

(1974) 02 GUJ CK 0011

In the Gujarat High Court

Case No : Income-tax Reference No. 74 of 1970

Commissioner of Income Tax, Gujarat-II

APPELLANT

Vs

Elecon Engineering Co. Ltd.

RESPONDENT

Date of Decision : 05-02-1974

Acts Referred:

Income Tax Act, 1961 — Section 14, 28, 29, 30, 31

Citation : (1974) 96 ITR 672

Hon'ble Judges : P.D. Desai, J;B.J. Divan, J

Bench : Division Bench

Advocate : J.M. Thakore, for the Appellant; K.H. Kaji, for the Respondent

Judgement

P.D. Desai, J.—This reference illustrates once again what a bewildering variety of questions arise for consideration under the Income Tax

law. The question which falls for determination in this reference is rather unusual, namely, whether drawings and patterns received by an assessee

from a foreign company under a collaboration agreement can be said to be ""plant"" on which depreciation is allowable u/s 32 of the Income Tax

Act, 1961 (hereinafter referred to as ""the Act""). It is a very debatable question which is not easy of answer and though we have taken one view

which appears to us more plausible, the other view is not altogether impossible.

2. The assessee is a public limited company engaged in the manufacture of elevators. The controversy in the present reference arises out of two

agreement entered into by the assessee with foreign collaborators. The first is an agreement dated October 5, 1960, entered into by the assessee

with Alfred Wiseman & Co. Ltd., Birmingham, and the second is an agreement dated October 7, 1960, entered into by the assessee with Spencer

(Melksham) Ltd., Wiltshire. For the purposes of this reference, it would be necessary to set out only such terms of each of the said agreements as

have a material bearing on the question under consideration and we proceed to do so.

3. By the first agreement, Alfred Wiseman & Co. Ltd., agreed : (a) to grant to the assessee full and exclusive licence and authority to manufacture

in India the complete range of Wiseman's Worm Reduction Gear Units up to 10 1/3 size for a period of ten years and, thereafter, until terminated

by either giving to the other months" notice in writing to that effect; (b) to supply to the assessee all existing and up-to-date drawings and

information (without cost) and patterns (at cost) which might be required by the assessee for the purpose of such manufacture; (c) to train in the

production of the Worm Reduction Gear Units of the type and range covered by the agreement two engineers employed by the assessee for a

period of six months without charge at their works and also to train additional employees of the assessee during the tenure of the agreement

provided boarding, lodging and other expenses of such additional trainees were borne entirely by the assessee; (d) to provide, at the request and

cost of the assessee, the services of one of their engineers for a period not exceeding one year to advise on design and production matters; (e) to

keep the assessee informed of all developments and improvements used or employed in the design or manufacture of the Gear Units which were

the subject of the agreement, and (f) to refrain from supplying any technical information with regard to the said Gear Units to any other persons,

firm or company in India except the assessee.

4. In consideration of these and other rights and privileges acquired under the agreements, the assessee undertook to pay to Alfred Wiseman &

Co. Ltd., free of Indian tax a lump sum of fourteen thousand Poundss and not to disclose to any person, firm or company any ""information"" given

to it by the said company.

5. The second agreement entered into by the assessee with Spencer (Melksham) Ltd., was of a slightly different nature. By the said agreement,

Spencer (Melksham) Ltd., who are manufactures of mechanical appliances known as ""Conveyor Idlers"", agreed to sell and the assessee agreed to

purchase complete drawings and manufacturing and engineering data and

information adequate and reasonably necessary to enable the assessee to manufacture in India the said Idlers in accordance with the vendor's design and specifications comprised in the designation SM/2/60 and described in the leaflet and drawing attached to the agreement. Spencer (Melksham) Ltd., undertook under the agreement : (a) to impart to two engineers nominated by the assessee all data and information relevant to the manufacture of the said Idlers within its knowledge and for that purpose to permit such engineers to attend regularly its factory for a continuous period of three months and to provide them with boarding and lodging during such period and for the like purpose, to provide in India at the expense of the assessee the services of a suitably qualified member of its engineering staff for a period, exclusive of traveling time, of one calendar month; and (b) not to knowingly supply any of the drawings or other things or matter referred to in the agreement to any person other than the assessee with a view to enabling such other person to manufacture the said Idlers in India. The assessee, in consideration of these and other benefits received under the agreement, undertook : (a) to pay free of Indian tax the sum of ten thousand Poundss to Spencer (Melksham) Ltd., in two installments, one instalment of five thousand Poundss immediately on the approval of the Government of India being obtained and the other instalment of five thousand Poundss within twelve months from the date of obtaining of such approval; and (b) to incorporate the word "Spencer" in the description of the Idlers manufactured by it and to engrave or otherwise mark upon the same the said word.

