

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

CORAM:

**THE HON'BLE MR. JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA**

T.C.A.No.566 of 2016

Commissioner of Income Tax II,
121, Nungambakkam High Road,
Chennai - 600 034.

... Appellant

v.

M/s. L & T Transportation Infrastructure Ltd.,
PB No.979, Mount Poonamallee Road,
Manapakkam, Chennai - 600 089
PAN : AAA CL 1912 F

... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, "B" Bench, dated 20.02.2015 in I.T.A.No.2005/Mds/2014 for the Assessment Year 2005-2006.

For Appellant : Mr. Karthik Ranganathan
Senior Standing Counsel

For Respondent : Mr.N.V. Bajaji

JUDGMENT

(Judgment was delivered by M. DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.2005/Mds/2014 in respect of the Assessment Year 2005-2006 on the file of the Income Tax Appellate Tribunal, Chennai, "B" Bench (for brevity, the Tribunal), the Revenue has filed the above appeal.

2. The assessee is engaged in the business of development of infrastructural facilities and developed a bye-pass road bridge in Coimbatore. The assessee has claimed depreciation on road/bridge. In the assessment order, the Assessing Officer has held that the assessee is not entitled for depreciation on road/bridge, since the assessee itself amortized the cost of the road/bridge over the construction period of 30/20 years and denied the claim of the assessee. Challenging the order of assessment, the assessee preferred an appeal before the Commissioner of Income Tax directed the Assessing Officer to allow the claim of the assessee. Aggrieved over the same, the Revenue

preferred an appeal before the Income Tax Appellate Tribunal, and the Tribunal, dismissed the appeal. Challenging the order passed by the Income Tax Appellate Tribunal, the Revenue has filed the above appeal.

3. The appellant has raised the following substantial question of law in the above appeal:-

“Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was entitled claim depreciation at the rate of 10% applicable to buildings on the roads and bridge developed and maintained by the assessee under the terms of "Build, Operate and Transfer (BOT) agreement with the Government even though as per the terms of the agreement the assessee could not be considered as the owner of the assets?”.

4. When the appeal is taken up for hearing, Mr.Karthik Ranganathan, learned Senior Standing Counsel appearing for the appellant fairly submitted that the substantial question of law that arise for consideration in the above appeal has already been decided

against the Revenue and in favour of the Assessee in the Judgment dated 29.06.2021 made in **TC.A. Nos.355 to 358 of 2011 [Commissioner of Income Tax-I, Chennai. v. M/s. L & T Transportation Infrastructure Ltd., Chennai]**, wherein this Bench held as follows:-

"..... 3. Heard Mr.Karthik Ranganathan, learned Standing Senior Counsel for the appellant and Mr.V. Balaji, learned counsel for the respondent.

4. Both the counsels contended that the Hon'ble Supreme Court in the decision in **Principal Commissioner of Income Tax Vs. GVK Jaipur Expressway Ltd.**, reported in [2018] 100 taxmann.com 96 (SC) has settled the present substantial question of law in favour of the assessee. The relevant portions of the decision of the Hon'ble Supreme Court is extracted hereunder.

"14. In our opinion, the term owned as occurring in Section 32 (1) of the Income-tax Act, 1961 must be assigned a wider meaning. Any one in possession of property in his own title exercising such dominion over the property as would enable other being excluded therefrom and having right to use and occupy the property and/or

to enjoy its usufruct in his own right would be the owner of the buildings though a formal deed of title may not have been executed and registered as contemplated by Transfer of Property Act, Registration Act, etc. 'Building owned by the assessee' the expression as occurring in Section 32(1) of the Income-tax Act means the person who having acquired possession over the building in his own right uses the same for the purposes of the business or profession though a legal title has not been conveyed to him consistently with the requirements of laws such as Transfer of Property Act, and Registration Act, etc. but nevertheless is entitled to hold the property to the exclusion of all others.

15. Generally speaking depreciation is an allowance for the diminution in the value due to wear and tear of capital asset employed by an assessee in his business. Black's Law Dictionary (Fifty Edn.) defines depreciation to mean, inter alia:

A fall in value, reduction of worth. The deterioration or the loss or lessening in value, arising from age, use, and improvements, due to better methods. A decline in value of property caused by wear or obsolescence and is usually measured by a set formula which reflects these elements over a given period of useful life of property.... Consistent gradual process of estimating and allocating

cost of capital investments over estimated useful life of asset in order to match cost against earnings.....

19. It is well-settled that there cannot be two owners of the property simultaneously and in the same sense of the term. The intention of the Legislature in enacting Section 32 of the Act would be best fulfilled by allowing deduction in respect of depreciation to the person in whom for the time-being vests the dominion over the building and who is entitled to use it in his own right and is using the same for the purposes of his business or profession. Assigning any different meaning would not subserve the legislative intent. To take the case at hand it is the appellant-assessee who having paid part of the price, has been placed in possession of the houses as an owner and is using the buildings for the purpose of its business in its own right. Still the assessee has been denied the benefit of Section 32. On the other hand, the Housing Board would be denied the benefit of Section 32 because in spite of its being the legal owner it was not using the building for its business or profession. We do not think such a benefit-to-none situation could have been intended by the Legislature. The finding of fact arrived at in the case at hand is that though a document of title was not executed by Housing Board in favour of the assessee, but the houses were allotted to the assessee by the Housing Board, part

payment received and possession delivered so as to confer dominion over the property on the assessee whereafter the assessee had in its own right allotted the quarters to the staff and they were being actually used by the staff of the assessee. It is common knowledge, under the various scheme floated by bodies like housing boards, houses are constructed on large scale and allotted on part payment to those who have booked. Possession is also delivered to the allottee so as to enable enjoyment of the property. Execution of document transferring title necessarily follows if the schedule of payment is observed by allottee. If only the allottee may default the property may revert back to the Board. That is a matter only between the Housing Board and the allottee. No third person intervenes. the part payment made by allottee are with the intention of acquiring title. the delivery of possession by Housing Board to allottee is also a step towards conferring ownership. Documentation is delayed only with the idea of compelling the allottee to observe the schedule of payment."

5. After discussing the various decisions, the Hon'ble Supreme Court clearly held that the assessee is entitled to claim depreciation of public roads, treating the same as building."

5. Mr. N.V. Balaji, learned counsel appearing for the respondent

submitted that in view of the ratio laid down by the Division Bench of this Court in **T.C.A. Nos.355 to 358 of 2011** [cited supra], the appeal may be dismissed.

6. Having regard to the submissions made by the learned counsel on either side, following the ratio laid down in the Judgment dated 29.06.2021 made in **T.C.A. Nos.355 to 358 of 2011 [cited supra]**, the question of law is decided against the Revenue and in favour of the assessee . Accordingly, the Tax Case Appeal is dismissed. No costs.

[M.D., J.] [R.H., J.]
20.07.2021

Index : Yes/No
Internet : Yes
Rj

To

The Income Tax Appellate Tribunal,
Chennai,"B" Bench.

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and
R.HEMALATHA, J.

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