Delhi High Court Commissioner Of Income Tax vs Bansal Credits Limited, Pratap ... on 13 November, 2002 Equivalent citations: (2003) 179 CTR Del 23 Author: D Jain Bench: D Jain, S Aggarwal JUDGMENT D.K. Jain, J. 1. These eight appeals by the Revenue under Section 260-A of the Income-tax Act, 1961 (for short the Act) are directed against the orders passed by the Income-tax Appellate Tribunal, New Delhi Benches in ITAs No. 262/Del/2001, 753/DEl/2001, 2625/Del/92, 8642/Del/92, 8641/Del/92, 2629/Del/2001, 428(Del)/98, and 3676/Del/2000. 2. In our view, the following common substantial question of law arises out of the orders of the Tribunal: "Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the assessed was entitled to depreciation allowance under Section 32 of the Act @ 40% in respect of the commercial vehicles, owned by it but leased out to a third party?" Since we have heard learned counsel for the parties at considerable length, we proceed to dispose of all the appeals at this stage itself. 3. The appeals pertain to different assessment years, but there being no material difference in the language of the relevant provisions, for the sake of convenience, we shall take the facts, as found by the Tribunal in ITA 16/2002, as illustrative. 4. The assessed company, like the other assessed, is a finance company engaged in the business of leasing out commercial vehicles. In its profits and loss account for the assessment year 1988-89 it claimed depreciation at 40% on the commercial vehicles leased out by it, which, according to the assessed were being actually used in the business of running them on hire. Since the Assessing Officer was not satisfied with the assessed's claim, he required the assessed to show cause as to why the depreciation allowance should not be allowed at the normal rate of 25%. Rejecting the submissions of the assessed that the leased out commercial vehicles were actually used in the business of running them on hire and thus it was entitled to the higher rate of deprecitation, the Assessing Officer allowed the depreciation at 25% on the ground that the vehicles had been leased out by the assessed and were not being used by the assessed in the business of running them on hire on its own. Being aggrieved, the assessed preferred appeal to the Commissioner of Income-tax (Appeals) but without success. The matter was taken up in further appeal to the Tribunal. Relying on the decision of the Andhra Pradesh High Court in Commissioner of Income-tax v. A.M. Constructions (1999) 238 ITR 775, the Tribunal held that the assessed was entitled to depreciation at 40%. Hence the present appeal. 5. We have heard Mr. Sanjiv Khanna, Mr. R.C. Pandey and Mr. J.R. Goel, learned senior standing counsel for the Revenue and Mr. C.S. Aggarwal and Mr. O.S. Bajpai on behalf of the assesseds. 6. It is strenuously urged by Mr. Khanna that it is the nature of the business of the assessed which is material in determining the rate of depreciation and not of the lessee and since the assessed itself is not engaged in the business of running motor buses, lorries or taxis on hire and is merely in the business of leasing out these vehicles, it is not eligible for higher rate of depreciation. To buttress his argument that the user of the vehicle on hire has to be in the hands of the assessed, learned counsel has heavily relied on the language of Rule 5 of the Income-tax Rules, 1962 (for short the Rules). Strong reliance is placed on the

decisions of the Calcutta High Court in Soma Finance and Leasing Co. Ltd. v. Commissioner of Income-tax (2000) 244 ITR 440, Rajasthan High Court in Commissioner of Income-tax v. Sardar Stones (1995) 215 ITR 350, Karnataka High Court in Gowri Shankar Finance Ltd v. Commissioner of Income-tax (2001) 248 ITR 713. Learned counsel for the assessed, on the other hand, have vehemently submitted that since the issue stands concluded by the decision of the Supreme Court in Commissioner of Income-tax v. Shaan Finance (P) Ltd. (1998) 231 ITR 308, no fault can be found with the view taken by the Tribunal. They would submit that since the assesseds are engaged in the business of leasing the vehicles, which activity by itself is a business of hiring and the lease income derived by them is being assessed as business income, the assesseds fulfill all the requisite conditions under Section 32 of the Act read with Rule 5 and Entry III(2)(ii) to Appendix I to the said Rules, thus entitling them to depreciation at the rate of 40%. It is asserted that in none of the cases before us, the Assessing Officer has found that the leased out vehicles were not being used for running them on hire. In support of their stand, learned counsel have placed reliance on the decisions of the Andhra Pradesh High Court in A.M. Construction case (supra), Guwahati High Court in A.B.C. India Ltd v. Commissioner of Income-tax (1997) 226 ITR 914, Madhya Pradesh High Court in Income-tax Commissioner v. Anupchand and Co. (1999) 239 ITR 446 and Madras High Court in Commissioner of Income-tax v. Madan and Co. (2002) 254 ITR 445. 7. To appreciate the rival contentions, it would be necessary to notice the relevant provisions. 