respondent : Mr.N.V.Balaji

J U D G M E N T

(Judgment of the Court was delivered by R.MAHADEVAN, J.)

This tax case appeal has been filed by the appellant / Revenue, challenging the order dated 22.07.2011 passed by the Income Tax Appellate Tribunal, Bench 'A', Chennai, in I.TA.No.1696/Mds/2010, relating to the assessment year 2007-08.

2. By order dated 06.03.2012, this court admitted the aforesaid tax case appeal on the following substantial question of law:

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was entitled claim depreciation at the rate of 10% applicable to buildings on the roads and bridge developed and maintained by the assessee under the terms of "Build, Operate and Transfer (BOT) agreement with the Government even though as per the terms of the agreement the assessee could not be considered as the owner of the assets?".

3. When the matter was taken into consideration, the learned counsel for the appellant/Revenue as well as respondent/assessee jointly submitted that the substantial question of law involved in this appeal has already been considered and decided in favour of the assessee, in the light of the judgment of the Hon'ble Supreme Court in Principal Commissioner of Income Tax Vs. GVK Jaipur Expressway Ltd., reported in [(2018) 100 taxmann.com (SC)], the relevant passage of which, is usefully extracted hereunder:

> "14. In our opinion the term owned as occurring in Section 32 (I) of the Income-tax Act, 1961 must be assigned a wider meaning. Any one in possession of property in his own title exercising such dominion over the property as would enable other being excluded therefrom and having right to use and occupy the property and/or to enjoy its usufruct in his own right would be the owner of the buildings though a formal deed of title may not have been executed and registered as contemplated by Transfer of Property Act, Registration Act, etc. 'Building owned by the assessee' the expression as occurring in Section 32(1) of the Income-tax Act means the person who having acquired possession over the building in his own right uses the same

for the purposes of the business or profession though a legal title has not been conveyed to him consistently with the requirements of laws such as Transfer of Property Act, and Registration Act, etc. but nevertheless is entitled to hold the property to the exclusion of all others.

15. Generally speaking depreciation is an allowance for the diminution in the value due to wear and tear of capital asset employed by an assessee in his business. Black's Law Dictionary (Fifty Edn.) defines depreciation to mean, inter alia:

A fall in value, reduction of worth. The deterioration or the loss or lessening in value, arising from age, use, and improvements, due to better methods. A decline in value of property caused by wear or obsolescence and is usually measured by a set formula which reflects these elements over a given period of useful life of property.... Consistent gradual process of estimating and allocating cost of capital investments over estimated useful life of asset in order to match cost against earnings.....

19. It is well-settled that there cannot be two owners of the property simultaneously and in the same sense of the term. The intention of the Legislature in enacting Section 32 of the Act would be best fulfilled by allowing deduction in respect of depreciation to the person in whom for the time-being vests the dominion over the building and who is entitled to use it in hos own right and is using the same for the purposes of his business or profession. Assigning any different meaning would not subserve the legislative intent. To take the case at hand it is the appellant-assessee who having paid part of the price, has been placed in possession of the houses as an owner and is using the buildings for the purpose of its business in its own right. Still the assessee has been denied the benefit of Section 32. On the other hand, the Housing Board would be denied the benefit of Section 32 because inspite of its being the legal owner it was not using the building for its business or profession. We do not think such a benefit-to-none situation

could have been intended by the Legislature. The finding of fact arrived at in the case at hand is that though a document of title was not executed by Housing Board in favour of the assessee, but the houses were allotted to the assessee by the Housing Board, part payment received and possession delivered so as to confer dominion over the property on the assessee whereafter the assessee had in its own right allotted the quarters to the staff and they were being actually used by the staff of the assessee. It is common knowledge, under the various scheme floated by bodies like housing boards, houses are constructed on large scale and allotted on part payment to those who have booked. Possession is also delivered to the allottee so as to enable enjoyment of the property. Execution of document transferring title necessarily follows if the schedule of payment is observed by allottee. If only the allottee may default the property may revert back to the Board. That is a matter only between the Housing Board and the allottee. No third person intervenes. The part payment made by allottee are with the intention of acquiring title. The delivery of possession by Housing Board to allottee is also a step towards conferring ownership. Documentation is delayed only with the idea of compelling the allottee to observe the schedule of payment."

4. Following the aforesaid decision, wherein, it was categorically held by the Hon'ble Supreme Court that "the assessee is entitled to claim depreciation of public roads treating it as building", we answer the substantial question of law raised herein against the appellant/Revenue and in favour of the respondent / assessee and accordingly, dismiss the tax case appeal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vm/kas

To

1. The Income Tax Appellate Tribunal,
   Chennai, “A” Bench.

2. The Commissioner of Income Tax - I ,
   Chennai.

3. The Income Tax Officer,
   Company Circle II(4),
   Chennai 600 034.

4. The Income Tax Officer,
   Company Ward- II(1),
   Chennai.

5. The Commissioner of Income Tax(Appeals)-III,
   Chennai.

+1cc to Mr.N.V.Balaji, Advocate, S.R.No.8730

T.C.A.No.17 of 2012

JPII(CO)
PM/16/03/2022