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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA.No.287/2002

% Date of Decision : November 14, 2002

# Commissioner of Income-tax ... APPELLANT  
! through Mr.Sanjiv Khanna  
with Mr.S.C.Sharma  
Advocates.

VERSUS

\$ M/s.Sindu Trade Link Ltd. ... RESPONDENT  
^ through Nemo.

\* CORAM :

\* HON'BLE MR.JUSTICE D.K.JAIN  
HON'BLE MS.JUSTICE SHARDA AGGARWAL

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

: D.K.JAIN, J. (ORAL)

This appeal by the revenue, under Section 260A of the Income Tax Act, 1961 (for short 'the Act'), is directed against the order, dated 6 May 2002, passed by the Income Tax Appellate Tribunal, Delhi Bench 'E' (for short 'the Tribunal') in ITA No.5465(Del)/96, pertaining to the assessment year 1994-95.

The only issue, which has been raised in this appeal is whether the assessee, who had given

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tippers/loaders/trucks on lease, is entitled to higher rate of depreciation under Section 32 of the Act read with Rule 5 of the Income Tax Rules, 1962 (for short 'the Rules') ~~read with~~ <sup>And</sup> Appendix I thereto. The stand of the revenue is that since the said vehicles had been leased out to third parties and had not been used by the assessee himself for running them on hire, it is not entitled to higher rate of depreciation, even though these have actually been used by the lessee in the business of running them on hire.

A similar issue had come up for consideration of this Court and vide our judgment dated 13 November 2002 in ITA No.16/2002 and other connected matters, we have held that a higher rate of depreciation in respect of the vehicles, falling under Entry III(2)(ii) in Appendix I to the Rules would be available, even though the leased out vehicles are not used in the business of hire by the assessee himself provided these are used by the lessee in the business of hire. However, while holding so, we have emphasised that to avail of the higher rate of depreciation, the assessee must show that the leased out vehicles were actually being used in the business of hire.

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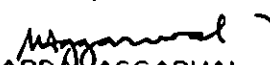
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Mr. Sanjiv Khanna, learned senior standing counsel for the revenue, while drawing our attention to certain observations by the Commissioner of Income-tax (Appeals), and affirmed by the Tribunal, has contended that the said orders tend to give an impression that even the vehicles, which are given on hire purchase, are entitled to higher rate of depreciation. Having carefully perused the assessment order, we feel that the apprehension of learned counsel is unfounded. It is clear from the assessment order that the depreciation at higher rate was denied to the assessee only on the ground that the assessee company was not involved in the business of transportation of goods on hire itself and had merely leased out the vehicles.

In view of the afore-noted decision rendered by us, no substantial question of law survives for consideration.

The appeal is accordingly dismissed.

  
D.K. JAIN, J

  
SHARDA AGGARWAL, J

NOVEMBER 14, 2002  
'SS'