

(1974) 07 CAL CK 0034
In the Calcutta High Court

Case No : Income-tax Reference No. 177 of 1970 & Income-tax Reference No. 91 of 1967

Anantapur Textiles Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 31-07-1974

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 32, 32(1), 34, 34(1)
Income Tax Rules, 1922 — Rule 8
Income Tax Rules, 1962 — Rule 5, 5(2), 5(3)

Citation : (1975) 1 CALLT 259 : (1975) 1 CompLJ 240 : (1979) 116 ITR 851

Hon'ble Judges : R.N. Pyne, J;A.N. Sen, J

Bench : Division Bench

Judgement

A.N. Sen, J.—In this reference u/s 256(1) of the I.T. Act, 1961, the Tribunal has referred the following question of law :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the extra shift allowance on machinery worked triple shift should be calculated with reference to the actual number of days each item of machinery had been put to use and not on the number of days the concern had worked in the previous year in view of Section 32 of the I.T. Act, 1961, and the Rules thereunder ?"

2. The facts of the case have been set out in the statement of the case and may be briefly stated. The assessee is a company engaged in the manufacture of yarn. The assessment year in question is 1964-65, the previous year in respect of which ended on December 31, 1963. For this assessment year the assessee, in addition to its claim for a sum of Rs. 3,19,914 as normal depreciation on machinery, also claimed an equal amount as extra shift allowance on the ground that the factory worked triple shift for 330 days during the previous year. The ITO allowed a sum of Rs. 2,86,985 in respect of the assessee's claim for extra shift allowance and disallowed the assessee's claim to the extent of Rs. 32,929.

The ITO found that some of the items of machinery had not been used for the entire period of the triple shift as those items of machinery were installed on different dates in the year. Calculating from the dates of installation, the ITO arrived at the number of days each item of machinery was put to use during the year of account and allowed proportionate extra shift allowance which came to the said figure of Rs. 2,86,985. The assessee had claimed before the ITO that extra shift allowance should be allowed for a sum equivalent to the normal depreciation, which in this case has been allowed to the assessee to the extent of Rs. 3,14,742. Though no reasons were stated by the ITO in his order for not allowing the entire claim of the assessee, the ITO in a note attached to the assessment order stated that he allowed the extra shift allowance according to the number of days the machinery were put to use during the year. Aggrieved by the order of the ITO the assessee preferred an appeal to the AAC and contended before him that the allowance granted by the ITO was not in consonance with the rules made in this regard and relied upon the remarks against item 3 in the statement of rates at which depreciation is admissible. Construing the said rule the AAC held that the rules did not provide for the computation of extra shift allowance on each machine with reference to the number of days it was put to use, and the AAC allowed the assessee's appeal and directed the ITO to grant extra shift allowance as claimed by the assessee. Against the order of AAC the department preferred an appeal to the Tribunal and the contention of the department before the Tribunal was that the order of the AAC was wrong and against the rules and the extra shift allowance granted by him should be withdrawn. The Tribunal held that the AAC was wrong in holding that the extra shift allowance was admissible on the items of machinery irrespective of the number of days to which they had been put to use in the accounting year. In the opinion of the Tribunal depreciation was allowable in respect of each item of machinery or plant separately and the allowance of normal depreciation depends admittedly upon the actual user of the machinery or plant during the previous year. In the opinion of the Tribunal when normal depreciation allowance is to be granted on each item of machinery as per the number of days it had worked, the extra shift allowance should also follow the same principle. The Tribunal has further expressed the view that though the relevant rule speaks generally of a concern working extra shift, in the opinion of the Tribunal it really referred to the extra shift working of a particular item of machinery or plant. The Tribunal held that extra shift allowance depended upon the user of the period of each item of machinery in the year of account and not on the working of the concern. The Tribunal, therefore, allowed the appeal filed by the department and restored the allowance made by the ITO. On the application of the assessee and on the above facts the Tribunal has referred to this court the question which we have earlier set out. It may be incidentally noted that the assessee sought to raise another question in the following terms :

"Whether, on the facts and in the circumstances of the case, the claim of the assessee-company for depreciation on machineries as extra shift allowance to

the extent of Rs. 32,929 was rightly disallowed in the assessment year 1964-65 in view of Section 32 of the I.T. Act, 1961, and the Rules there under"

3. The Tribunal was of the opinion that this aspect of the matter was covered by the question which the Tribunal framed and which the Tribunal has referred to this court.

