

Before : G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME-TAX, JULLUNDUR,—Applicant.

versus

M/S. FRIENDS CORPORATION, JULLUNDUR,—Respondent.

Income Tax Reference No. 122 of 1982.

26th April, 1989

Income Tax Act, 1961-S. 256(1)—Assessee not claiming depreciation—No requisite particulars supplied by assessee—Income Tax officer—Whether competent to suo moto allow depreciation.

Held, that there is no gain saying that allowance for depreciation is a benefit available to the assessee to claim, but not one that can be trust upon him against his wishes. At any rate, in order to claim depreciation, the assessee must furnish the requisite particulars as prescribed by the Income Tax Act and the rules made thereunder. In the absence of such particulars, the assessee cannot avail of nor indeed can he be held entitled to depreciation.

(Para 3).

Reference under Section 256(1) of the Income Tax Act, 1961, by Income Tax Appellate Tribunal to the Hon'ble High Court of Punjab and Haryana for opinion of the following questions of law arising out of the order of the Tribunal in I. T. A. No. 782 of 1976-77:—

1. "Whether, on the facts and in the circumstances of the cases, the Appellate Tribunal was right in law in holding that ITO could not suo moto allow depreciation of the three tankers withheld by the assessee?"
2. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in accepting the contention of the assessee that he had not made an effective claim in the return for claiming depreciation?"

L. K. Sood, Advocate, for the Applicant.

S. S. Mahajan, Advocate, for the Respondent.

ORDER

S. S. Sodhi, J.

(1) When depreciation is neither claimed nor the requisite particulars thereof furnished by the assessee, is the Income Tax

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Officer competent to *suo moto* allow it even against the wishes of the assessee ? Herein lies the controversy raised in this reference ?

(2) The matter here relates to the assessment year 1976-77. The assessee Messrs; Friends Corporation which is engaged in transport business, owned three tankers. It filed a return showing a loss of Rs. 22,521 with a note at annexure D, Fara-I, sub-para (c) of the return "as per chart allowed". The particulars in respect of which this note had been made, do not appear to have been given anywhere in the return, but the Income Tax Officer, on the basis of this note, worked out depreciation on the tankers from what he gleaned from the assessee's accounts. The assessee objected to this and went up in appeal before the Commissioner of Income Tax (Appeals). This appeal was dismissed, but on further appeal to the Tribunal, the assessee succeeded. The Tribunal held that as the requisite particulars for working out depreciation on the tankers had not been furnished by the assessee, the Income Tax Officer could not *suo moto* proceed to allow depreciation. It is this view of the Tribunal that has led to the following questions being referred for the opinion of this Court :—

- (i) "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that ITO could not *suo moto* allow depreciation of the three tankers held by the assessee ?
- (ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in accepting the contention of the assessee that he had not made an effective claim in the return for claiming depreciation ?"

(3) There is no gain saying that allowance for depreciation is a benefit available to the assessee to claim, but not one that can be trust upon him against his wishes. At any rate, in order to claim depreciation, the assessee must furnish the requisite particulars as prescribed by the Income Tax Act and the rules made thereunder. In the absence of such particulars, the assessee cannot avail of nor indeed can he be held entitled to depreciation. It would be pertinent in this behalf to advert to the judgment of this Court in *Beco Engineering Co. Ltd v. Commissioner of Income Tax, Rohtak* (1), where reference was made to Circular No. 29D (XIX-14) of 1965:

(1) (1984) 148 I.T.R. 478.

dated August 31, 1965 issued by the Central Board of Direct Taxes which provides that where the required particulars have not been furnished by the assessee and no claim for depreciation has been made in the return, the Income Tax Officer should estimate the income without allowing depreciation allowance. Further, it was held that from the language of Sections 32(1) (ii) and 34(1) read with the Circular, it was clear that in case the assessee had not claimed depreciation, the Income Tax Officer could not give him depreciation allowance.

(4) The proposition of law that the assessee must furnish particulars for claiming depreciation allowance is also supported by *Pr. Al. M. Muthukaruppan Chettiar v. Commissioner of Income Tax, Madras* (2), and *Rao Bahadur S. Ramanatha Reddiar v. The Commissioner of Income Tax, Burma* (3).

(5) As mentioned earlier, depreciation allowance is, at any rate, a benefit available to the assessee to avail of, but if the assessee chooses not to claim it, it would be contrary to reason and law to hold that it must be forced upon him.

(6) In this view of the matter, both the questions posed are hereby answered in the affirmative in favour of the assessee and against revenue. This reference is disposed of accordingly. There will, however, be no order as to costs.

P.C.G.

Before : M. R. Agnihotri, J.

MOHINDER SINGH.—Petitioner.

versus

THE FINANCIAL COMMISSIONER (TAXATION) OF THE STATE OF PUNJAB, CHANDIGARH AND OTHERS,—Respondents.

Civil Writ Petition No. 1215 of 1983.

2nd June, 1989.

Punjab Security of Land Tenures Act, 1953—Ss. 9 & 9-A, Form K-1—Small land owner—Obtaining order of eviction against tenant—Tenant not taking possession of alternative land—Eviction of such tenant.

(2) (1939) (VII) I.T.R. 76.

(3) I.T. cases (vil. 3) 10.