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

% *Date of decision: 10th February, 2014*

\+ **ITA 80/1999**
\+ **ITA 18/2000**
\+ **ITA 95/2000**

COMMISSIONER OF INCOME TAX .....Appellant
Through: Mr. Rohit Madan, Sr. Standing Counsel with Mr. Akash Vajpai and Ms. Pavitra Roy Choudhry, Advocates.

versus

B.L. PASSI ..... Respondent
Through: Mr. C.S. Aggarwal, Sr. Advocate with Mr. Prakash Kumar and Mr. Sheel Vardhan, Advocates.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

R.V. EASWAR, J. (OPEN COURT)

1. These are three appeals filed by the revenue under Section 260A of the Income Tax Act, 1961 ('Act', for short). On 16.10.2001 this Court admitted the appeals and the following substantial questions of law were framed for adjudication: -

(i) *Whether there was any material before the Tribunal to come to the conclusion that the trucks in question were given on hire?*

(ii) *Whether the Tribunal was correct in law in accepting assessee's claim of depreciation on the trucks?*

2. The appeals relate to the assessment years 1986-87, 1987-88 and 1988-89. The assessee is an individual and runs a proprietory concern under the name and style of M/s. Pasco Automobiles which deals in sale of Maruti cars on commission basis. He also derives share income from two partnership firms which were dealing in the purchase and sale of Telco trucks. Since the issue upon which questions of law have been framed is the same in all the three years and since it has been discussed in detail in the order of the Tribunal for the assessment year 1986-87, the facts for that year may be noticed as illustrative for all the three years. In the return filed for that year, the assessee claimed depreciation of Rs.10,29,581/- in respect of the trucks. In the course of the assessment proceedings, the AO took the view that the claim of depreciation was a mere device to reduce the tax liability arising out of the commission earnings of Rs.36.02 lakhs on sale of Maruti cars and Rs.6.5 lakhs on sale of other vehicles. He noted that there was a steep ingress in the commission income compared to the earlier year in which it was only Rs.6.50 lakhs. On further investigation he found that the trucks on

which the assessee had claimed depreciation were shown to have been acquired from the sister concern of the assessee and that too in the fag end of the relevant financial year i.e. between 03.03.1986 and 15.03.1986. The trucks were also allowed to have been acquired without making any immediate payment. They were claimed to have been given on hire to M/s. Bombay Okara Cargo Ltd. and M/s. Bombay Okara Carriers and Movers (Regd.) for hire charges of Rs.300/- and Rs.290/- per day respectively. The total charges thus received were Rs.14,850/-. On being asked to furnish the details regarding the purchase, registration, user and subsequent sale of the trucks early in the next financial year, the assessee furnished such details. The AO thereafter recorded the statement of the accountant of the aforesaid transport companies. On the basis of this statement and not being satisfied with the particulars submitted by the assessee, the claim of depreciation was disallowed.

3. On appeal the CIT (Appeals) by order dated 20.02.1990 set-aside the assessment and directed the assessing officer to re-examine the claim and record fresh findings on various points, including the question as to whether these trucks were actually given on hire.

4. Pursuant to the directions, the AO made some inquiries and issued notices under Section 131 of the Act to the parties from whom the assessee received hire charges, but these notices came back unserved. Those parties could not be produced by the assessee. The AO accordingly repeated the disallowance.

5. On appeal against the fresh assessment, the CIT (Appeals) was satisfied with the details furnished by the assessee in respect of the purchase, registration, user and subsequent sale of the trucks. He also relied on an affidavit of Sardar Inder Singh one of the directors of M/s. Bombay Okara Carriers and Movers (Regd.) dated 23.03.1989. On this basis he upheld the assessee's claim for depreciation.

6. The revenue carried the matter in appeal to the Tribunal which endorsed the view taken by the CIT (Appeals) and while doing so relied heavily on the statement of Vijay Kumar dated 14.03.1989 and the affidavit of the director of M/s. Bombay Okara Carriers and Movers (Regd.). The Tribunal in its order dated 28.10.1998 found that the transactions were made in the normal course of business and were not open to the challenge of being a device to reduce the tax liability of the assessee. A similar decision was given in respect of the other two years also, by separate orders.