8. Section 32 of the Act (as on 1 April 1988) reads as follows: "32. Depreciation: (1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessed and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of Section 34, be allowed- (i)xxxxx (ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed: provided that where the actual cost of any machinery or plant does not exceed five thousand rupees, the actual cost thereof shall be allowed as a deduction in respect of the previous year in which such macinery or plant is first put to use by the assessed for the purposes of his business or profession; Provided further that no deduction shall be allowed under this clause in respect of any motor car manufactured outside India, where such motor car, is acquired by the assessed after 28th day of February, 1975, and is used otherwise than in a business of running it on hire for tourists." 9. The section provides that depreciation in respect of buildings, machinery, plant or furniture owned by the assessed and used for the purpose of business or profession shall be allowed in accordance with the rates as may be prescribed. The section postulates three basic conditions for grant of depreciation in respect of an asset namely: (i) the existence of assets specified in the Section; (ii) it should be owned by the assessed and (iii) it should be used for the purpose of business or profession. 10. Rule 5 is as under: "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 town value of such block of assets as are used for the purposes of the business or profession of the assessed at any time during the previous year." 11. The Rule only provides that the depreciation allowance in respect of block of assets shall be calculated at the percentage specified in the second column of the Table in Appendix-I to the Rules on the written down value of such block of assets as are used for the purposes of the business or profession of the assessed. 12. The relevant entry in the said Appendix is as follows: "III. MACHINERY AND PLANT (1) Machinery and plant other than those covered by Sub-items (1A), (2) and (3) below. (1A) Motor cars, other than those used in a business of running them on hire, acquired or put to use on or after the 1st day of April 1990. (2) (i) Aeroplanes-Aeroengines. (ii) Motor buses, motor lorries and motor taxis used in a business of running them on hire. xxxxxxxxxxxxxxx xxxxxxxxxxxxxxx." 13. From a conjoint reading of the afore-noted provisions it is clear that higher rate of depreciation in respect of motor buses, motor lorries and motor taxis is admissible if these are used in a business of running them on hire. The existence of the specified assets; assesseds ownership thereof and these being used in running them on hire are not in dispute. The only objection of the Revenue to the grant of higher rate of depreciation is that the assessed is not himself running these vehicles on hire. Therefore, the short question for consideration is whether for availing higher rate of depreciation, it is mandatory that the said vehicles are not merely used in a business of running them on hire but the assessed should himself use these vehicles for the said purpose? 14. In our opinion on a bare reading of the afore-noted provisions, answer to the question has to be in the negative. In support of the Revenue's stand, Mr. Khanna has laid too much emphasis on the expression "as are used for the purposes of the business or profession of the assessed" appearing in Rule 5. The submission is that it is the nature of the assessed's business which is the determining factor for rate of depreciation. If the assessed, even though the owner of the vehicles, does not use these running them on hire himself, higher rate of depreciation cannot be granted. We are unable to persuade ourselves to agree with the learned counsel. 15. The cardinal rule of interpretation is that the statute must be construed according to its plain language and neither should anything be added nor subtracted there from unless there are adequate grounds to justify the inference that the Legislature clearly so intended. It is also well-settled that in a taxing statute one has to look merely at what is clearly stated. The meaning and extent of the statute must be collected from the plain and unambiguous expression used therein, rather than from any notions which may be entertained by the court as to what is just or expedient. In Cape Brandy Syndicate v. IRC (1921) 1 KB 64 it was said that one must look at what is clearly stated in the statute. 16. Recently in Grasim Industries Limited v. Collector of Customs, Bombay their lordships of the Supreme Court have again observed that the elementary principle of interpreting any word while considering a statute is to gather the means of sententia legis of the Legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the Legislature is clearly conveyed, there is no scope for the Court to take upon itself the task

of amending or altering is clear, the intention of the wherever the language is clear, the intention of the Legislature is to be gathered from the language used. 17. In our opinion, on a plain reading of the section and the relevant entry in the Appendix, it is clear that it is the end user of the specified asset which is relevant for determining the percentage of depreciation. The Section require that the asset should be used for the purposes of assessed's business and the entry in the Appendix refers to the user it should be put to. Apart from the fact that the leasing out of the vehicles is by itself tantamount to hire of vehicles, we are unable to read into any of the aforenoted provisions the requirement that the assets are to be used by the assessed for the purposes of "his" business or profession. Once it is accepted that the leasing out of the vehicles is one of the modes of doing business by the assessed and in fact the income derived form such leading is treated as business income of the assessed, it would be clearly contradictory in terms of hold that the vehicles in question were not used wholly for the purpose of assessed's business, which, as noted above, is one of the requisites stipulated in Section 32, apart from the other two conditions indicated above, which all the assessed indubitably fulfill. 