

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2550 OF 2004

K.M. Sugar Mills Limited ...Appellant
versus
Commissioner of Income Tax ...Respondent

O R D E R

This appeal relates to the assessment year 1986-87.

The issue pertains to depreciation on the 1250 gas cylinders which the assessee had claimed in that year, and which has been disallowed by the authorities below.

The brief facts which require mention for the purpose of the present appeal are as under:

The appellant-assessee had set up its unit some time in September, 1985 to carry on the business of manufacturing and Compressing Oxygen, Hydrogen, Nitrogen Amonis, Carbonic Acid, Action (including dissolved) Argon, cooking gas and other types of industrial gases or kind substances etc. For running the aforesaid plant, the assessee had also bought 1250 gas cylinders. However, since the unit had not started functioning, these gas cylinders were leased out to M/s Saraveshwari Gases

(P) Limited, Ghaziabad and M/s Malik Industries.

Signature Not Verified

In the return

Digitally signed by

Parveen Kumar Chawla
filed by the assessee, he claimed depreciation on those gas

Parveen Kumar Chawla

Date: 2015.03.26

16:57:38 IST

Reason:

cylinders at the rate of 100 per cent, as provided under the rules on the aforesaid item.

The Assessing Officer, however, rejected the claim of depreciation on the ground that hiring business was not proved.

It would be significant to state that the appeal filed by the assessee before the Commissioner of Income Tax (Appeals) was accepted on the ground that the income received from leasing the aforesaid equipments would be treated as business income and on that basis he allowed the depreciation. Relevant portion of the order of the CIT(Appeals) reads as under:

"22. As per the facts, there is no doubt that the assessee purchased the cylinders during the year under consideration and thus he became the owner of these cylinders. Since the Oxygen plant could not be put up during the year under consideration, the assessee was free to use the cylinders for any other purpose to his benefits. He did so by leasing out the cylinders to the two parties. There is no doubt that the cylinders were despatched to the two parties on 20.9.1985. Leasing out of cylinders, in this case amounted to the business of the assessee and once the cylinders had been despatched to the lessee, it can be said that they have been put to use by the lessor for the business of hiring/leasing the cylinders. Whether the lessee uses the cylinders or keep them unused with him is his outlook. Once the cylinders have been given to the lessee, the lessor loses control over them and he has no right to direct the lessee to put them to use in a particular manner or fashion. If according to the lease agreements the lessee pays the lease amount to the lessor, whether he actually uses the cylinders or not it is his outlook and not the botheration of the lessor. Thus, since, the cylinders were despatched to the lessee by the appellant, in this accounting year and he had received some lease amount also, it can be said that the cylinders were put to use by the appellant in the business of leasing. Both the conditions for allowing depreciation are, therefore, fulfilled in this case. The ITO was not justified in rejecting assessee's claim for allowance of depreciation. He is directed to allow the depreciation on cylinders as per rules."

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The aforesaid order of the CIT(Appeals) was set aside by the Income Tax Appellate Tribunal, and the order of the Income Tax Appellate Tribunal was upheld by the High Court.

The High Court has concurred with the opinion of the Tribunal on the ground that the cylinders were not purchased for leasing business and one of the parties to whom the cylinders were leased out is the manufacture and seller of the cylinders. It is further stated that the cylinders were dispatched to the other party only a day before the closing of the accounting period.

The aforesaid reasons given by the Income Tax Appellate Tribunal and the High Court in denying the depreciation do not appear to be valid reasons in law. Insofar as the purchase of gas cylinders by the assessee is concerned, this fact is not disputed. It is also not disputed that these gas cylinders were purchased for business purpose. In fact, the plea of the assessee that since manufacturing unit had not started functioning and this necessitated the assessee to lease out these gas cylinders to the aforesaid two parties to enable it to earn some income, rather than keeping those cylinders idle, is also not in dispute. On the contrary, as mentioned above, the income which is generated from leasing out those gas cylinders is treated as "business income". Once the income from leasing those gas cylinders is accepted as the "business income", which is taxed at the hands of the assessee as such, we

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see no reason how the depreciation on these gas cylinders could be disallowed on the ground that the cylinders were not purchased for "leasing business".

The aforesaid facts would clearly demonstrate that the assessee has proved ownership of these gas cylinders and use of these gas cylinders for business purpose. Once these ingredients are proved, the assessee was entitled to depreciation under Section 32 of the Income Tax Act. We, therefore, set aside the judgment of the High Court, and hold that the assessee would be entitled to depreciation as claimed for the assessment year in question.

The appeal is accordingly allowed. No costs.

.....J.
[A.K. SIKRI]

NEW DELHI;
MARCH 25, 2015.

.....J.
[ROHINTON FALI NARIMAN]

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RECORD OF PROCEEDINGS

Civil Appeal No(s). 2550/2004

K.M. SUGAR MILLS LTD.

Appellant(s)

VERSUS

COMMNR. OF INCOME TAX
(with office report)

Respondent(s)

Date : 25/03/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. Rohit Sthalekar, Adv.
Mr. Avi Tandon, Adv.
for Mr. Jatin Zaveri, AOR

For Respondent(s) Mr. Arijit Prasad, Adv.
Mr. D.L. Chidananda, Adv.
Ms. Anil Katiyar, Adv.
for Mr. B. V. Balaram Das, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

(Parveen Kr. Chawla)
Court Master

(Suman Jain)
Court Master

[signed order is placed on the file]