(1981) 02 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 38 of 1976

Commissioner of Income Tax APPELLANT

Vs

Yamuna Cold Storage RESPONDENT

Date of Decision : 04-02-1981

Acts Referred:
Factories Act, 1948 — Section 2
Income Tax Act, 1961 — Section 43(3)

Citation : (1981) 23 CTR 15 : (1981) 129 ITR 728

Hon'ble Judges : S.P. Goyal, J;J.V. Gupta, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.K. Jhingan, for the Appellant; None, for the Respondent

Judgement

S.P. Goyal, J.—The assessee, M/s. Yamuna Cold Storage, a registered firm, is engaged in the business of cold storage the construction of which wasstarted in December, 1968, and completed in March, 1969. The assessment year in question is 1970-71. The dispute in this reference relates only to the depreciation to be allowed on the building and the cost of thermocole insulation. The ITO allowed 10% depreciation on the building and 15% on the rmocole insulation treating it to be machineay. The AAC during the course of the hearing of the appeal filed by the assessee reduced the depreciation to 5% on both the items treating it to be a godown and as such an ordinary building. Aggrieved thereby, the assessee went in appeal before the Tribunal which restored the order of the ITO holding that the cold storage was a factory building and that the thermocole insulation was covered by the definition of "plant" as denned in Section 43(3) of the I.T. Act. However, on an application by the revenue, the following two questions were referred u/s 256(1) of the Act for the opinion of this court :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the cold storage building of the assessee falls under the description of ''factory building'' qualified for depreciation allowance under the Income Tax Act as such ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that '' thermocole insulation '' is covered by the definition of the term '' plant'' as appearing in Section 43(3) of the Income Tax Act, 1961 ? "

2. So.far as the second question is concerned, D. N. Awasthy, learned counsel for the revenue, has not seriously disputed that the thermocole insulation would be covered by the definition of the term "plant" as appearing in Section 43(3) of the Act. Otherwise also, the matter is not res integra and a Division Bench of the Allahabad High Court in Commissioner of Income Tax Vs. Kanodia Cold Storage, held that in common parlance the word "plant" includes within its ambit buildings and equipment used for manufacturing purposes. The definition of "plant" in Section 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. Respectfully following the rule laid down in the said case, we also hold that the thermocole insulation would be covered by the definition of plant in Section 43(3) and the assessee, therefore, is entitled to 15% depreciation on bills of its costs. Question No. 2 is accordingly answered in the affirmative.

3. As regards the first question, the Tribunal did not record any reasons to opine that the cold storage building was a factory building and relied upon its earlier decision in Aggarwal Cold Storage and General Mills v. ITO (1970) Tax 30.

4. The word " factory buildings" is not defined in the Act but under the Factories Act, 1948, the word " factory " is denned to mean any premises including the precincts thereof-

2. (m)(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on......

The essence of the factory, therefore, lies in the manufacturing process carried thereon which term is again denned as under (Factories Act, 1948):

" 2. (k) ''Manufacturing process'' means any process for-

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery, or disposal, or

(ii) pumping oil, water, or sewage, or

(iii) generating, transforming or transmitting power, or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding,

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels. "

5. The Tribunal in Aggarwal Cold Storage''s case did not refute the contention of the revenue that the definition of factory as contained in the Factories Act would serve as the best guidance, in the absence of any definition in the Act, to determine whether the building of cold storage would be a factory building or not. However, after noticing the working of the cold storage it rejected the contention of the revenue that no manufacturing process is involved in a cold storage in the following terms :

"Now, what is done in a cold storage ? It is a big hall where a refrigeration plant is installed to circulate cold air at a temperature varying from 34? F to 36? F. This reduction in temperature is achieved by the refrigeration plant and the necessary requirement is that the temperature of the hall should not be less than 34? F and should not be more than 36? F. It is said that a thermostat is also used to control the temperature.........This brief description of the ''plant'' and process is enough to show that it is not a case of ''godown'' as the revenue would have it. It is a case of complicated process of modern science which is yoked for the preservation of valuable food material. It is not the case of Storage but a cold storage. If this is not ''manufacture'', then we do not know what else would be."

6. We find no reason to differ with the view of the Tribunal which has stood the test of time for all these years and more so because no decision to the contrary has been brought to our notice. Otherwise also, we are of the opinion that the process undertaken in the cold storage would, be fully covered by Clause (k)(i) because it would certainly be a process of treating the articles of goods with a view to preserve them for their use or sale. It may also be mentioned here that the cold storage is subject to the control and supervision of the Factories Inspector and has been always recognised as a "factory" under the Factories Act. Consequently, the first question is also answered in the affirmative, in favour of the assessee and against the revenue. No costs.

