
(1992) 09 BOM CK 0038

In the Bombay High Court

Case No : Income-tax Reference No. 151 of 1983

B. Malani and Co.

APPELLANT

Vs

Commissioner of Income Tax.

RESPONDENT

Date of Decision : 17-09-1992

Acts Referred:

Income Tax Act, 1961 — Section 32, 32(1), 33, 34

Citation : (1995) 214 ITR 192

Hon'ble Judges : V.A. Mohta, J; B.P. Saraf, J

Bench : Division Bench

Advocate : C.J. Thakar, for the Appellant; P.N. Chandurkar, for the Respondent

Judgement

V.A. Mohta J.

1. This is the assessee's reference u/s 256(1) of the Income Tax Act, 1961 (for short "the Act"), on the following question :

"In the facts and circumstances of the case whether the Tribunal was right in disallowing the claim of the assessee for initial depreciation in respect of the plant and machinery installed by the assessee, but not put to use during the year ?"

2. The assessee claimed in the assessment year 1976-77 initial depreciation on two machines—crankshaft grinding machine and air compressor—valued at Rs. 2,41,281. The machinery was installed in 1975 and the production started in the year 1977. The Income Tax Officer refused the allowance on the ground that the conditions laid down in section 32(1)(vi) of the Income Tax Act were not fulfilled because the machinery was not actually put to use in the accounting year previous to the assessment year.

3. We reproduce for ready reference the material part of section 32(1) :

"32(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
-

(vi) in the case of a new ship or new aircraft acquired after the 31st day of May, 1974, by an assessee engaged in the business of operation of ships or aircraft or in the case of new machinery or plant (other than office appliances or road transport vehicles) installed after that date for the purposes of business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in items 1 to 24 (both inclusive) in the list in the Ninth Schedule or in the case of new machinery or plant (other than office appliances or road transport vehicles) installed after that date in a small-scale industrial undertaking for the purposes of business of manufacture or production of any other articles or things, a sum equal to twenty per cent. of the actual cost of the ship, aircraft, machinery or plant to the assessee, in respect of the previous year in which the ship or aircraft is acquired or the machinery or plant is installed, or if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year; but any such sum shall not be deductible in determining the written down value for the purposes of clause (ii) :"

4. Having regard to the object of depreciation allowance, the expression "owned by the assessee and used for the purposes of the business" and the language used in clause (vi), it seems to us that unless the machinery is actually put to use for the purposes of business of the assessee, the depreciation allowance is not to be granted. This view is fortified by a decision of the Gujarat High Court in the case of Commissioner of Income Tax, Gujarat Vs. Suhrid Geigy Ltd., . Inviting our attention to the following words of clause (vi) :

"in respect of the previous year in which the ship or aircraft is acquired or the machinery or plant is installed, or if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year,"

5. Shri Thakar, learned counsel for the assessee, submitted that it was the choice of the assessee to claim depreciation either in respect of the year of installation or in respect of the year of first putting it to use for the business, and, hence the assessee was entitled to claim depreciation allowance even in respect of the year of installation of machinery. It is difficult to accept this line of approach. The scheme seems to be that the assessee is entitled to claim deduction in respect of the assessment year relevant to the previous year in which the machinery or plant was installed and was used in such year for the purposes of business carried on by the assessee. If, however, the machinery is not used in an year in which it has been installed but none the less it has been put to use in the year just following the year of Installation, the assessee is entitled to claim deduction in respect of that year. Thus, if there is a gap of more than one clear previous year between the installation of the machinery and its user, no depreciation can

be claimed.

6. In this context our attention was invited to some decisions. COMMISSIONER OF INCOME TAX, BOMBAY Vs. VISWANATH BHASKAR SATHE., . This is a Bombay High Court decision taking a view that the word "use" in section 10(2)(vi) of the Indian Income Tax Act, 1922, should be understood in a wide sense so as to embrace passive as well as active user. In a subsequent decision, the Bombay High Court in Whittle Anderson Ltd. Vs. Commissioner of Income Tax, Bombay City I, , following the above decision, has given the same meaning to the word "user" as found in the second proviso to section 10(2)(vii) of the Indian Income Tax Act, 1922. A bare perusal of those provisions will indicate that the object, the words and the context of section 10(2) are not similar to the object, words and context of section 32 of the Income Tax Act. Commissioner of Income Tax, Tamil Nadu-I Vs. Vayithri Plantations Ltd., pertains to development rebate u/s 33 of the 1961 Act. The object of this provision and that of section 32 are not similar and hence the ratio of that decision also does not apply to this case.

7. Under the circumstances, the question is answered in the affirmative and in favour of the Revenue. No order as to costs.