

Court No. - 3

Case :- INCOME TAX APPEAL No. - 23 of 2014

Appellant :- Commissioner Of Income Tax-II Lucknow

Respondent :- M/S U.P.State Bridge Corporation Ltd.16 M.M.M.Marg
Lucknow

Counsel for Appellant :- Manish Misra

Counsel for Respondent :- Pradeep Agrawal

Hon'ble Sudhir Agarwal,J.

Hon'ble Ravindra Nath Mishra-II,J.

1. Heard Sri Manish Misra, learned counsel for appellant and Sri Pradeep Agrawal, counsel for respondent.

2. This appeal under Section 260-A of Income Tax Act, 1961 (hereinafter referred to as "Act 1961") preferred by Revenue relating to Assessment Year 1992-93 has arisen from judgment and order dated 30.01.2014 passed by Income Tax Appellate Tribunal, Lucknow Bench 'A' Lucknow (hereinafter referred to as "Tribunal") in Income Tax Appeal no. 05/LKW/2003. Though it is not admitted but counsel for parties agreed that only following substantial questions of law which may arise in this appeal are:-

"1. Whether on the facts and circumstances of the case the Income-Tax Appellate Tribunal was justified in upholding the order of the CIT(A) without appreciating the fact that any item can be categorised as either Revenue or Capital but not both at the same time.

2. Whether on the facts and circumstances of the case the Income-Tax Appellate Tribunal was justified in upholding the order of the CIT(A) by following its earlier order without assigning any reason for the same."

3. He also stated that similar questions have already been considered by this Court in Income-Tax Appeal no. 24 of 2011 between same parties for Assessment Year 1995-96 and the same have been answered in favour of Assessee and against Department. The operative part of judgment reads as under:-

"It may be mentioned that in the instant case, the construction of the bridge is the main business activity of assessee for which the shuttering is an essential item. The assessee is the complete owner of the shuttering.

*Without shuttering, no building or bridge can be erected. Shuttering material was treated as a plant on which 100% depreciation is allowable as per the ratio laid down in the case of **Harijan Awam Nirbal Varg Avas Nigam Vs. CIT 1998, 229 ITR, 776 Alld.** Similar views were also expressed in the case of **CIT Vs. Mohta Construction Company 273 ITR, 276 Rajasthan.***

*Further, in the instant case, it was claimed by the department that the shuttering was not used, it was kept unused. But it may be mentioned that in the case of **Dinesh Kumar Gulabchand Agarwal Vs. CIT 276 ITR, 768 Bombay,** it was held that:-*

"The word "used" in section 32 of the Income-tax Act, 1961, denotes that the asset has been actually used and not that it is merely ready for use. The expression "used" means actually used for the purpose of the business."

In the instant case, the assessee was the owner of the shuttering which was ready to use. When it is so, then the assessee is entitled for 100% depreciation, as rightly observed by the Tribunal. Therefore, we find no reason to interfere with the impugned order passed by the Tribunal and the same is hereby sustained along with the reasons mentioned therein.

The answer to the substantial question of law is in favour of the assessee and against the department.

In the result, appeal filed by the department is dismissed."

4. For the reasons stated therein and having not being placed any otherwise binding law to persuade us to take a different view in the matter, this appeal is decided in favour of Assessee and against Revenue.

5. Appeal is accordingly dismissed.

Order Date :- 11.1.2017

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