



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: November 24, 2014

+ **ITA No. 720/2014**

COMMISSIONER OF INCOME TAX-21 Appellant

Through: Mr.Rohit Madan,Sr.Standing
Counsel with Mr.Ruchir Bhatia,
Advocate

versus

MR. SARKAR NATH OBEROI Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V.KAMESWAR RAO

SANJIV KHANNA, J. (Oral)

1. The first issue raised in the present appeal relates to additions made by the Assessing Officer under Section 40(a)(ia) of the Income Tax Act, 1961 on the ground that the tax deducted at source was deposited with the government after the end of the relevant Assessment Year. It is accepted by revenue that the tax deducted at source was deposited before the due date of the filing of the return. In view of this admitted factual position, the question has to be decided against the appellant revenue in view of the decision of this Court in *Commissioner of Income Tax Vs. Naresh Kumar, [2014] 362 ITR 256 (Delhi)*, wherein, it has been held that amendment to Section 40(a)(ia) by Finance At, 2010 has retrospective effect. The respondent assessee would be entitled to benefit of the proviso added to Section 40(a)(ia) vide Finance



Act, 2010. Thus, the disallowance under Section 40(a)(ia) cannot be sustained.

2. The second issue raised in the present appeal relates to the issue of rate of depreciation on trucks. Tribunal has relied upon Circular No. 652 dated 14.06.1993 issued by the Central Board of Direct Taxes (CBDT) which is applicable. The said circular reproduced in [1993] 202 ITR 55 (ST.) 55, reads:-

“Subject: Section 32 of the Income-tax Act, 1961 – Rate of depreciation on motor lorries used in the business of transportation of goods – Regarding.

Under sub-item 2(ii) of Item No. III of Appendix I to the Income Tax Rules, 1962 higher rate of depreciation is admissible on motor buses, motor lorries and motor taxis used in a business of running them on hire. A question has been raised as to whether, for deriving the benefit of higher depreciation, motor lorries must be hired out to some other person or whether the user of the same in the assessee’s business of transportation of goods on hire would suffice.

2. In Board’s Circular No. 609, dated 29th July 1991, it was clarified that where a tour operator or travel agent uses motor buses or motor taxis owned by him in providing transportation services to tourists, higher rate of depreciation would be allowed on such vehicles. It is further clarified that higher depreciation will also be admissible on motor lorries used in the assessee’s business of transportation of goods on hire. The higher rate of depreciation, however, will not apply if the motor buses, motor lorries, etc. are used in some other non-hiring business of the assessee”.

3. The factual findings by the Tribunal is that the assessee had



entered into contracts with the third parties for the transportation of coal, iron etc. The aforesaid factual finding shows that the assessee was plying the motor lorries for hire. Transportation of goods was the business of the assessee, and was generating revenue/income. It is not the case of the revenue that the respondent assessee was plying the motor lorries for transporting goods belonging to the assessee. The Supreme Court in *Commissioner of Income Tax Vs. Gupta Global Exim (Pvt.) Ltd., [2008] 305 ITR 132 (SC)* has held that the true test which should be applied, is whether the assessee was in the business of transportation and the vehicles were used for the said business. This would show whether the vehicles were run on hire. The said test has been rightly applied in the present case.

4. In view of the factual findings recorded by the Tribunal, we do not see any reason to issue notice on the second issue. The appeal is accordingly dismissed.

(SANJIV KHANNA)
JUDGE

(V.KAMESWAR RAO)
JUDGE

NOVEMBER 24, 2014/akb