
(1978) 11 AHC CK 0008

In the Allahabad High Court

Case No : Income-tax Reference No. 760 of 1975

Commissioner of Income Tax

APPELLANT

Vs

Chandra Agro P. Ltd.

RESPONDENT

Date of Decision : 03-11-1978

Acts Referred:

Income Tax Act, 1961 — Section 32(1)

Citation : (1979) 117 ITR 251

Hon'ble Judges : Satish Chandra, C.J.; M.B. Farooqi, J

Bench : Division Bench

Advocate : A. Gupta, for the Appellant; S.B.L. Srivastava, for the Respondent

Judgement

Satish Chandra, C.J.—The assessee is a private limited company. Its main business is taking house property on lease, repairing, altering and remodelling it and then letting it out to tenants. During the assessment years 1969-70, 1970-71 and 1971-72, the assessee claimed depreciation on the capital expenditure for improving the buildings. The expenditure was claimed for construction of partition walls, fitting tiles in some portions of the buildings and in converting some portions of the floor of the building into mosaic floors. The claim of the assessee for depreciation of this expenditure was repelled by the ITO. He took the view that the improvement effected continued to vest and belong to the lessor. The assessee only had a right to use them for the duration of the lease. Since the assessee was not the owner, it was not entitled to claim depreciation on the capital expenditure so incurred by it.

2. The assessee took the matter to the Tribunal. The Tribunal held that though the building was not owned by the assessee, yet, in view of the circumstances of the case, the improvements which were of permanent nature effected by the assessee did belong to him for the duration of the lease. On this view the assessee's claim was allowed.

3. At the instance of the Commissioner, the Tribunal has referred the following

question of law for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in allowing depreciation on the capital expenditure incurred by the assessee in making improvements to the property taken on lease in the assessment years 1969-70 to 1971-72?"

4. The most material and relevant circumstance is that the assessee carried on the business of taking buildings on rent, effecting improvements in them in a variety of ways and then letting them out for higher returns. This being the business of the assessee, the expenditure incurred by it in effecting the improvements would obviously be a capital expenditure. For the revenue the assertion that the expenditure was of a capital nature was disputed.

5. The controversy centres around the requirement of Section 32(1) of the Act, which deals with depreciation. Under the section, depreciation was allowable in respect of buildings, machinery, plant, etc., owned by the assessee and used for the purposes of business or profession. We are in agreement with the view taken by the Tribunal that for the duration of the lease, which was for a fixed period of ten years, the assessee was in fact and in law the owner of the improvements of permanent nature effected by the assessee. The purpose for effecting improvements was to earn a better return from the property. It was a business investment in the shape of making permanent improvements in the buildings. The assessee was, in the eye of law, the owner of these improvements so long it had the right to retain the building as a tenant. The fact that, on the expiry of the lease, the improvements would go with the building does not alter the relevant and material aspect that during the duration of the lease the assessee continued to remain the sole owner of the improvements. This view finds support in *Additional Commissioner of Income Tax Vs. Lawlys Enterprises (P.) Ltd.*, and also in *Y.V. Srinivasamurthy Vs. Commissioner of Income Tax, Mysore*, .

6. We, therefore, answer the question referred to us in the affirmative, in favour of the assessee and against the department. The assessee will be entitled to costs which are assessed at Rs. 200.