

---

**(1978) 01 AP CK 0016**

**In the Andhra Pradesh High Court**

**Case No : Case Referred No. 66 of 1976**

Commissioner of Income Tax

APPELLANT

Vs

Warner Hindustan Ltd.

RESPONDENT

---

**Date of Decision : 17-01-1978**

**Acts Referred:**

Income Tax Act, 1961 — Section 246, 32, 43(3)

**Citation : (1979) 117 ITR 15**

**Hon'ble Judges : S. Obul Reddy, C.J; Narasinga Rao, J**

**Bench : Division Bench**

**Advocate : P. Rama Rao, for the Appellant; P.R. Ramachandra Rao, for the Respondent**

---

## **Judgement**

Obul Reddy, C.J.—The following two questions have been referred to this court for its opinion by the Tribunal at the instance of the revenue:

"1. Whether, on the facts and in the circumstances of the case, the assessee was entitled to depreciation and development rebate on the cost of digging a well ?

2. Whether, on the facts and in the circumstances of the case, the appeal against the order of the ITO giving effect to the directions given by the AAC is maintainable ?"

2. The facts relevant for answering the questions are these: The assessee, Warner Hindustan Ltd., Hyderabad, is a public limited company carrying on business of manufacturing pharmaceuticals. The relevant assessment years are 1968-69 and 1969-70. The assessee spent a sum of Rs. 1,26,254 for digging a well in its factory and it was admittedly for the purpose of carrying on its business. The ITO disallowed the assessee's claim for depreciation and development rebate on the sole ground that the well did not come within the expression "plant". The AAC accepted the claim of the assessee and granted the rebate. The revenue carried that order in appeal contending that the well was not meant for the purpose of business use. The Tribunal negated the contention of

the revenue and opined that the well was admittedly dug in the factory premises for its business purpose. In so coming to the conclusion, the Tribunal applied the ratio of the decision of the Supreme Court in Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, . The other question raised before the Tribunal by the revenue was that the order of the ITO made on April 6, 1973, giving effect to the appellate order of the AAC is not an appealable order. That contention too was negatived by the Tribunal relying upon the decision of the Calcutta High Court in Kooka Sidhwa and Co., Calcutta Vs. The Commissioner of Income Tax, W.B., . Questioning the findings of the Tribunal on the aforesaid two points, the revenue moved for reference to this court.

3. As regards the first question, Mr. Rama Rao, the learned counsel appearing for the revenue, contended that even if a wider meaning is to be given to the expression "plant", it will not take within its ambit a "well ". Section 32 of the I.T. Act deals with depreciation and Section 32, to the extent relevant, says :

"In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of Section 34, be allowed--.....

(ii) in the case of buildings, machinery, plant or furniture, other than ships covered by Clause (i), such percentage on the written down value thereof as may in any case or class of cases be prescribed....."

4. Section 43(3) defines," plant" which "includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession". Mr. P. R. Ramachandra Rao, appearing for the assessee, submits that the definition of "plant" is an inclusive definition of wide amplitude taking within its ambit even a well, provided that the well was dug for the purpose of carrying on the business of the factory. According to Mr. Ramachandra Rao, the assessee had to dig a well in the factory premises and instal a pumping set for pumping water to the factory as there was no adequate supply of water by the Corporation to the factory. It is his case that without digging that well, it would have been well nigh impossible for the assessee to carry on its business of manufacturing pharmaceuticals. In other words, it is his case that the well is part and parcel of the plant without which it would not be possible for the assessee to manufacture pharmaceuticals. The Supreme Court had occasion to consider the meaning of the term "plant" in Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, . The hotel in that case had installed sanitary and pipeline fittings in one of its branches and in respect of these fittings it claimed depreciation allowance under the head "Furniture and fittings". The question arose whether the sanitary and pipeline fittings installed fell within the definition of "plant "in Section 10(5) of the 1922 Act. The Supreme Court construed the expression "plant" as having a wider meaning. In that view, it held that the sanitary and pipeline fittings fell within the definition of "plant". There can be no doubt that it was not the intention of the legislature to restrict the

meaning of "plant". Otherwise, the legislature would not have included in its ambit articles like books, scientific apparatus and surgical instruments in the definition. Mr. Rama Rao, however, sought to place reliance upon the decision of the Bombay High Court in *Jayasingrao Piraji Rao Ghatge Vs. Commissioner of Income Tax, Bombay South*, . It is to be noted that this decision was doubted by the same High Court in *CIT v. Union Bank of India Ltd.* [1976] 101 ITR 270. Kantawala C. J., speaking for the court, observed (p. 273):

"The correctness of the test laid down in this case is doubted in a later decision of the Gujarat High Court in the case of *Commissioner of Income Tax, Gujarat-II Vs. Elecon Engineering Co. Ltd.*, the decision of the Bombay High Court in *Jayasingrao Piraji Rao Ghatge Vs. Commissioner of Income Tax, Bombay South*, is referred to and it is observed that "this decision is not in accord with the trend of later decisions. In the first place, the primary meaning it assigned to the word "plant" is too narrow and constricted, that it must be an article having connection with mechanical or industrial business or manufacture of finished goods from raw products. Secondly, even the extended meaning of the word "plant" was there confined merely to capital invested in the manufacturing trade or business."

5. The Gujarat High Court too in *Commissioner of Income Tax, Gujarat-II Vs. Elecon Engineering Co. Ltd.*, was of the view that the interpretation put by the earlier decision of the Bombay High Court was not justified. The ratio of the decision of the Supreme Court in *Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad*, in our view, when applied to the facts of the present case, would bring in "well" also within the term "plant" in view of the fact that the well was admittedly sunk for the purpose of carrying on the business of manufacturing pharmaceuticals by the assessee. The definition of "plant", in our view, is of wide amplitude so as to take in even a well, provided that the well was dug for the purpose of carrying on the business of the assessee, as in this case, manufacture of pharmaceuticals.

6. A regards the second question, when the AAC directed the ITO to revise the assessment in accordance with the directions given by him, then an order passed in consequence of the direction of the appellate authority would be an appealable order and this position is well settled.

7. We, therefore, answer the two questions referred to us in the affirmative and against the revenue with costs. Advocate's fee Rs. 250.