7. It is against the aforesaid orders of the Tribunal that the revenue has filed the present appeals. Though the orders for the assessment years 1987-88 and 1988-89 were passed on different dates, the issue has been mainly discussed by the Tribunal only in its order for the assessment year 1986-87. The revenue has filed appeals against the orders of the Tribunal for all the three years.

8. The main question, as indicated by the first substantial question of law framed by this Court is whether there was any material before the Tribunal to hold that the assessee let out the trucks on hire. So far as this aspect is concerned the discussion of the Tribunal is contained in paragraphs 6.19 to paragraph 6.31. A perusal of these paragraphs shows that the Tribunal has recorded a finding that the truck chassis were purchased on 03.03.1986 and 15.03.1986 for a total price of Rs.20.69 lakhs and the assessee got the body built on each truck at a cost of Rs.40,000/- each. Expenses were also incurred on transport of the truck chassis, registration charges, insurance charges, etc. and the total expenses came to Rs.25,73,952/-. These facts were not disputed before the Tribunal. The Tribunal has also noticed that the trucks were got registered on completion of all formalities on various dates between 14.03.1986 and 28.03.1986. The fact that the trucks were so registered

was also not disputed before the Tribunal by the revenue. The Tribunal's finding that the trucks were actually paid for by three demand drafts on 17th and 19th March, 1986 is also not disputed by the revenue. Actually two demand drafts for Rs.10.5 lakhs appear to have been issued to M/s. Pasco Automobiles. In para 6.20 of its order the Tribunal has found that the expenses on purchase of the trucks and the body building, registration, insurance, etc. were duly accounted for in the assessee's books of accounts. It also noted that the copies of the purchase bills were produced before the assessing officer along with the insurance cover note and registration books for all the trucks in the course of the original assessment proceedings. It was on these materials that the Tribunal held that the assessee was the owner of the trucks, which materials and finding were not disputed by the revenue. One of the conditions for the claim of depreciation prescribed by Section 32(1) of the Act is that the assessee should be the owner of the asset. The ownership thus stands established on the basis of the materials referred to by the Tribunal and relied upon by it.

9. The Tribunal also found that the assessee got the body building on the chassis done from five body builders whose names and addresses are given in para 6.20. In paragraph 6.21, the Tribunal has found that those

body builders were paid through cheques drawn on Punjab & Sindh Bank. Affidavits were also filed by the body builders. Though the summons issued by the assessing officer to the body builders were received back unserved but without any postal remarks, since the registration certificates/ books were produced before the assessing officer and evidence was also led with regard to the cheque payments made to the body builders, the existence and ownership of the trucks cannot be disputed. The Tribunal has referred to this aspect in para 6.21 by observing that the trucks can be got registered only when necessary formalities about the completion of the body building, insurance, etc. were completed. There was also a further finding that the trucks were registered during the period from 14.03.1986 to 28.03.1986. Thus the finding of the Tribunal that the assessee was owner of the trucks cannot be disputed.

10. So far as the receipt of hire charges is concerned, one Vijay Kumar, Accountant of Bombay Okara Cargo Ltd. and Bombay Okara Carriers and Movers (Regd.) appeared before the Assessing Officer in response to the summons and produced the books of accounts and vouchers to show the payment of hire charges to the assessee. The relevant voucher numbers and the dates have been noted by the Tribunal

in paragraph 6.22. The Tribunal has also noted that the assessee received the hire charges through cheques and they were in respect of the period 25.03.1986 to 31.03.1986 and 01.04.1986 to 07.04.1986. Vijay Kumar also confirmed that the trucks were taken on hire and were used for local transportation. An affidavit from Sardar Inder Singh, who was the Director of M/s. Bombay Okara Cargo Ltd. and the managing partner of M/s. Bombay Okara Carriers and Movers (Regd.) was also filed by the assessee as noted by the Tribunal and in this affidavit he deposed that in addition to their own trucks, they also hired trucks whenever necessary depending upon the need of their business. He further states in the affidavit that it is a regular feature in this line of business for them to engage trucks belonging to other persons in order to carry on their business of transporting goods from one place to another. The Tribunal has referred to this affidavit in some detail in para 6.23 of its order and has also noted that the assessing officer, before whom the affidavit was filed did not summon Sardar Inder Singh to verify the correctness of contents of the affidavit nor did he make any inquiries through the Inspector. It was the opinion of the Tribunal that in these circumstances, the averments in the affidavit of Sardar Inder Singh remain uncontroverted. In addition, the Tribunal has also referred to the

correspondence exchanged between the assessee and the two transport companies.