4. The question involved in the present reference turns on a proper construction of Section 32 and the relevant Rules framed for computation of the extra shift allowance.

5. Before considering the respective contentions of the parties, it will be convenient to set out the relevant provisions of the statute and the Rules.

6. The relevant provisions contained in Section 32 read as follows :

"32. Depreciation.--(1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of Section 34, be allowed--...

(ii) in the case of buildings, machinery, plant or furniture, other than ships covered by Clause (i), such percentage on the written down value thereof as may in any case or class of cases be prescribed;.....

Provided that such deficiency is actually written off in the books of the assessee....."

7. The material provisions contained in Section 34 are in the following terms :

"34. Conditions for depreciation allowance", and development rebate.--(1) The deductions referred to in Sub-section (1) of Section 32 shall be allowed only if the prescribed particulars have been furnished ;.....

(2) For the purposes of Section 32,--

(i) the aggregate of all deductions in respect of depreciation made under Sub-section (1) of Section 32 or under the Indian Income Tax Act, 1922 (11 of 1922), or under any Act repealed by that Act or under the Indian Income Tax Act, 1886 (2 of 1886), shall, in no case, exceed the actual cost to the assessee of the buildings, machinery, plant or furniture, as the case may be;....."

8. The relevant rule is Rule 5 of the I.T. Rules, 1962. Material provisions of the said rule are as follows:

"5. Depreciation.--(1) Subject to the provisions of Sub-rules (2) and (3), the allowance under Clause (i) or (ii) of Sub-section (1) of Section 32 in respect of depreciation of buildings, machinery, plant or furniture shall be at a percentage of the actual cost or the written down value, as the case may be, equal to (i) 100%, (ii) 50%, or (iii) nil per cent. of the number shown in the corresponding entry in the second column of the statement in Part I of Appendix I to these rules

according as the buildings, machinery, plant or furniture have been used by the assessee in his business or profession during the previous year (i) for a period of 180 days or more, (ii) for a period of less than 180 days but more than 30 days, or (iii) for a period of 30 days or less than 30 days, respectively :....."

9. Appendix I in Part I referred to in Rule 5 contains statement of rates at which depreciation is admissible and the provisions contained in the said Appendix material for the purpose of the present reference are in the following terms:

" III. Machinery and Plant--(i) General Rate:

Col: 3 Remarks :

An extra allowance up to a maximum of 50 per cent. of the normal allowance shall be allowed by the Income Tax Officer where a concern claims such allowance on account of double shift working and satisfies the Income Tax Officer that the concern has actually worked double shift. An extra allowance up to a maximum of 100 per cent. of the normal allowance, instead of 50 per cent. shall be allowed in computing the total income assessable for any assessment year commencing on or after the 1st day of April, 1964, where a concern proves that it has worked triple shift. The calculations of the extra allowances for double shift working and for triple shift working shall be made separately in the proportion which the number of days for which the concern worked double shift or triple shift, as the case may be, bears to the normal number of working days throughout the previous year. For this purpose, the normal number of working days throughout the previous year shall be taken as 300, and if, for example, a concern has worked only double shift for 100 days and triple shift for another 100 days, the extra allowance for double shift shall be one third of 50 per cent. of the normal allowance and that for triple shift shall be one-third of 100 per cent. of the normal allowance. This applies to all concerns whether the general rate or any special rate of depreciation applies to them, but does not apply to an item of machinery or plant which has been specifically excepted by the inscription of the letters "N.E.S.A." against it.

Explanation 1.--For this purpose, the normal allowance means the amount of depreciation allowance (other than the extra depreciation allowance for multiple shift working) that would have been allowed under Rule 5 if the machinery or plant had been used during the previous year for a period of 180 days or more, or in the case of a seasonal factory, if that factory had been worked by the assessee during all the working seasons of the previous year.

Explanation 2.--For the removal of doubts, it is hereby declared that no extra allowance for double or triple shift working shall be allowed in a case where the machinery or plant has been used for a period of 30 days or less than thirty days during the previous year."

