

(1998) 02 MAD CK 0153

In the Madras High Court

Case No : Tax Case No. 746 of 1982 (Reference No. 483 of 1982)

Commissioner of Income Tax

APPELLANT

Vs

S.R.P. Tools Ltd.

RESPONDENT

Date of Decision : 20-02-1998

Acts Referred:

Citation : (2000) 242 ITR 636

Hon'ble Judges : Janarthanam, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : Chitra Venkataraman, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

Janarthanam, J.—In this action, the question referred to us for our opinion is :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the generator installed in the assessee's factory for generating "electricity" would not come under the category of "electrical machinery" but would come under the classification of plant and machinery and, hence, the assessee's claim for extra-shift allowance should be allowed ?"

2. The assessee is a public limited company. For the assessment year 1974-75, corresponding to the previous year ending on March 31, 1974, the assessee showed an income of Rs. 3,77,118. In claiming the deduction of depreciation, the assessee claimed extra-shift allowance in respect of a diesel generating set and industrial engine.

3. The Income Tax Officer was of the opinion that these came under the category of "switch gear and instruments, transformers and other stationary plant" which was not entitled to extra-shift allowance and he, therefore, disallowed the claim.

4. On appeal, the Appellate Assistant Commissioner posed the question whether the generator was "electrical machinery" and finding that the generator is only

machinery, which produced electricity and was powered by a diesel engine, he concluded that it was not "electrical machinery" and, therefore, extra-shift allowance cannot be disallowed.

5. The Revenue appealed and the Appellate Tribunal found that only electrical machinery belonging to the class of switch gear and instruments, transformers, etc., could be denied the extra-shift allowance and not all kinds of electrical machinery. Further, it was noted that the generator was not operated with electricity and, therefore, the order of the Appellate Assistant Commissioner was confirmed--giving rise to the present action--T. C. No. 746 of 1982.

6. Arguments of Mrs. Chitra Venkataraman, learned counsel representing the Revenue, and Mr. P. P. S. Janarthana Raja, learned counsel appearing for the assessee, were heard.

7. Our attention had been drawn to a decision of this court in the case of Commissioner of Income Tax, Tamil Nadu-IV Vs. M.S. Sahadevan, , wherein the Division Bench held as follows (headnote) :

"For a machinery to come within the scope of the term "electrical machinery" in entry III (iii) E-3(b) of column 1 of Part I of Appendix I to the Income Tax Rules, 1962, for the purpose of special rate of depreciation it is not necessary that the machinery should produce, transmit or store electricity. It would not also include any machinery which is run by electricity or whose motive power is electricity. What it comprehends will be that the machinery is such that inbuilt into it is the electric motor which forms a vital and inseparable part of the machinery. The fact that electrical devices are put into the machinery for the purpose of allowing electricity to pass through will not make the machinery electrical machinery but the machinery itself should be a single unit with the electric motor forming a vital and inseparable part of it."

8. Our attention was also drawn to another decision of a Division Bench of this court in the case of Commissioner of Income Tax Vs. Light Roofings Ltd., , wherein their Lordships of the said Division Bench following the decision in the case of Commissioner of Income Tax, Tamil Nadu-IV Vs. M.S. Sahadevan, , said the first question is answered in Commissioner of Income Tax, Tamil Nadu-IV Vs. M.S. Sahadevan, by a Division Bench of this court, wherein it is pointed out that wherever the machinery is such that inbuilt into it is the electric motor, then it would be electrical machinery. The said view is reiterated by the Allahabad High Court in Commissioner of Income Tax Vs. Saran Khandsari Udyog, and the Kerala High Court in Commissioner of Income Tax Vs. P. Veriah, . It appears the Central Board of Revenue has already issued Circular No. 1454 on the subject. This should satisfy all concerned. Thus, the Tribunal has committed no mistake in not treating a generator as "electrical machinery".

9. In view of the aforesaid decisions, it goes without saying that the question posed for consideration in the instant case has to be necessarily answered in the affirmative and against the Revenue and, consequently, the question is so

answered.

10. This tax case is thus disposed of. There shall, however, be no order as to costs, on the facts and in the circumstances of the case.