6. The total amount paid by the assessee to the foreign collaborators under the aforesaid two agreements came to twenty-four thousand Poundss, that is, Rs. 3,20,567. The amount was duly paid by the assessee and it received from the two foreign collaborators patterns, drawings, manufacturing and engineering data and information necessary for the manufacture of the two articles in question. It appears, though this is not very clear from the record, yet further technical know-how was also acquired by the assessee from the foreign collaborators by deputation of personnel.

7. The assessee claimed in the course of assessment to Income Tax for the assessment years 1963-64 and 1964-65, the relevant account years

for which were the calendar years 1962 and 1963, that the amount of Rs. 3,20,567 expended by the assessee should be spread over a period of

fourteen years and a sum of Rs. 22,897 representing 1/14th of that amount should be allowed as revenue expenditure in computing the trading

profits of the assessee for each of the assessment years. This claim was negatived by the Income Tax Officer and, on appeal, by the Appellate

Assistant Commissioner on the ground that the expenditure having been incurred on acquisition of technical know-how and information necessary

for manufacture of Wiseman Worm Reduction Gear Units and Conveyor Idlers was of a capital nature and hence not allowable as a revenue

deduction and that even depreciation could not be claimed in respect of it since the technical know-how and information acquired by such

expenditure could not be regarded as "building, plant or machinery" within the meaning of section 32 of the Act.

8. The assessee thereupon preferred two appeals to the Tribunal, one in respect of each assessment year. During the course of the hearing of the

appeals, the assessee did not "seriously press" the contention that the expenditure in question was revenue expenditure. The assessee, however,

contended that if the expenditure was of a capital nature as held by the Income Tax authorities, what was acquired was a result of such expenditure

and would be a capital asset in respect of which the assessee was entitled to depreciation allowance u/s 32 of the Act. The argument in terms was

that drawings and information received by the assessee under the licence agreement with Alfred Wiseman & Co. Ltd. and drawings, specifications

and patterns acquired by the assessee under the sale agreement with Spencer (Melksham) Ltd., should be treated as "plant" within the meaning of

section 32 of the Act and depreciation allowance worked out on the basis of the pro rata cost incurred on the acquisition of those assets must be

granted to the assessee. The revenue resisted the claim of the assessee on two grounds : first, that the assessee could not be permitted to raise at

the second appellate stage a totally new claim for depreciation allowance and, secondly, that drawings, specifications and patterns acquired by the

assessee from its foreign collaborators were not "plant" within the meaning of section 32. A subsidiary contention was also raised to the effect that

even if drawings and information received by the assessee from Alfred Wiseman & Co. Ltd., were treated as assets, under the terms of the

agreement the assessee was a mere licensee who was permitted to make use of the same during the tenure of the licence and that as such the

assessee could not be said to have owned the said assets and, therefore, the assessee was not entitled to claim any depreciation allowance in

respect thereof. The Tribunal observed that the assessee was right in not seriously contending that the expenditure incurred on the acquisition of

designs, patterns and information was revenue expenditure and found as a matter of fact that the expenditure in question was capital in nature. The

Tribunal also found that the assessee was entitled to raise a new claim for depreciation allowance in respect of drawings, patterns and information

received by it from the foreign collaborators at the second appellate stage. These two findings of the Tribunal are not the subject-matter of

challenge in the present reference and no more need be said about them. As regards the other points in controversy between the parties, the

Tribunal found, in the first place, that on a true construction of the agreement entered into by the assessee with Alfred Wiseman & Co. Ltd., the

assessee had become the owner of the drawings and information received by it from the said company. The Tribunal next proceeded to consider

the question whether the material acquired by the assessee under the two collaboration agreements constituted a capital asset in the hands of the

assessee on which depreciation was allowable u/s 32 of the Act. The Tribunal observed that two distinct matters or items were the subject-matter

of the said agreements :

(i) assets of intangible nature in the form of knowledge regarding technical know-how; and

(ii) assets in the form of drawings and patterns which form the basis for manufacturing the machinery mentioned in the contract.