10. Mr. Das Gupta, learned counsel for the assessee, has submitted that in the facts of the instant case there is no dispute that the requirements of Section 32

are complied with and the conditions laid down u/s 34 have been fulfilled. It is his submission that, as the requirements of the said Sections 32 and 34 are satisfied, normal depreciation has in fact been allowed to the assessee. He has argued that the only question is with regard to the computation of the extra shift allowance. It is his argument that there is no dispute that the assessee is entitled to extra shift allowance as it is the finding of the ITO that the assessee has in fact worked triple shift. The only question, according to Mr. Das Gupta, is how the extra shift allowance is to be calculated. Mr. Das Gupta contends that the provisions contained in Rule 5 and Appendix I in Part I lay down the mode of computation of the depreciation which is to be allowed. It is his contention that Rule 5 which provides for normal depreciation allowance lays down that plant and machinery which have been used by the assessee in its business during the previous year for a period of 180 days or more will be entitled to 100 per cent. allowance, the plant and machinery which have been used in the business of the assessee for a period of less than 180 days but more than 30 days will be entitled to 50 per cent. allowance and the plant and machinery which have been used in the business of the assessee for a period of 30 days or less than 30 days will not be entitled to any depreciation allowance. He argues that these provisions relate to normal depreciation allowance and in case of normal depreciation allowance, depreciation allowance will be allowed on the above basis in respect of each item of plant and machinery. It is, however, his argument that Rule 5 which provides for normal depreciation allowance has really no application to the case of extra shift allowance and necessary provision for extra shift allowance has been made in Appendix I in Part I. He has argued that for qualifying for extra shift allowance the assessee is only required to prove that the concern of the assessee has worked double shift or triple shift. He contends that the provisions contained in Appendix I in Part I with regard to extra shift allowance only requires that the concern must have worked double shift or triple shift and it is not the requirement of the relevant provision that each item of machinery must have worked double shift or triple shift. It is his contention that as soon as the assessee establishes that the concern of the assessee has worked triple shift, the assessee on the basis of the provisions contained in Appendix I in Part I becomes entitled to the extra allowance of another 100 per cent. of the normal allowance irrespective of the question for how many days each item of plant and machinery had worked. Mr. Das Gupta has contended that the number of days on which any item of plant or machinery has worked may be relevant for computing the normal depreciation allowance in accordance with the provision contained in Rule 5 ; but in computing the extra allowance for working triple shift the question of how many days any item of plant and machinery had worked is irrelevant and immaterial, as the extra shift allowance for working triple shift is earned by the assessee once the assessee proved that the concern of assessee has worked triple shift. He argues that the legislature has in the matter of computation of extra shift allowance deliberately chosen not to mention "plant and machinery working triple shift for a number of days" and the legislature has only provided for the assessee proving to the satisfaction of the ITO that the

concern of the assessee has worked triple shift. He has argued that Expln. 2 to item No. III in Appendix I in Part I which deals with machinery and plant clearly indicates that if any plant or machinery has been used for more than 30 days during the previous year, the number of days on which the plant and machinery worked if the concern had worked triple shift, clearly becomes immaterial. It is his argument that Expln. 2 which has been introduced, as the said Explanation itself makes it clear, for removal of doubts that any plant or machinery which worked for 30 days or less than 30 days during the previous year will not qualify for any extra shift allowance. He submits that once it is established that any plant or machinery worked for more than 30 days during the previous year and once it is established that the concern of the assessee had worked in triple shift, the number of days on which each item of machinery worked while the assessee's concern worked triple shift, is of no consequence and extra shift allowance has to be computed in accordance with the provisions contained in the said Appendix I in Part I on the basis of the number of days the concern had worked in triple shift. He has commented that the Tribunal clearly went wrong in holding that "though the relevant rule extracted above talks generally of the concern, working double shift, we are of the opinion that it really refers to the double shift working of a particular item of machinery or plant". It is his comment that in interpreting the rule the Tribunal really sought to put words which are not there and which according to him had not been deliberately put in the said rule which intends to confer particular benefit to the assessee whose concern works in more shifts than one. Mr. Das Gupta has submitted that even if it can be said that the said rule is also capable of the construction put forward by the Tribunal, the construction which is beneficial to the assessee should be accepted and the assessee should be held to be entitled to the extra shift allowance on the basis of the number of days the concern of the assessee worked triple shift and not on the basis of any particular item of plant and machinery worked. Mr. Das Gupta in this connection has also drawn our attention to the following observations of the Tribunal in para 8 of its order : "We must confess that the rule as extracted above does give room for the argument urged by the assessee and accepted by the Appellate Assistant Commissioner."

