

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.737/Mds/2014

निर्धारण वर्ष / Assessment Year : 2005-06

M/s Anand Transport,
No.1, 9th Street,
Dr. Radhakrishnan Salai,
Mylapore, Chennai - 600 034.

v. The Assistant Commissioner
of Income Tax,
Business Circle – I,
Chennai - 600 034.

PAN : AAAFA 1037 D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Dr. Anita Sumanth, Advocate

प्रत्यर्थी की ओर से/Respondent by : Sh. P. Radhakrishnan, JCIT

सुनवाई की तारीख/Date of Hearing : 24.06.2015

घोषणा की तारीख/Date of Pronouncement : 14.08.2015

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) (Central-I), Chennai, dated 16.12.2013 and pertains to assessment year 2005-06.

2. The first ground of appeal is with regard to reopening of assessment under Section 147 of the Income-tax Act, 1961 (in short 'the Act').

3. Dr. Anita Sumanth, the Ld.counsel for the assessee, submitted that the assessee asked for the reasons for reopening in the light of the judgment of the Apex Court in GKN Driveshafts (India) Ltd. v. ITO 259 ITR 19. However, the reasons were not furnished. The Ld.counsel further submitted that however, in the course of appellate proceedings, the reasons were brought to the notice of the assessee. According to the Ld.counsel, when the assessee was not furnished the reasons, the entire proceeding is vitiated. Therefore, the assessment order does not stand in the eye of law.

4. Coming to the merit of the appeal, the Ld.counsel submitted that the assessee entered into an agreement for creation and operation of a Jetty at Ennore Port for loading iron ore vessels for export by MMTC Limited. Referring to the agreement, a copy which is available at page 1 of the paper-book, the Ld.counsel submitted that on 06.05.2004, the assessee entered into the agreement for establishing a temporary Jetty for a period of three years. Referring

to clause 6.1 of the agreement, the Ld.counsel submitted that the period is only three years from the date of commencement of vessel loading operation. Therefore, it is a temporary structure created by the assessee for the purpose of business. Referring to subsequent agreement, a copy of which is available at page 57 of the paper-book, the Ld.counsel submitted that on 12.08.2009, the agreement dated 06.05.2004 was modified and the operation of Jetty was restricted till the Ennore Port allows the operation or for a period of three months from 24.06.2009, whichever is earlier. An option was given to the parties to extend the operation till 31.03.2010.

5. According to the Ld. counsel, the Jetty erected by the assessee is purely temporary structure in the land belonging to Ennore Port Trust. Therefore, the assessee is entitled for depreciation @ 100%. The Ld.counsel placed her reliance on the judgment of Bombay High Court in National Organic Chemical v. CIT (1993) 203 ITR 410 and submitted that on identical circumstances, the Bombay High Court allowed 100% depreciation. The Ld.counsel has also placed her reliance on the judgment of the Madras High Court in Geetha Hotels (P) Ltd. v. CIT (2002) 254 ITR 649. Referring to the judgment of Apex Court in CIT v. Anand Theatres (2000) 244 ITR 192, the Ld.counsel submitted that the

temporary structure erected by the assessee would fall within the definition of “building”. Therefore, it is entitled for depreciation @ 100%.

6. On the contrary, Sh. P. Radhakrishnan, the Ld. Departmental Representative, submitted that the assessee erected the Jetty for transport of iron ore in Ennore Port Trust. Referring to subsequent amendment made to the agreement, the Ld. D.R. pointed out that the assessee was allowed to continue till 31.03.2010 or the Ennore Port allows operations of temporary Jetty, whichever is earlier. Therefore, it is not for a period of three years, it is for permanent. Therefore, the structure cannot be construed as temporary structure. Hence, according to the Ld. D.R., the claim cannot be allowed @ 100%. According to the Ld. D.R., the CIT(Appeals) has rightly restricted the claim of depreciation @ 25%.

7. We have considered the rival submissions on either side and perused the relevant material on record. We have also carefully gone through the Depreciation Schedule at old Appendix 1, which is applicable for 2003-04 to 2005-06. For the assessment year 2005-06, under “Part-A” heading “tangible asset”, and sub-heading I “Building” temporary erections such as wooden structure are falling

under the classification “building” and 100% depreciation was prescribed. Old Appendix-1 Part A (1)(4) reads as follows:-

“purely temporary erection such as wooden structure”.

The word “temporary erection” was subject matter for consideration before the Cochin Bench of this Tribunal in ACIT v. Kitex Garments Ltd. 2014 (1) TMI 126. The Cochin Bench of this Tribunal, while considering the word “temporary erection” found that what is to be examined is the nature/purpose for which the structure was made. If it is for temporary purpose, then irrespective of the usage of the material, it has to be considered as only a purely temporary purpose. In the case before us, the agreement entered into between the assessee and MMTC Limited clearly says that it is for a period of three years from the end of the commencement of operation. In fact, para 6.1 reads as follows:-

“The BOT Operator shall operate the jetty and other iron-ore loading facilities for a period of three years from the date of commencement of vessel loading operation. On cessation of operations at the end of three years, the BOT Operator shall dismantle and remove all the equipments / structures installed including the Jetty at his own cost.”

This condition was further modified by saying as under:-

“BOT operator shall operate the Jetty and other Iron Ore Facilities till such time as Ennore Port allows operations or for a period of three months from 24.06.09 whichever is earlier and which period may be extended by MMTC on the

same rates and terms and conditions on mutual consent depending on the iron ore export market conditions till 31.03.2010 or Ennore Port allows operations of Temporary Jetty whichever is earlier. On cessation of operations, the BOT operator shall dismantle and remove all the equipments / structures installed including the Jetty at his own cost.”

8. From the above, it is obvious that a period of three months was given from 24.06.2009 which can be extended by the consent of parties subject to the permission that may be given by Ennore Port. The object and purpose of erection of Jetty was for temporary in nature and not as a permanent establishment. Merely because an option was given to the assessee to continue till 31.03.2010 subject to export market conditions, that does not mean that the Jetty was a permanent structure. Ultimately, the assessee has to dismantle and remove all the equipments / structures installed at Jetty at its own cost. Therefore, this Tribunal is of the considered opinion that the assessee has installed a temporary structure for the purpose of its business. This temporary structure has to be construed as “building” under Old Appendix-1 Part A (1)(4). Hence, the assessee is entitled for depreciation @ 100%. Accordingly, the orders of the lower authorities are set aside. The Assessing Officer is directed to grant depreciation @ 100% on the cost of erection of temporary structure, namely, the Jetty at Ennore Port Trust.

9. In the result, the appeal of the assessee is allowed.

Order pronounced on 14th August, 2015 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 14th August, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A), Central-I, Chennai
4. आयकर आयुक्त/CIT, Chennai-I, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.