(1998) 03 MAD CK 0059

In the Madras High Court

Case No : T.C. No. 886 of 1986 (Reference No. 583 of 1986)

Commissioner of Income Tax — APPELLANT

Vs

J.K.K. Textiles Processing Mills. — RESPONDENT

Date of Decision : 26-03-1998

Acts Referred:

Citation : (2000) 242 ITR 165

Hon'ble Judges : P. Thangavel, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

P. Thangavel, J.—At the instance of the Revenue, the following question of law is referred for the opinion of this court u/s 256(1) of the

Income Tax Act, 1961 :

Whether, the Tribunal''s finding that electrical transformers should be treated as textile processing machinery and allowed extra shift allowance is

sustainable in law in view of the prohibition contained in the rules ?

2. The assessee was using electrical transformers for the working of textile processing machinery. The Income Tax Officer of the concerned circle

has decided that as per the Income Tax Rules, 1962, Appendix I, transformers are not eligible for extra shift allowance. But, the Commissioner of

Income Tax (Appeals) was of the opinion that electrical transformers should be considered as integral parts of the abovesaid textile processing

machinery and, therefore, the electrical transformers are eligible for extra shift allowance. According to the Revenue, the Appendix to rule 5 sets

out the rates of depreciation on different items of assets and according to it, extra shift allowance will not be available in respect of any item of

machinery or plant specifically excepted by inscription of the letters N.E.S.A. The Revenue has also relied on item No. 5, under which electrical

machinery was described as switchgear and instruments, transformers and other stationary plant and wiring and fittings of electric lights and fan

installations. The Tribunal negatived the abovesaid contention of the Revenue and upheld the claim made by the assessee, holding that electrical

transformers are eligible for extra shift allowance. While holding so, the Tribunal has held that electrical transformers are an integral part of the

textile processing machinery and that the Appendix sets out various items of machinery and in respect of each category, there are items of plant

and machinery, which bear the inscription N. E. S. A., thereby meaning that they are ineligible for extra shift allowance. The Tribunal has also held

that a reading of various items listed out in the Appendix would disclose that extra shift allowance is not allowed in respect of machinery, to which

special rates like 20 per cent, or 30 per cent, apply, but machinery, in respect of which the general rate is applicable, is eligible for extra shift

allowance. The Tribunal has also come to the conclusion, after considering the representation made on the side of the Revenue, that the prohibition

contained in granting extra shift allowance would apply only to machineries, which are independent machineries by themselves and not to

machineries forming part and parcel of other types of machineries which are entitled to extra shift allowance.

3. Aggrieved by the order of the Tribunal, at the instance of the Revenue the question of law set out above has been referred for the opinion of this

court.

4. The assessee is carrying on textile processing business at Komara-palayam by using textile processing machineries in the mill premises. The fact

remains that electrical transformers are installed within the above-said premises and the Electricity Board is supplying energy through high tension

lines to the abovesaid transformers, from where electricity is supplied for the abovesaid textile processing mill to run its machineries. It is for the

abovesaid transformers, extra shift allowance is claimed by the assessee, which was upheld by the Tribunal as referred to above.

5. Learned counsel for the Revenue would contend that the electrical

transformers installed in the textile processing mill of the assessee could not

be considered as an integral part of the textile processing machinery of the assessee, that the electrical transformers are independent instruments by

themselves, that the abovesaid item will fall within the meaning of the items excepted by inscription of the letters N. E. S. A. (no extra shift

allowance), to which the general rate of depreciation of 10 per cent, applies and, therefore, extra shift allowance cannot be given to electrical

transformers as held by the Tribunal. Learned counsel for the assessee contended contra to the abovesaid contentions, to sustain the conclusion of

the Tribunal.