9. The Tribunal found that the first out of the two items or matters mentioned above was not an asset of depreciable nature and that, therefore,

depreciation was not allowable in respect thereof u/s 32 of the Act. As regards drawings and patterns, however, the Tribunal found that they were

plant"" within the meaning of section 32 and that depreciation was allowable in respect thereof under the said section. This decision of the Tribunal

was founded on two grounds : first, that drawings and patterns were ""books"" and since ""books"" were ""plant"" according to the inclusive definition of

the latter word as contained in section 43(3) of the Act, those two articles were "plant" and, secondly, that even otherwise since drawings and patterns formed "the basis of the business of manufacturing the machinery in question", they were comprehended within the ordinary meaning of the word "plant". The Tribunal then considered as to what final order was required to be passed in the appeals before it and observed that since only part and not the whole of the amount of consideration paid by the assessee to the two foreign collaborators was attributable to the acquisition of drawings and patterns and since there was no evidence on record on the basis of which the portion of the amount expended by the assessee on the acquisition of the said assets could be ascertained with certainty, it was not possible to dispose of the appeals before it on merits. The Tribunal, therefore, remitted the matter to the Appellate Assistant Commissioner with a direction to give an opportunity to both the parties to lead proper evidence on the point and "to give deduction on account of depreciation allowance according to law on the amount found to have been spent by the assessee in obtaining these drawings and patterns and to complete the assessment on that basis.

10. The revenue, feeling aggrieved by the decision of the Tribunal, made two applications u/s 256(1) of the Act requiring the Tribunal to refer to this court the questions of law arising out of its orders made in the two appeals. The Tribunal has thereupon made a consolidated reference and referred to this court the following question of law :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was entitled to depreciation allowance on any part of the expenditure incurred by it by virtue of the agreements entered into by the assessee with Messrs. Alfred Wiseman & Co. Ltd. and Messrs. Spencer (Melksham) Ltd. ?

11. Though the question referred by the Tribunal is rather widely worded, only a few of its ramifications were highlighted during the course of the arguments urged on behalf of the revenue in support of the reference. It was urged that :

(i) drawings and patterns were not "books" and that they were, therefore, not "plant" within the enlarged meaning of the said word as given in section 43(3) of the Act; and

(ii) drawings and patterns were not "plant" even according to the ordinary signification of that word in the context in which it is used in section 32 of

the Act since (a) they were merely the material vehicle through which the real asset, namely, technical know-how for manufacture of certain items

was acquired by the assessee and technical know-how being an intangible asset lacked the gross-materiality necessary to qualify it as "plant" and

(b) technical know-how was not a depreciable asset, that is, subject to diminution in value year after year by reason of wear and tear by its

application to earn profits in the course of business. These, briefly stated, were the two principal arguments urged on behalf of the revenue to

negative the assessee's claim to depreciation allowance in respect of drawings and patterns.

12. It would be necessary first to refer to the relevant statutory provisions. Section 14 of the Act provides that save as otherwise provided, all

income shall, for the purposes of charge of Income Tax and computation of total income, be classified under the heads of income enumerated

therein. One of the heads of income enumerated in the said section is "profits and gains of business or profession". Section 28 enumerates different

kinds of income chargeable to Income Tax under the head "profits and gains of business or profession". Section 29 as it stood at the relevant time

provided that the income referred to in Section 28 shall be computed in accordance with the provisions contained in section 30 to 43. Out of the

fasciculus of sections mentioned in section 29, the only two sections which are relevant for the purpose of the present reference are sections 32

and 43 relevant parts thereof may be fully set out :

32. Depreciation. - (1) 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 -

43. Definitions of certain terms relevant to income from profits and gains of business or profession. - In sections 28 to 41 and in this section,

unless the context otherwise requires, -

(3) "plant" includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession;...

13. On an analysis of the opening part of section 32, it would appear that (sic) a

deduction on account of buildings, machinery, plant or furniture,

(ii) owned by the assessee and used for the purposes of his business or profession, (iii) subject, however, to the provisions of section 34. If these

three conditions are satisfied in respect of any asset the assessee would be able to avail himself of the benefit of depreciation allowance. The

questions arising in this reference will have to be decided against the background of this legal position.

