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(1996) 07 MP CK 0098

In the Madhya Pradesh High Court

Case No : MCC No. 237 of 1994, July 10, 1996.

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

SIBBAL COLD STORAGE. — RESPONDENT

Date of Decision : 10-07-1996

Acts Referred:
Income Tax Act, 1961 — Section 256, 43

Citation : (1996) 136 CTR 244

Judgement

This is a reference under s. 256(1) at the instance of Revenue and the following questions of law have been referred by the Tribunal for answer by this Court :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the order of CIT(A) who directed the AO to allow the depreciation on building i.e. on cold storage and chamber at 15% as against the depreciation allowed by the AO at 10% ?

(ii) Whether the Tribunal is right in law in holding that the word plant includes within its ambit building in which machineries are installed for manufacturing purposes ?"

2. Brief facts giving rise to the reference are that the assessee is engaged in running a cold storage. While making assessment, the AO noticed that the assessee had received capital subsidy for investment in the new unit at 15% on the total investment. The AO had allowed depreciation on the chamber which is building at the rate of 10% of the cost of its written down value as against depreciation claimed by the assessee at the rate of 15%. The CIT(A) allowed the claim of the assessee and the Department approached by way of an appeal before the Tribunal and the Tribunal upheld the order of the CIT(A). Hence, the Department approached the Tribunal for referring the aforesaid two questions of law along with other questions for answer by this Court. However, the Tribunal has referred only two questions for consideration as quoted above. We have heard learned counsel for the parties.

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3. So far as cold storage is concerned, it falls within the definition of plant as defined under s. 43(3) of the IT Act, 1961 and this view has been taken in series of decisions of various High Courts. In the case of Commissioner of Income Tax Vs. Kanodia Cold Storage, , Allahabad High Court has taken the view as under :

"In common parlance the word plant includes within its ambit buildings and equipment used for manufacturing purposes. The definition of plant in s. 43(3) is inclusive and does not exclude things normally included in it. Where a building with insulated walls is used as a freezing chamber, though it is not machinery or part thereof, it is part of the air-conditioning plant of the cold storage of the assessee and will be entitled to special depreciation at 15% on its written down value."

The same view has been taken by Punjab & Haryana High Court in the case of Commissioner of Income Tax Vs. Yamuna Cold Storage, wherein it has been observed that building of cold storage is a factory building and is entitled to depreciation at 10%; but for the plant i.e. thermocole insulation is plant and is entitled to depreciation at 15%. In Commissioner of Income Tax Vs. Dev Jaimehi Ice and Cold Storage, , Allahabad High Court has also taken the view that since a cold storage construction is a specialised construction where the plant consists of a freezing chamber which is made by a special process, the fibre glass used in the construction of a freezing chamber cannot be separated from the plant and machinery because they are an integral part of the cold storage. Therefore, depreciation for fibre glass is admissible as in the case of machinery and plant. Therefore, question No. 1 has to be answered against Revenue and in favour of assessee.

4. So far as the question No. (ii) whether the word plant includes within its ambit building in which machineries are installed for manufacturing purposes is concerned, it may be said that in fact the plant cannot survive independent of building. Some building has to be there in order to house the plant; and as such, the building which houses the plant is a plant. Therefore, the plant includes within its ambit building in which machineries are housed. The same view has been taken by Allahabad High Court in the case of Kanodia Cold Storage (supra).

5. In the result, both the aforesaid questions of law are answered against Revenue and in favour of assessee.

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