6. We have considered the rival submissions made by both the sides in depth in the light of the materials available on record. It is evident from

Appendix I to the Income Tax Rules, 1962, that extra shift allowance shall not be allowed in respect of any item of machinery or plant, which has

been specifically excepted by inscription of the letters N. E. S. A. against the machinery and plant to which the general rate of depreciation of 10

per cent, applies. In the excepted items with the heading ""Electrical machinery"" switchgear and instruments, transformers and other stationary plant

and wiring and fittings of electric light and fan installations are described along with other items. Therefore, it is evident that the electrical

transformers will come within the excepted item to which the general rate of depreciation of 10 per cent, is applicable.

7. Electric transformers are admittedly used to receive electric energy from high tension lines supplied by the Electricity Board and from the

abovesaid electrical transformers, the electric supply is made to the plant or machinery, in order to run the same. It is also relevant to point out that

the quantum of electricity consumed by the plant or machinery will be metered only at the place where the transformers are erected by the

Electricity Board to collect necessary charges for such consumption of electricity. The electrical transformers, even if they are in the premises of the

assessee, will be under the control and supervision of the Electricity Board. The fact of supplying energy from the transformers to the asses-see''s

plant or machineries will not go to mean that the abovesaid electrical transformers will form an integral part of the textile processing machinery, run

by the assessee. It is a separate item, used to receive energy from the high tension line. In view of that fact, the conclusion arrived at by the

Tribunal that the electrical transformers in dispute will form an integral part of the textile processing machinery of the assessee cannot be accepted.

8. Learned counsel for the Revenue has brought to our notice the decision in Commissioner of Income Tax Vs. Kiran Crimpers, . In that case, it

was held that in the first instance the rate of general depreciation has to be prescribed under Sub-items (i) and (ii) of item III of Part I of Appendix

I to the Income Tax Rules, 1962, thereafter when the question of extra shift allowance arises to be considered under Sub-item (iv), it has to be

seen what specific items have been excluded from the applicability of extra shift allowance and if any items have been specifically so excluded

either by inscribing N. E. S. A., while including that item under the description of machinery and plant slated for the special rate or the general rate,

such item cannot be made available for computation of extra shift allowance. It has also been held that once an apparatus becomes an integral part

of another asset as such, it loses its independent identity as an asset and the asset of which it becomes an integral part alone is to be considered as

an asset, that in other words, unless one apparatus which independently is a plant or machine, when fitted to another machine to make that machine

complete, becomes an integral part of the concerned asset itself and loses its independent identity, it cannot be said that the two assets are one, but

mere interdependency upon each other for their functioning does not make the two assets one for the purposes of claiming depreciation. Further, it

has also been held that it is a well-known principle of interpretation that where there are two entries covering the same item, one special and

another general, the applicability of the general provision shall be excluded.

9. In the light of the observations made above it was held in that case that the phrase used in entry (2) of sub item (ii)B of item III of Part I of

Appendix I to the rules is air-conditioning machinery including room air-conditioners, that this goes to show that this entry deals with all types of

air-conditioning machinery whether used in a room, factory or office or any other place of business irrespective of any particular use to which it is

put and that, therefore, no extra shift depreciation allowance is allowable in the case of air conditioners necessarily used for crimping nylon yarn.

10. It has already been held that the electrical transformers are independent

items and they will not form an integral part of the textile processing

machinery of the assessee, except to transmit energy from the transformers through cables to the abovesaid textile processing machineries of the

assessee. It is also evident as mentioned above, that electrical transformers are entitled to depreciation allowance at 10% under the general

category rate. If the principles laid down in the case cited above are applied by way of analogy to the facts and circumstances of this case, in the

light of Appendix I to the Income Tax Rules, 1962, it is quite clear that extra shift allowance cannot be granted to the demised electrical

transformers installed in the premises of the assessee. Therefore, we accept the arguments advanced by learned counsel for the Revenue.

11. Accordingly, we answer the question of law referred to this court in the negative and in favour of the Revenue. In the circumstances of the

case, there will be no order as to costs.