11. There are other materials on the basis of which the Tribunal held that the assessee did receive hire charges for letting out the trucks on hire. It has noted that the hire charges received by the assessee in the accounting year relevant to the assessment year 1986-87 were assessed as the assessee's income. The hire charges were also received in respect of the assessment year 1987-88. In the accounting year relevant to the assessment year 1987-88, the trucks were sold for a total price of Rs.15.91 lakhs as against the cost of Rs.25.73 lakhs. The Tribunal accepted the genuineness of the sale on the basis of the evidence adduced by the finance companies such as Motor and Finance Ltd. and Finance House (India) Pvt. Ltd. The sale consideration was found by the Tribunal to have been received by the assessee directly from the finance companies. On the basis of these materials, the Tribunal did not find any justification to doubt the genuineness of the sale of the trucks.

12. In paragraph 6.24 of its order, the Tribunal also noted the fact that the assessee hired out trucks and received hire charges since the assessment year 1984-85 and in those years the assessing officer did not entertain any doubt about the claim of depreciation and allowed the

same. Whenever those trucks were sold, the balancing charge (excess of the sale price over the written down value, to the extent of depreciation already allowed) was seen to have been assessed by the assessing officer under Section 41(2) of the Act, as business income. In the assessment year 1984-85, hire charges of Rs.14,966/- were received and depreciation of Rs.3,10,055/- had been allowed. Even the loss on account of depreciation from running the trucks on hire was determined at Rs.2,95,089/- and allowed in that assessment year by an order passed on 24.01.1986 under Section 143(3). In the assessment year 1985-86 the assessee received truck hire charges of Rs.59,250/- and claimed depreciation of Rs.5,62,532/- as well as bank interest on loan at Rs.11,480/-. The aggregate amount of Rs.5,21,762/- was allowed as a loss in a scrutiny assessment made under Section 143(3) on 11.05.1987. In this year one more aspect which the Tribunal has noted is that the profit of sale of the trucks amounting to Rs.17,416/- was assessed under Section 41(2) as business income. Not only in those earlier years, but also in the assessment year 1986-87, the excess amount realised on sale of the trucks over the written down value, to the extent of depreciation already allowed at Rs.36,054/- was declared and assessed by the assessing officer under Section 41(2).

13. The Tribunal found it incongruous that on the one hand the assessing officer was consistently assessing the hire charges and also the profit on account of the sale of the trucks under Section 41(2) as business income, but on the other hand the depreciation claimed on the trucks was being disallowed, though in similar circumstances the AO had no objection to allowing the depreciation claim in the assessment years 1984-85 and 1985-86.

14. It was only on the basis of the aforesaid materials that the Tribunal came to the conclusion in all the three years that the assessee was in receipt of hire charges and thus satisfied the second condition of Section 32(1) i.e. that the asset owned by the assessee should be used for the purpose of the business of the assessee. We have referred to the materials relied upon by the Tribunal in some detail because the first substantial question of law framed by this Court is whether the Tribunal had any material before it to come to the conclusion that the assessee was in receipt of hire charges. It is also to be noted that the assessing officer was not able to discredit or impeach the evidence adduced by the assessee to show that it was in receipt of hire charges. The assessing officer was not able to show that the claim was bogus.

15. For the aforesaid reasons the answer to the first question of law is in affirmative by holding that there was material before the Tribunal to come to the conclusion that the trucks in question were given on hire. There is no substantial question of law framed on the aspect of whether the assessee was the owner of the trucks. Thus both the conditions of Section 32(1) stand satisfied. Accordingly, the second substantial question of law i.e. whether the Tribunal was correct in law in accepting the assessee's claim for depreciation on the trucks, is also answered in the affirmative in favour of the assessee and against the revenue.

16. For the above reasons, the Court answers the questions framed in favour of the assessee and against the revenue. Consequently, the appeals are dismissed.

(R.V. EASWAR)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

FEBRUARY 10, 2014
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