(1980) 03 MAD CK 0002

In the Madras High Court

Case No : Tax Case No. 602 of 1976

Commissioner of Income Tax APPELLANT

Vs

Festo Elgi (P.) Ltd. RESPONDENT

Date of Decision : 20-03-1980

Acts Referred:

Citation : (1981) 7 TAXMAN 87

Hon'ble Judges : P. Venugopal, J

Bench : Single Bench

Advocate : A.N. Ramagaswami and Mrs. Nalini Chidambaram, for the Appellant; S. Swaminathan, for the Respondent

Judgement

P. Venugopal, J.—At the instance of the revenue, the following question of law has been referred to this court for opinion:

Whether, on the facts and in the circumstances of the case, the technical know-how in the form of blue prints, instructions, manuals, etc., would fall

within the definition of ''plant'' appearing in section 43(3) of the Act and that depreciation and development rebate should be allowed on such

technical know-how paid to the foreign collaborator?

The assessee entered into an agreement with M/s. Festo Maschinen-fabrik G Steel of West Germany, under the terms of which it paid certain

amounts to the foreign collaborator towards the technical know-how, workshop drawings, etc. The ITO disallowed the claim for depreciation and

development rebate on the amount spent for the acquisition of technical know-how, workshop drawings, etc. On appeal, the AAC came to the

conclusion that the technical know-how came within the ambit of the definition of ""plant"" and directed depreciation allowance and development rebate as claimed by the assessee. On further appeal, the Tribunal, following the decision of the Gujarat High Court in Commissioner of Income

Tax, Gujarat-II Vs. Elecon Engineering Co. Ltd., held that the assessee is entitled to the depreciation and development rebate on the value of the

technical know-how paid to the foreign concern. The question has been referred to this court for opinion at the instance of the revenue.

2. The learned counsel for the revenue, relying on certain observations in Jeffrey v. Rolls-Royce Ltd. (1962) 40 TC 443; (1965) 56 ITR 580

(HL), contended that the know-how supplied to the assessee-company is an intangible asset and it is a kind of capital asset only by analogy and no

depreciation and development rebate can be allowed on the question of such an intangible asset. The question came to be directly considered by

the Gujarat High Court in Commissioner of Income Tax, Gujarat-II Vs. Elecon Engineering Co. Ltd., and it was held that know-how is the

accumulated fund of knowledge acquired by years of observation, research, experimentation and experience, and the whole of it is not in an

intangible form even while it is in the process of being acquired and very often it takes a physical form as it grows in the shape of formulae,

drawings, patterns, blue prints, specifications and so on and the material form it takes not only facilitates preservation, collation and ready reference

but also makes it perceptible and visible and easily capable of being transmitted to others. Secondly, it was pointed out that having regard to the

legislative intent to give a wide meaning to the word ""plant"", material record of know-how is clearly included within the meaning of the word ""plant

in section 32. In that case, the assessee acquired drawings and patterns for the manufacture of gear units and conveyor idlers from foreign

collaborators and it was held that the drawings and patterns were the basic tools of the assessee''s trade having a fairly enduring quality. The

drawings and patterns were, therefore, held to be plant within the meaning of section 32 and the assessee was held to be entitled to depreciation in

respect of those assets. This decision of the Gujarat High Court was followed in a later decision of the Karnataka High Court in Nippon

Electronics (P.) Ltd. Vs. Commissioner of Income Tax, Karnataka, and was pointed out that where the assessee-company had used the designs,

drawings, plans, blue prints and technical data which it acquired for valuable consideration from a foreign company in the course of a business and the cost thereof was not treated as revenue expenditure, it would not be possible to ascertain the true profits of the assessee if no depreciation was

allowed in the case of those items. It was further pointed out that the assessee-company would not have erected the factory for carrying on the

manufacturing process without the expenditure incurred on the acquisition of those items which could be compendiously included in the expression

technical know-how"" necessary for the purpose of carrying on the business and in this view it was held that the designs and blue prints constitute

plant"" for the purpose of allowing depreciation u/s 32 of the Act. This decision has been followed in two other decisions, namely, in L. Sanyasi

and Sons Vs. Commissioner of Income Tax and Another, and Commissioner of Income Tax, Bombay City-II Vs. Emco Electro Pvt. Ltd., In the

present case, the technical know-how has been supplied to the assessee-company in the form of blue prints, instructions, technical manuals, etc.,

which, more or less, constitute the tools for carrying on the business of the assessee-company and having an enduring benefit and forming cost of

the capital assets with which the assessee-company has carried on the business. They constitute ""plant"" for the purpose of allowing depreciation u/s

32 of the Act. Following the decision of the Gujarat High court and the decisions of the other High Courts, we answer this question in the

affirmative and against the revenue. The assessee will be entitled to the costs of this reference. Counsel''s fee Rs. 500.