
(1974) 05 AHC CK 0035

In the Allahabad High Court

Case No : Income-tax Reference No. 278 of 1972

Commissioner of Income Tax

APPELLANT

Vs

Kanodia Cold Storage

RESPONDENT

Date of Decision : 07-05-1974

Acts Referred:

Income Tax Act, 1961 — Section 43, 43(3)

Citation : (1975) 100 ITR 155

Hon'ble Judges : Satish Chandra, J;H.N. Seth, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; B.C. Dey, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Seth, J.—This is a consolidated reference, relating to the assessment years 1964-65 and 1965-66.

2. At the instance of the Commissioner of Income Tax, the Income Tax Appellate Tribunal, Allahabad, has referred the following two questions of law for the opinion of this court:

"I. Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct, in holding that the portion of the walls of the freezing chamber containing insulation materials constituted "plant" within the meaning of Section 43(3) of the Income Tax Act, 1961, and that it was entitled to depreciation as on a "plant" ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the payment of Rs. 14,742 to the Allahabad Electric Supply Undertaking towards cost of transformer and service line for replacing the existing line to enable it to have higher K. V. A. electric power for cold storage was an allowable expenditure in computing the income of the assessee-firm for the assessment year 1965-66?"

3. The assessee is a registered partnership firm. It purchased, as a going concern, a cold storage styled as M/s. Govind Hari Cold Storage and started its business from April, 1963. In the assessment of the firm for the two years the Income Tax Officer allowed depreciation on the building of the cold storage on its written down value, amounting to Rs. 38,179 and Rs. 36,270 at 5%. He also disallowed a sum of Rs. 14,742 claimed by the assessee as revenue expenditure, for the assessment year 1965-66, on transformer and service line for replacing the existing line, on the ground that it was an expenditure of capital nature.

4. In appeal, the Appellate Assistant Commissioner held that in the relevant years, the Income Tax Officer should have allowed depreciation on factory building at 10% instead of 5%. However, he upheld the order passed by the Income Tax Officer, in so far as the assessee's claim for the expenditure incurred by it in getting the transformer and the existing service line replaced was concerned. The assessee then filed two appeals (which were ultimately heard together) before the Income Tax Appellate Tribunal. The Tribunal allowed both the appeals. It held that in the circumstances the assessee was, in respect of each of the two years, entitled to depreciation, calculated at 15% on the written down value of the factory building as it formed part of the plant used for running the cold storage. It also accepted the assessee's case that the expenditure incurred by it in connection with the change of the transformer and the existing service line, being a business expenditure which could neither be classed as a personal expenditure nor as an expenditure of capital nature, was an expenditure which had to be deducted in computing its income for the year 1965-66.

5. Being aggrieved by the aforementioned order of the Tribunal, the Commissioner of Income Tax moved applications and got the aforementioned two questions referred to this court for opinion.

6. Assessee's case was that the factory building in respect of which it claimed depreciation at the rate of 15% was a part of an air-conditioning machinery or plant. At the request of the assessee, the learned members of the Tribunal inspected the cold storage and found that the walls of the building in respect of which depreciation at 15% was being claimed was being used as freezing chamber containing insulation material like cork, etc., to keep it at the appropriate temperature. It was impossible to work the cold storage plant without such a treatment to its walls. The Appellate Tribunal found that the building which was being used as freezing chamber, though not a machinery or part thereof, was a part of the air-conditioning plant of the cold storage and the assessee was entitled to claim special depreciation at 15% on its written down value. The question, therefore, that arises for consideration is whether the Tribunal was right in holding that the building in question was a part of the air-conditioning plant of cold storage.

7. In common parlance the word "plant" includes within its ambit buildings and equipments used for manufacturing purposes. On the observation made by the members of the Tribunal it is obvious that the building in question would be a

part of the air-conditioning plant of the cold storage, in the sense in which the word is understood in common parlance. Section 43(3) of the Income Tax Act, 1961, gives an inclusive definition of the expression "plant" in these words:

" "Plant" includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of business or profession."

8. This indicates that the legislature intended to give to the word "plant" an extended meaning which went even beyond that conveyed by it in common parlance. It surely did not intend to exclude from its ambit things which would normally be included in it. Viewed in this light, the building in question would be a part of the plant used for air-conditioning the assessee's cold storage and the assessee would be entitled to claim depreciation with regard to it at 15% on its written down value.

9. So far as the second question is concerned, the Tribunal found that in the previous year relevant to the assessment year 1965-66, the assessee had paid a sum of Rs. 14,742 to the Allahabad Electric Supply Undertaking as cost of transformer and charge for service line for meeting the assessee's requirement for extended load which could not be supplied over the existing line. However, the ownership of the line was to vest in the undertaking. It is not disputed that the aforesaid expenditure was incurred by the assessee in connection with its business and that it was not an expenditure of personal nature. It would be inadmissible as a deduction only if it could be shown that it was an expenditure of capital nature. It is on this point that there is a controversy between the Commissioner and the assessee. The Commissioner of Income Tax claims that such an expenditure is an expenditure of capital nature, whereas the assessee claims it to be revenue expenditure.

10. According to the finding recorded by the Appellate Tribunal, the object of incurring the aforesaid expenditure was to get the existing power line replaced so as to enable the assessee to receive higher K. V. A. electric power for its cold storage. The already existing line was the appliance through which the assessee received power for its cold storage. The change in the appliance for receiving power was required by the assessee so that its plant may work more efficiently. It cannot be said that by changing the line the assessee procured some enduring asset. In our opinion, the principle laid down by the Supreme Court in the case of Commissioner of Income Tax, Madras Vs. Mahalakshmi Textile Mills Ltd., , for determining when a particular expenditure partakes the nature of revenue expenditure, fully applied to the facts of the present case. In that case it has been held that replacement of worn out parts does not by itself bring in a new asset but having regard to the nature of expenditure one should consider the productive unit as a whole and not pick out parts therein which are new. Where only a replaceable part of composite piece of machinery is renewed,, such part having a comparatively lesser life than the machinery itself, it would be reasonable to regard the cost of such renewal as revenue expenditure. It appears that the Supreme Court further accepted the proposition that, where certain

moving parts of the machinery had to be periodically replaced and it is found that the type of the replacement was not available in the market, the assessee introduced an alternative system thereby replacing certain parts, the expenditure incurred on such an item was a revenue expenditure. This means that in a case where the productive unit set up by the assessee remains the same, but a part of it which has become unsuitable for its use is replaced by something which makes it possible for the existing set up to function efficiently, the cost incurred on such replacement would be revenue expenditure.

11. In the case before us, we find that the service-line undoubtedly was a part of the entire set up for the functioning of the cold storage. This was to be replaced by another line capable of carrying higher K. V. A. electric power current to enable the cold storage to function properly. By effecting such a change no new asset of enduring nature, belonging to the assessee, came into existence. We are, therefore, of opinion that the expenditure in question could not be described as capital expenditure.

12. In the result we answer both the questions referred to us in the affirmative and in favour of the assessee. The assessee will be entitled to receive the costs of the reference from the Commissioner of Income Tax which is assessed at Rs. 200.