11. Mr. Ajit Sengupta, learned counsel appearing on behalf of the department, has submitted that the view expressed by the Tribunal is right. He contends that the depreciation is allowed on the plant and machinery and it has, therefore, to be calculated with reference to the number of days the plant and machinery actually worked. It is his contention that as depreciation exceeds in any event the actual cost or written down value, every item of machinery should be considered separately and the amount of depreciation will depend on the nature, age and user of the particular machinery. He argues that if calculation is made on the basis of the concern working double or triple shift for a number of days, then the item of machinery or plant which has been specifically excepted by the inscription of the letters "N.E.S.A." against it will also get the benefit of the extra shift allowance, although the said item does not qualify and is not entitled to any

extra shift allowance. It is his argument that for taking into consideration these excepted items of plant or machinery bearing the inscription "N.E.S.A." each item of plant or machinery has to be taken into consideration and the concern as a whole cannot be considered. Mr. Sengupta has submitted that the calculation provided in Appendix I in Part I is for the purpose of ascertaining the total number of days for which the extra shift benefit is to be allowed. It is his submission that in calculating the extra shift allowance, the proportion of the actual number of days for which the plant and machinery had been working extra shift to 300 days is to be taken as the normal number of the working of the plant and machinery. Mr. Sengupta has pointed out with reference to Section 34 that Sub-section (1) thereof lays down that deductions in respect of depreciation will be allowed only if the prescribed particulars have been furnished and Mr. Sengupta has drawn our attention to the prescribed form in Appendix II under the head "Depreciation" (in Part VII-A) which contains the "Statement of particulars prescribed u/s 34(1) of the Income Tax Act, 1961, and of the amount of depreciation" and with reference to it the form requires the assessee to state "the number of days for which the asset worked two or more shifts" (under column 8). Mr. Sengupta argues that this clearly indicates that extra shift allowance is to be allowed only for the days the plant or machinery has worked double or triple shift.

12. Mr. Sengupta has submitted that depreciation allowance is given in respect of items of assets owned and used by an assessee in its business because of its wear and tear as a result of use in course of time and depreciation allowance is not granted to a business concern as a concern unless it has plant and machinery and unless the same are used in the business of the assessee. Depreciation, according to Mr. Sengupta, is the depreciation of the plant and machinery and not depreciation of the concern. Mr. Sengupta has relied on the decision of this court in the case of Ganesh Sugar Mills Ltd. Vs. Commissioner of Income Tax, West Bengal, III, . He has also referred to the decisions of the Allahabad High Court in the case of Raza Sugar Co. Vs. Commissioner of Income Tax, and in the case of Kundan Sugar Mills Vs. Commissioner of Income Tax, .

13. In the instant case, it is not in dispute that the assessee has satisfied the requirements of Sections 32 and 34 of the Act and is entitled to depreciation allowance. Rule 5 read with Appendix I in Part I provides for computation of the depreciation allowance. As the assessee is entitled to depreciation allowance, normal depreciation for the sum of Rs. 3,19,914 has been allowed to the assessee, computing the said figure on the basis of the provisions contained in Rule 5 read with Appendix I in Part I. There is no dispute with regard to the computation of the normal depreciation allowance. The dispute centres round the computation of extra allowance to which the assessee is entitled for having worked its concern triple shift. It may be noted that it is not in dispute that the assessee has actually worked its concern triple shift and has earned the extra allowance payable to the assessee for running, its concern triple shift. The dispute relates only to the computation of the amount of the extra allowance

payable to the assessee for running its concern triple shift.

14. Rule 5 which deals with the question of computation of the depreciation allowance provides that, in computing the normal depreciation, allowance will be allowed on each machinery on the basis of the number of days each machine or plant actually worked in the previous year. Rule 5 lays down that in computing normal depreciation allowance the plant or machinery which has worked for a period of 180 days or more will be entitled to 100 per cent. of the depreciation allowed, the plant or machinery which has worked for a period of less than 180 days but more than 30 days will be entitled to 50 per cent. of the depreciation provided and the plant or machinery which has worked for a period of 30 days or less than 30 days will be entitled to nil percentage of the depreciation provided. In other words, the plant or machinery which has worked for a period of 30 days or less will not really be entitled to any depreciation allowance, although the plant or machinery might have otherwise earned depreciation allowance on the basis of fulfilment of the conditions laid down in Sections 32 and 34 of the Act. It is therefore, clear that in the case of computation of normal depreciation allowance the actual working of each plant and machinery is material and depreciation allowance is to be computed on the basis of the number of days each plant and machinery worked during the previous year, provided the plant or machinery is otherwise qualified to claim the depreciation allowance.