14. We will first consider the question whether drawings and patterns acquired by the assessee are "books", for the inclusive definition of the word

plant" in section 43(3) of the Act expressly declares that "books" used for the purposes of the business or profession of the assessee, that is, used

for the purpose of enabling the assessee to carry on his business or profession and earn income therefrom, are "plant" within the meaning of section

32. Now, the word "book" has not been defined in the Act and it is not a term of art. It is an ordinary English word of everyday use and it must,

therefore, be assigned its natural meaning as understood in common parlance subject, of course, to the context in which it is used here. In popular

sense, book means a collection of a number of leaves or sheets of paper or of other substance, blank, written or printed, of any size, shape and

value, held together along one of the edges so as to form a material whole and protected on the front and back with a cover of more or less

durable material. That this is how the word "book" is understood in ordinary usage is evident from the third meaning of the word given in the

Shorter Oxford English Dictionary, third edition, page 202 :

gen. A collection of sheets of paper or other substance, blank, written, or printed, fastened together so as to form a material whole ; esp. such a

collection fastened together at the back, and protected by covers; also, a literary composition long enough to make one volume, as dist. from a

tract, pamphlet, essay, etc.

15. In this rather wide sense not only a literary or scientific book, book of art, law book, religious book, text book, dictionary and so on but also

an account book, minute book, cheque book, pocket diary, note-book and a hundred other varieties of objects satisfying the above description

would be books. For the purpose of ascertaining the true meaning of the word "books" in section 43(3) in which it occurs in conjunction with the

expression "used for the purposes of the business or profession", however, one must have regard not only to the physical but also to the functional characteristics of a "book". A book within the meaning of section 43(3) must in addition to conforming to its physical form denoted by the above definition, be functionally useful for the purposes of the assessee's business or profession. It must be a tool of his trade - an article which is a part of the apparatus with which his business or profession is carried on. It must have the utility value enabling its owner to pursue his business or profession with greater advantage. In the ultimate analysis, therefore, it would appear that a book within the meaning of section 43(3) must be an object or article which must satisfy a dual test; it must bear both physical and functional characteristics of a book. It must be a collection of a number of sheets of paper or of other substance, having suitable size, shape and value, bound together at one edge so as to form a material whole and protected on the front and back with covers of some kind and functionally useful to the assessee for carrying on his business or profession.

16. Counsel appearing on both the sides made reference to decided cases with a view to explaining the true meaning of the word "book". The decisions in three of the cases cited, namely, *Schove v. Schmincke*, *Davis v. Benjamin* and *Veerabrahmam v. State* turned upon the definition of the word "book" in the statutes with which the courts were there concerned. These decisions cannot, therefore, be of any assistance in deciding the case in hand in which the plain and natural meaning of the word "book" is to be ascertained. We do not, therefore, propose to make further reference to those decisions.

17. In *Willis v. Curtois* the question as to what the word "book" meant arose in the context of the construction of a will. The testator in that case was a medical practitioner who, having made dispositions of several properties, devised to the plaintiff (who again was a medical practitioner) "all and every the books in and about my house in Tenterden Street". At the time of his death, the testator was possessed of 32 uniformly bound volumes of manuscripts of notes of his attendance upon the late King George the Third and one manuscript journal containing private memoranda and observations on the state of health and malady of the late King. On the death of the testator, the plaintiff took out an action claiming that he

was entitled to the manuscript journal referred to above under the bequest made in his favour in the will. The claim of the plaintiff was contested by

the defendant. Lord Langdale M. R., who decided the case, dealt with the question in dispute between the parties in the following words :

These books are the subject of the present controversy, and the question is, whether they come under the description of things meant by this

clause, "all and every the books in and about my house in Tenterden Street". That they were books is not denied : whether they are to be

considered as books coming under the particular description, is the matter in controversy, it being alleged they are not, because, they ought to be

considered as mere loose memoranda, put together for the convenience of the testator, in a form in which they were more easily capable of being

consulted and ought not to be considered in the character of books; and it has been contended, that under these words, nothing would pass but

such printed books as are in the habit of being sole in booksellers' shops. Recollecting, however, that in this case the legatee to whom these books

were given was a medical gentleman engaged in the like branch of the profession as the testator was a person, therefore, to whom books of this

sort would of necessity be most peculiarly valuable - a person who might be placed in precisely the same circumstances as the testator was, and, if

he should be so, that these books would be of more value to him than they could be to any other person in existence; and taking these

circumstances into consideration, which I think I cannot avoid doing, in the construction of this will, and seeing the words are sufficient to comprise

these books, and that the great probability is, the testator, if his attention had been drawn to them, would have passed those books by specifically

naming them, I think (the words being sufficient), I must consider that those books passed under that clause.