18. At this juncture we may, with advantage, refer to the decision of the Apex Court in Shaan Finance (supra), strongly relied upon by learned counsel for the assesseds. The question which came up for consideration in that case was whether for grant of investment allowance under Section 32A of the Act in respect of the specified machinery, it was necessary that the assessed should not merely use the machinery for the purpose of his business but should "himself" use it for the purpose of manufacture etc. To appreciate the ratio of the said decision, it would be appropriate to extract the relevant portion of Section 32A, which reads as follows: "32A. (1) In respect of a ship or an aircraft or machinery or plant specified in Sub-section (2) which is owned by the assessed and is wholly used for the purposes of the business carried on by him, xxxxxxxxxxxxxxx xxxxxxxxxxxxxxx Provided that (2) The ship or aircraft or machinery or plant referred to in Sub-section(1) shall be the following namely:- (a) a new ship or new aircraft acquired after the 31st day of March, 1976, by an assessed engaged in the business of operation of ships or aircraft; (b) any new machinery or plant installed after the 31st day of March, 1976,- (i) for the purposes of business of generation or distribution of electricity or any other form of power; or (ii) in a small scale industrial undertaking for the purposes of business of manufacture or production of any article or thing; or (iii) in any other industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing, not being an article or thing specified in the list in the Eleventh Schedule." 19. Drawing a clear distinction between Sub-sections (2)(a) and (2)(b) of the Section, their Lordships held as follows: "In respect of a new ship of or a new aircraft, Section 32A(2)(a) expressly prescribes that the new ship or the new aircraft should be acquired by an assessed which is itself engaged in the business of operation of ships or aircraft. Under Sub-section (2)(b), however, any such express requirement that the assessed must himself use the plant or machinery is absent. Section 32A(2)(b) merely describes the new plant or machinery which

is covered by Section 32A. The plant or machinery is described with reference to its purpose. For example, Sub-section (2)(b)(i) prescribed"the purposes of business of generation or distribution of electricity or any other form or power". Sub-section (2)(b)(ii) refers to small-scale industrial undertakings which may use the machinery for the business of manufacture or production of any article, and Sub-section (2)(b)(iii) refers to the business of construction, manufacture or production of any article or thing other than that specified in the Eleventh Schedule. Sub-section (2)(b), therefore, refers to the uses to which the machinery can be put. It does not specify that the assessed himself should use the machinery for these purposes." 20. It is significant to note that the above view was expressed when the expression used in the section is the specified machinery "which is owned by the assessed is wholly used for the purposes of the business carried on by him", whereas in Section 32 of the Act the words "carried on by him" are missing. In our opinion, the ratio of the said decision clinches the issue in favor of the assesseds and the view taken by us is in line with the said decision. 21. We are fortified in our view by the decisions of the Andhra Pradesh High Court in A.M. Constructions case (supra), Guwahati High Court in A.B.C. India Ltd. case (supra) and Madras High Court in Madan & Co. case (supra). 22. In our view, the ratio of the decisions, relied upon by learned counsel for the Revenue, is not applicable on the facts of the instant case. These decisions are clearly distinguishable on facts. In all these cases it has been found as a fact that the trucks were being used by the assesseds for the transportation of their own products. Noticing that the dominant purpose for which assesseds were required to use the said vehicles to be entitled to higher rate of depreciation was in a business of running them on hire and the occasional use of trucks for hiring was not sufficient for availing a higher rate of deprecation, the issue was decided against the assesseds. As noted above, it is not the case here. 23. Before we close, we may point out that in some of the cases before us (ITAs No. 64/99, 65/99, 73/99 & 74/99), the Tribunal has remanded the matters back to the Assessing Officers to examine whether the leased out vehicles had been actually used by the lessee in the business of hire. In the light of the view taken by us, we do not find any infirmity in such a direction. As a matter of fact, wherever there is a doubt it must be examined whether the leased out vehicles are actually being used in the business of hiring. Only in such a situation depreciation at the higher rate of 40% or 50%, as the case may be, is to be allowed under the relevant entry in Appendix-I to the Rules. 24. For the foregoing reasons, we do not find any infirmity in the view taken by the Tribunal on the question formulated above. In the result, all the appeals fail and are accordingly dismissed, leaving the parties to bear their own costs.