15. Provisions for extra shift allowance are contained in Appendix I in Part I of the Rules under the column "Remarks" and the said provisions have already been set out. An analysis of the said provisions indicates that to be entitled to any such extra allowance the assessee has to satisfy that the assessee's concern has actually worked double shift or triple shift. If this requirement, namely, the assessee's concern having actually worked double shift or triple shift is satisfied, the question of calculation or computation of the extra allowance arises. The said provisions further lay down that if the assessee's concern had worked triple shift an extra allowance up to a maximum of 100 per cent. of the normal allowance shall be allowed in computing the total income assessable for assessment and the calculation for the extra allowance for triple shift working shall be made separately in the proportion which the number of days for which the concern worked triple shift, bears to the normal number of working days throughout the previous year and, for this purpose, normal number of working days throughout the previous year shall be taken as 300, and if, for example, a concern has worked in double shift for 100 days and triple shift for another 100 days, the extra allowance for double shift shall be $\frac{1}{3}$ of 50 per cent. of the normal allowance and that for triple shift shall be $\frac{1}{3}$ of 100 per cent. of the normal allowance ; and this will apply to all concerns whether the general rate or any special rate of depreciation applies to them, but does not apply to an item of machinery or plant which has been specifically excepted by the inscription of the letters "N.E.S.A." against it. It is further provided in Explan. 1 that for this purpose the normal allowance means the amount of depreciation allowance (other than "the extra depreciation allowance for multiple shift working) that

would have been allowed under Rule 5 if the machinery or plant had been used during the previous year for a period of 180 days or more. Explan. 2 further makes it clear that no extra allowance for double or triple shift working shall be allowed in a case where the machinery or plant has been used for a period of 30 days or less than 30 days during the previous year.

16. It is, therefore, clear that the extra allowance which is to be allowed to a concern working triple shift up to a maximum of 100 per cent. of the normal allowance is to be calculated separately in the proportion which the number of days for which the concern worked triple shift bears to the normal number of working days taken as 300 throughout the previous year and the normal allowance which forms the basis of the measure of extra allowance will be the amount of depreciation allowance that would be allowed under Rule 5 if the machinery or plant had been used during the previous year for a period of 180 days or more. It is also clear that in calculating the extra allowance, an item of machinery or plant which has been specifically excepted by the inscription of the letters N. E. S. A. against it will not be taken into consideration and the benefit of extra allowance will not be applicable to any such item of machinery or plant. It, therefore, follows that in computing the extra allowance for the triple shift working of the concern each item of machinery and the number of days of its working has to be taken into consideration, as in calculating the extra allowance for triple shift working any item of machinery specifically excepted by the inscription of the letters "N.E.S.A." must be left out of account and the normal allowance which is the basis or the measuring rod of the calculation of the extra allowance has to be ascertained under Rule 5 on the basis of the machinery or plant having been used during the previous year for a period of 180 days or more. Explan. 2 which provides that no extra allowance for triple shift working should be allowed in a case where the machinery or plant has been used for a period of 30 days or less during the previous year also indicates that in computing the extra allowance for triple shift working of the concern the item of machinery and the number of days on which the same had worked are to be taken into consideration. The provision that extra allowance will be paid to the assessee's concern which has worked double shift or triple shift up to a maximum of 100 per cent. of the normal allowance relates to the eligibility of the claim of any concern for the extra allowance up to the maximum limit. The said provision, however, does not relate to the mode or method of calculation of the extra allowance and the said provision does not lay down that in calculating the extra allowance to be allowed to a concern which has worked triple shift, items of machinery or the number of days on which any particular plant or machinery has worked need not be taken into consideration. It is to be borne in mind that the depreciation allowance is allowed on each item of plant or machinery on the basis of its working, provided the conditions which are required to be satisfied for being entitled to the depreciation allowance are satisfied; and depreciation allowance is not allowed to any concern as a concern irrespective of and independent of the question of the plant and machinery of the concern and their

working. The further provision in the form prescribed u/s 34(1) of the Act and contained in Appendix II of the Income Tax Rules, which requires the assessee to state the number of days for which any asset worked two or more shifts also indicates, in our view, that extra allowance for double shift or triple shift working of any concern has to be calculated on the basis of the number of days any plant or machinery has worked and not on the basis of the number of days the concern has worked double shift or triple shift.

