

(1987) 09 RAJ CK 0026

In the Rajasthan High Court

Case No : .I.T. Reference No"s. 48, 48A and 48B of 1980

Commissioner of Income Tax

APPELLANT

Vs

Jai Drinks (P.) Ltd.

RESPONDENT

Date of Decision : 22-09-1987

Acts Referred:

Income Tax Act, 1961 — Section 32, 33, 43

Citation : (1988) 68 CTR 41 : (1988) 173 ITR 100

Hon'ble Judges : J.S. Verma, C.J;I.S. Israni, J

Bench : Division Bench

Advocate : R.N. Surolia, for the Appellant; N.M. Ranka, for the Respondent

Judgement

1. In respect of the three assessment years 1969-70 to 1971-72 relating to the same assessee, a common question of law has been referred at the instance of the Revenue for the decision of this court by drawing up a common statement of case. The common question of law is as under:

" Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the bottles and shells constitute "plant" within the meaning of Section 43(3) of the Income Tax Act, 1961, and as such, depreciation and development rebate was rightly allowed ? "

2. The assessee, Jai Drinks (P.) Ltd., was manufacturing and selling soft drinks like cocacola, etc. The products of the assessee were supplied for sale in marked bottles. In respect of these assessment years, the assessee claimed depreciation and development rebate on bottles and shells used in bottling the soft drinks on the ground that they constituted "plant" as defined in Section 43(3) of the Income Tax Act, 1961 ("the Act"). This point for the first two years was raised for the first time before the Appellate Assistant Commissioner who accepted the assessee's contention. For the third year, the point was raised before the Income Tax Officer who rejected the same, but on appeal it was accepted by the Appellate Assistant Commissioner. Thereafter, the Tribunal has affirmed the view

of the Appellate Assistant Commissioner for all the three years of assessment. It has been held by the Tribunal that the business of the assessee of manufacturing cold drinks and selling the same bottled in this manner cannot be carried on without the use of these bottles and shells, so that the use of bottles and shells is an integral part of the assessee's business. It has been held that these containers are not the stock-in-trade of the assessee but a part of the "plant" installed by the assessee for the manufacture and bottling of soft drinks. On this basis, the assessee's claim for depreciation and development rebate thereon has been allowed by the Tribunal for all these three years. Aggrieved by the Tribunal's view, this reference has been made at the instance of the Revenue to answer the above common question of law arising out of the Tribunal's order in respect of the aforesaid three assessment years.

3. The construction of the definition of "plant", as occurring in Section 10(5) of the Indian Income Tax Act, 1922 ("the 1922 Act"), corresponding to Section 43(3) of the 1961 Act came up for consideration of the Supreme Court in a similar situation in *Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad*. In that case, the assessee carried on the business of a hotelier, and the question was, whether the sanitary and pipe line fittings installed in the hotel fell within the definition of "plant" to allow the assessee's claim for depreciation and development rebate on that basis. The Supreme Court pointed out that the definition of "plant" was an inclusive definition and the intention of the Legislature was to give it a wide meaning which is evident from the fact that articles like books and surgical instruments were expressly included in the definition of "plant". The test indicated by the Supreme Court in this decision was the utility of the article for properly carrying on the business of the assessee. On this basis, it was concluded that the sanitary fittings, etc., in a bathroom is one of the essential amenities or convenience which are normally provided in any good hotel and, therefore, the same fell within the definition of "plant" as claimed by the assessee. This decision was followed recently by the Supreme Court in *Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh*, while construing the definition of "plant" in Section 43(3). The question was, whether drawings, designs, charts, plans, etc., were within the definition of "plant" where the assessee's business was to manufacture scientific instruments. The question was answered in the assessee's favour. The above decision of the Supreme Court was expressly referred to and followed. It was indicated that the inclusive definition of "plant" must be understood to mean in its ordinary sense as including all apparatus used by a businessman for carrying on his business but not as stock in trade. The test to be applied was also laid down by the Supreme Court in this decision as under :

"In other words, the test would be : does the article fulfil the function of a plant in the assessee's trading activity ? Is it a tool of his trade with which he carries on his business ? If the answer is in the affirmative, it will be a plant." (p. 96).

4. Applying the above test indicated by the Supreme Court, there is no escape

from the conclusion that the bottles and shells used for bottling the soft drinks manufactured by the assessee fall within the definition of "plant" contained in Section 43(3). We find that the Delhi High Court in Commissioner of Income Tax Vs. National Air Products Limited, and the Calcutta High Court in Commissioner of Income Tax Vs. Steel Rolling Mills of Hindusthan (P.) Ltd., have taken the view that gas cylinders fall within the definition of "plant" in Section 43(3) where the business of the assessee is to manufacture gas and the gas cylinders are used for bottling the manufactured gas. In our opinion, these decisions also lend support to the conclusion we have reached.

5. Consequently, the reference is answered against the Revenue and in favour of the assessee for all the three assessment years by answering the above question as under :

"The Tribunal was justified in holding that the bottles and shells constitute "plant" within the meaning of Section 43(3) of the Income Tax Act, 1961, and as such, depreciation and development rebate thereon was rightly allowed."

6. No costs.