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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/74/2011
COMMISSIONER OF INCOME TAX, KOLKATA-XII, KOLKATA
VS.
M/s. BOTHRA SHIPPING SERVICES

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 20TH FEBRUARY, 2023

<u>Appearance</u> :
Mr. Prithu Dudhoria, Adv.
...for appellant

The Court : - This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 16.7.2010 passed by the Income Tax Appellate Tribunal 'C' Bench, Kolkata in ITA No. 583/Kol/2010 for the assessment year 2005-06.

Heard learned Counsel for the appellant Mr. Prithu Dudhoria, who had appeared in this appeal when the appeal was admitted on 11.3.2011. Though it is submitted by the learned standing Counsel that he does not have specific instruction to appear, since he has appeared when the appeal was admitted we directed him to appear in this matter and his appearance shall be regularized by the concerned department.

The appeal was admitted on the following substantial question of law :-

i) Whether the Tribunal committed substantial error of law in allowing depreciation in terms of Section 32 of the Income Tax Act, 1961 @ 30% by totally over looking the fact that the rate of depreciation applicable should be 15% as provided in Entry No.III(2) of Part-I of Appendix I of the Income Tax Rule, 1962?"

The assessee was an appellant before the learned Tribunal challenging the order passed by the Commissioner of Income Tax, Kolkata dated 1.2.2010, passed under Section 263 of the Act. The assessee's contention was that the earth moving vehicles fall under Entry 111(3)(ii) of part A of Appendix I of the Income Tax Rules 1962 and as such entitled to depreciation at 30% as allowable in case of motor lorries, since they were used in absence of running them on hire which was considered in the proper perspective by the assessing officer and the action of the CIT in restricting the depreciation at 15% is unlawful and could not have been done by invoking the power under Section 263 of the Act. The learned Tribunal had considered the factual position which was not in dispute; took note of the decisions of the Hon'ble Supreme Court in *Bose Abraham Vs. State of Kerala, AIR 2001 SC 835* and the decision in the case of *CIT vs. Gaylord Constructions (2010) 190 Taxman 406 (Kerala), Gujco Carriers Vs. CIT (2002) 122 Taxman 206 (Gujarat), Sanco Trans Ltd. Vs. ACIT (1997) 58 TTJ (Mad) 619, Gujarat Tube Well Co. Vs. ITO 1992 43 TTJ (Ahd) 331* and *Hindustan Construction Co. Vs. ITO (1988) TTJ (Ahd) 278* and held that the assessing officer had correctly allowed the claim of depreciation under Section 32 of the Act, applying the rate of 30%. Thus we find that the learned Tribunal took note of the undisputed questions of fact and applied the judicial precedent and affirmed the order passed by the assessing officer

We find no error in the order passed by the learned Tribunal or in the decision making process.

In the result the appeal is dismissed and the substantial question of law is answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.