17. In our opinion the decision of this court in the case of Ganesh Sugar Mills Ltd. Vs. Commissioner of Income Tax, West Bengal, III, , relied on by Mr. Sengupta, clearly supports the construction we have adopted. In the case of Ganesh Sugar Mills Ltd. v. CIT, this court had to consider the effect of more or less similar provisions contained in Rule 8 of the Indian I.T. Rules, 1922. One of the questions, namely, the first one which came up for consideration before the court in the case of Ganesh Sugar Mills Ltd. Vs. Commissioner of Income Tax, West Bengal, III, was : "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that extra shift depreciation allowance in the case of the assessee-company must also be calculated with reference to the actual number of days on which the extra shifts had worked during the previous years to the assessment years 1958-59 and 1959-60?" A contention was raised relying on the provisions contained in Rule 8 that in computation of the extra shift depreciation allowance, the maximum of 50 per cent. of the normal depreciation should be allowed irrespective of the number of days in which the assessee's plant and machinery had been worked. Dealing with the said contention this court observed (p. 399):

"We are unable to accept this contention of Dr. Pal. The note to Clause III of Rule 8 makes it quite clear that the maximum of the extra depreciation allowable for working double shift is 50 per cent. while that of triple shift is 100 per cent. of the normal depreciation calculated for the whole year. To this, maximum is to be applied the proportion of the actual number of days for which the plant and machinery had been working extra shift to 300, 300 being taken as the normal number of working days in any year. It is made expressly clear that this principle would apply to all concerns whether the general rate or any special rate applied to them. Therefore, there is no scope for the application of the principle of the second proviso to the main Rule 8 in calculating the allowances for extra shift depreciation in the case of seasonal factories. The authorities below and the Tribunal were right in disallowing the assessee's claim to the full amount of 50 per cent. of the normal depreciation as extra shift allowance and the first question must be answered in the affirmative and against the assessee."

18. It is to be noted that in the case of Ganesh Sugar Mills Ltd. Vs. Commissioner of Income Tax, West Bengal, III, the assessing authorities and also the Tribunal rejected the claim of the assessee which had worked its concern double shift to the full amount of 50 per cent. of the normal depreciation as the assessee's factories which were seasonal factories worked only during that part of the year

when sugarcane was available. The decision of the Allahabad High Court in the case of Raza Sugar Co. Vs. Commissioner of Income Tax, , in which the said Rule 8 of the Indian I.T. Rules, 1922, came up for consideration, also appears to lend support to the view we have taken. The decision of the Allahabad High Court in the case of Kundan Sugar Mills Vs. Commissioner of Income Tax, clearly supports, in our view, the conclusion we have arrived at. It may be noted that in this case the Allahabad High Court in considering the question of double shift allowance in the case of seasonal factories was concerned with the provisions of the I.T. Act, 1961. The assessee was engaged in running two sugar mills, namely, Kundan Sugar Mills at Amroha and Pannijee Sugar Mills at Bulandshahr. The previous year ended on the 31st day of August. The assessee claimed double shift allowance on its plant and machinery employed in its sugar mills at 50 per cent. of the normal depreciation allowance. The ITO found that the sugar mills had worked double shift only on certain days and, therefore, allowed extra shift allowance--proportionately at 50 per cent. of the normal depreciation on the plant and machinery for the actual number of days worked. On appeal, the AAC allowed the assessee's claim on the ground that the factories in question were seasonal and could, therefore, be deemed to have worked for the full year, if it had worked during the season. On appeal by the department before the Tribunal, the order of the AAC was reversed and the order of the ITO was restored. At the instance of the assessee the Tribunal referred the question, namely, "whether, on the facts and in the circumstances of the case, and in accordance with the provisions of the law and rules, the assessee-company is entitled to 50 per cent. of the normal depreciation on the plant and machinery on account of double shift allowance for the whole year or for a proportionate period ?" to the court. Following the earlier decision in the case of Raza Sugar Co. Vs. Commissioner of Income Tax, , the court held that the assessee-company was entitled to 50 per cent. of the normal depreciation on the plant and machinery on account of double shift allowance proportionately for the actual number of days worked.

19. We must, therefore, hold that the claim of the assessee-company for depreciation on machinery as extra shift allowance to the extent of Rs. 32,929 was rightly disallowed in the assessment year 1964-65 and we have to answer the question accordingly. We, therefore, answer the question in the affirmative, in favour of the revenue and against the assessee.

20. In the facts of the instant case we do not propose to make any order as to costs.

R.N. Pyne, J.

21. I agree.