IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 828 OF 2010

The Commissioner of Income Tax-2,]
Mumbai, Aayakar Bhavan,]
Mumbai – 400 020.] ... Appellant

Vs

M/s. Birla Global Asset Finance Co. Ltd.]
Ahura Centre, "B" Tower, 2nd Floor,]
Mahakali Caves Road, Andheri East,]
Mumbai.] ... Respondents

Mr. Vimal Gupta for the Appellant.

Mr. J.D. Mistri, senior counsel with Mr. Atul Jasani for the Respondent.

CORAM : S.J. VAZIFDAR, &
M.S. SANKLECHA, JJ.

WEDNESDAY, 8TH AUGUST, 2012

JUDGMENT : ***[Per S.J. Vazifdar, J.]***

1. This is an appeal under section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal dated 2nd July, 2009 in ITA No.724/Mum/2008 in respect of assessment year

2003-2004.

2. The appellant seeks to raise the following questions of law :-

(A) Whether on the facts and in the circumstances of the case and in law the Hon'ble Tribunal was right in holding that motor cars are commercial vehicles and the assessee is entitled to depreciation at the rate of 50% as provided in sub-clause (vi) of clause 3 of Item III of Part A of Appendix I of the Table of rates of depreciation relevant to assessment year 2003-2004 ?

(B) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in granting depreciation @ 50% on motor cars ignoring the provisions of clause (2) of Item-III of Part A of Old Appendix-I of the table of rates of depreciation relevant to the assessment year 2003-04 which specifically provide for depreciation @ 20% on motor cars not used in the business of running them on hire?

3. The respondent-assessee filed its return of income declaring a total loss of Rs.3,60,29,219/-. The respondent carries on business of asset based finance/investment and trade finance. The Assessing Officer (A.O.) made the assessment order under section 143(3). The assessee claimed depreciation of Rs.42,35,755/- at the rate of 50% on motor cars of the total value of Rs.84,71,510/- claiming them to be new motor vehicles. The A.O. held that the respondent was entitled to depreciation at only 20%. The respondent contended that the vehicles were light motor vehicles eligible for depreciation at 50%, but the A.O. held that the respondent had failed to substantiate as to how the same could be termed `commercial vehicles'. He observed that to avail of the depreciation at 50%, the vehicles must be used for commercial purposes and merely because the respondent used the vehicles in its business, the vehicles could not be categorized as commercial vehicles. This was on the basis that to be categorized as

commercial vehicles, the same must earn revenue by being used in the business of hiring.

4. The Commissioner of Income Tax (Appeals) [CIT(A)] held in the respondent's favour, *inter-alia*, on the basis of the previous decision of the CIT(A) as well as the Tribunal. The Tribunal upheld the decision in this regard. The Tribunal held that the vehicles were used by the respondent in its business, that the vehicles were commercial vehicles and that the respondent was entitled to depreciation at 50% in respect thereof.

5(A) Section 32(1)(i) of the Income Tax Act, 1961, reads as under:-

> *"32. Depreciation.- (1) In respect of depreciation of -*
>
> *(i) buildings, machinery, plant or furniture, being tangible assets;*
>
> *(ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,*
>
> *owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed -*

(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;
(ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed;"
[emphasis supplied]

The said vehicles fall within the term "plant" in section 32(1)(i). In the present case, section 32(1)(ii) appearing in the second instance applies.

(B)(i) It is agreed that the vehicles in the present case are light motor vehicles (LMV). Rule 5(1) of the Income Tax Rules, 1962 reads as under :-

"***Depreciation***.

5.(1) Subject to the provisions of sub-rule(2), the allowance under clause (ii) of sub-section (1) of section 32 in respect of depreciation of any block of assets shall be calculated at the percentages specified in the second column of the Table in Appendix-I to these rules on the written down value of such block of assets as are used for the purposes of the business or profession of the assessee at any time during the previous year." [emphasis supplied]

(ii) APPENDIX-I PART-A (TANGIBLE ASSETS), III. MACHINERY AND PLANT (3) (vi) read as under :

*"**III. MACHINERY AND PLANT***
……….
(3) (i) ……...
to
(v) …..........

(vi) New commercial vehicle which is acquired on or after the 1st day of April, 2001 but before the 1st day of April, 2002 and is put to use before the 1st day of April, 2002 for the purposes of business or profession [See Note 6 below the Table]"

(iii) Note 6 referred to above, in turn, reads as under :-

"6. "Commercial vehicle" means …............ "light motor vehicle" ….............. The expressions …........... "light motor vehicle" …............... shall have the meanings respectively as assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988)".

6. It is admitted that the vehicles in respect whereof depreciation has been claimed by the respondent at 50% per annum are light motor vehicles and that the above provisions of the Act and the Rules apply in the present case. Note 6 appears to be a part of the Table.

7. In the circumstances, the issues raised in paragraph 4 of the appeal do not raise a substantial question of law. The appeal is, therefore, dismissed.

M.S. SANKLECHA, J. ***S.J. VAZIFDAR, J.***