
(2003) 10 RAJ CK 0027
In the Rajasthan High Court
Case No : IT Ref. No. 29 of 1997

Commissioner of Income Tax

APPELLANT

Vs

Ajit Bhawan Hotel

RESPONDENT

Date of Decision : 13-10-2003

Acts Referred:

Income Tax Act, 1961 — Section 32, 32A

Citation : (2004) 186 CTR 138 : (2005) 274 ITR 66

Hon'ble Judges : Sunil Kumar Garg, J;Rajesh Balia, J

Bench : Division Bench

Advocate : Sangeet Lodha, for the Appellant; Anjay Kothari, for the Respondent

Judgement

Rajesh Balia, J.—In the facts and circumstances of the case, the preparation of the paper book is dispensed with and at the request of learned counsel for the parties, we have heard the learned counsel for the parties on merits.

2. On the reference u/s 260(1) the following common question of law arising out of Tribunal's order in two appeals relating to asst. yrs, 1985-86 and 1986-87 has been referred to this Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal is legally justified in allowing benefit of depreciation, extra-shift allowance and investment allowance on hotel building and tourist complex by treating them as a plant ?"

3. The question is now no more res integra. The building used as hotel as the tourist complex cannot be treated as a plant within the meaning of Section 32 and cognate provision and the assessee is not entitled to benefit of depreciation, extra-shift allowance and investment allowances in respect of such building as plant. The Hon'ble Supreme Court in CIT v. Anand Theatres, etc. AIR 2000 SCWR 2487 has held that hotel building cannot be a "plant" within the meaning of Section 32 of the IT Act, 1961, which separately identifies "buildings" as depreciable asset, distinct and independent of plant and machinery and

prescribes separate rate at which deduction on account of depreciation on written down value of a building is to be allowed. Section 32A which governs the case of "investment allowance" on investment made in "plant and machinery" is in addition to and independent of deduction for depreciation and building has not been included in the operational field of Section 32A.

4. In Anand Theater's case (supra), the Supreme Court was dealing with the depreciation and interpreted the word "depreciation" in the context of independent description of building as depreciable asset. The following statement of law was made by the Supreme Court :

"42. Further, for running almost all industries or for carrying on any trade or business, building is required. On occasions, building may be designed and constructed to suit the requirement of a particular industry, trade or business. But that would not make such building a plant. It only shelters running of such business. For each and every business, trade or industry, building is required to carry on such activity. That means building plays some role and in other words, its function is to shelter the business but it has no other function except in some rare cases such as dry dock where it plays an essential part in the operations which take place in getting a ship into the dock, holding it squarely and then returning it to the river. Building is more durable. If contention of the assessee is accepted, virtually all such building would be considered to be plant and distinction which the legislature has made between the "building" and "machinery" or "plant" would be obliterated.

43. Learned counsel for the assessee submitted that the words "plant" and "building" are not mutually exclusive. "Plant" may include building in certain set of circumstances and therefore, applying the functional tests, assessee would be entitled to depreciation under the head "it is more beneficial to it". He submitted that in the modern era, theatre building and hotel building are integral part of operation for carrying out such business and, therefore, such building should be considered as a "plant".

44. As discussed above, the aforesaid contention cannot be accepted. Firstly, it would be difficult to draw a line between a building which is specifically constructed for the aforesaid purposes and building which are used for the aforesaid purposes by converting a residential accommodation or industrial premises for such purposes. Secondly, the depreciation as a general principle represents the diminution in value of capital asset when applied to the purpose of making profit or gain. The object is to get true picture of real income of the business. Hence, it can be inferred that the legislature never intended to give such benefit of depreciation to a "building" which is usually more durable than "machinery" or "plant". In Commissioner of Income Tax, Punjab, Jammu and Kashmir and Himachal Pradesh Vs. Alps Theatre, Court considered the question whether the cost of land is entitled to depreciation under the schedule to the IT Act along with the cost of the building standing thereon? The Court observed (in para 6) thus :

"It would be noticed that the word used in "depreciation" and "depreciation" means :

"a decrease in value of property through wear, deterioration, or obsolescence; the allowance made for this in book-keeping account, etc." (Webster's New Word Dictionary).

In that sense, land cannot depreciate. The other words to notice are "such building." We have noticed that in Sub-clause (iv) and (v), "building" clearly means structures and does not include site."

The Court also held in paras 7 and 8 that :

"One other consideration is important. The whole object of Section 10 is to arrive at the assessable income of a business after allowing necessary expenditure and deductions.

Depreciation is allowable as a deduction both according to accountancy principles and according to the Indian IT Act. Why? Because otherwise one would not have a true picture of the real income of the business. But land does not depreciate and if depreciation was allowed it would give a wrong picture of the true income.

Under the new Act also for the building and machinery or plant depreciation is allowed probably after taking into consideration its life and decrease in the value of the property through wear and tear,"

5. Following the aforesaid decision, this Court in CIT v. Lake Palace Hotels & Motels (P) Ltd. in DB IT Ref. No. 15/1996, decided on 16th March, 2001 has negated the contention of the assessee that the assessee is entitled to the benefit under the IT Act by treating the hotel business to be industrial undertaking.

6. In view of the aforesaid, we hold that the Tribunal was not justified in allowing the benefit of depreciation, extra-shift allowance and investment allowance on hotel building and tourist complex by treating them as a plant.

7. Accordingly, the reference is answered in favour of Revenue and against the assessee.

8. No order as to costs.