18. There was no dispute in that case that the manuscript journals were books presumably because they had all the physical characteristics of a

book. The only controversy was whether books of that nature, which consisted of loose sheets of memoranda bound together for the convenience

of the testator and or easy consultation, could be called books since they were not like ordinary printed books sold at a bookstall. That argument

was negatived principally on the ground that the journals in question were bequeathed to a person to whom, having regard to his profession, they

might be of value and as such they passed to him under the relevant clause of the will. This decision proceeds more or less on the functional or

utility test in judging whether a particular article is book and only to that extent it is relevant for the purposes of the present case.

19. In *Pretyman v. Pretyman*, the question of construction of the word "book" again arose in the following circumstances. The testator in that case

had by his will, inter alia, bequeathed "all the pictures prints statues sculptures articles of vertu books furniture and plate in my mansion houses...

unto my trustees upon trust to allow the same (hereinafter called "the said heirlooms") to be used and enjoyed" as in the will mentioned. Included in

the testator's estate were 155 original manuscripts of the series of letters and papers known as the Paston letters. These letters and papers were

not in the form of loose sheets included in portfolios or kept in a safe. They were mounted, or inlaid, in sheets or paper and bound up in three

volumes. The testator had acquired them so bound and they were still so bound at the date of his death. The question before the court was

whether the said three volumes were "articles of vertu" or "books" within the meaning of the relevant clause of the will set out above. Maugham J.,

who decided the case, held that they were not articles of vertu. He then proceeded to consider the question whether they were books. He

observed :

To my mind it is plain that a book is not necessarily a printed book... But in addition, according to the ordinary meaning of the English word

"book", there are many books which are not necessarily the sort of books which one finds in a library at all, and which yet are books. I might

mention as an example the book which I have before me, a judge's note-book. I do not know how that could be described otherwise than as a

book.

20. He then referred to the decision in *In re Plowden* in which a volume containing manuscript music by Beethoven and Mozart, the sheets of

music being bound together with an outer cover with considerable care by a bookbinder, passed under the description of the word "book". He

also referred to the decision of Lord Langdale M. R. in *Willis v. Curtois* and to the decision in *In re Barratt*, where a manuscript book described as

the log book of a ship containing the original log entries in manuscript (not

consisting of several sheets of paper afterwards bound up but book in which entries were made from time to time by the proper officer) was held to pass under a bequest of books. After referring to one more case,

Maugham J. observed :

In the present case I have come to the conclusion that these three volumes are books. The factors leading me to that conclusion are these : The

volumes are in book form; to the outward eye they look like books, and in the ordinary course they can be, and are, handled like books. Next, I

observe that they can be used like books, in the sense that, as one turns over the sheets, one can, if able to decipher the handwriting, read the

various letters as a collection of letters bound up in the books. I observe further that they are not detachable letters in the ordinary sense, but have

been so inserted in the sheets that they are in substance permanent parts of the volumes, unless, indeed, they should be cut out or removed by

some forcible effect.

21. It would appear that in reaching the conclusion that the manuscript letters and papers before him were books in the true sense of the word,

Maugham J. principally relied upon the factors that they in substance formed permanent parts of volumes from which they could not be removed

except by forcible effort, that in their appearance they looked like books and were capable of being handled like books. The emphasis here was

primarily and mainly on the physical characteristics of book and the test which was applied was whether the articles in question were so held

together as to form part of a book and appeared like a book.

22. Next we have the decision of Bennett J. in *Hearts of Oak Assurance Co. v. James Flower & Sons*. The question in that case was whether a

number of loose leaves fastened together in two covers in such a physical condition that at any moment, any number of leaves could be taken out

and substituted by any number of other leaves, purporting to contain minutes of the directors' meeting of a company, which were tendered as

evidence, were admissible in evidence as minutes entered in books kept for that purpose within the meaning of section 120 of the Companies Act,

1929. If they were, they could be put in evidence without any witness being called to depose to the accuracy of the minutes. Bennett J. held :

I proposed to hold that it is not, because I consider that it is most undesirable

that something from which a part may be taken out, or into which something else may be put, should be used in evidence without the sanction of an oath as to its accuracy; and without the party against whom the evidence is to be used being able to test its accuracy by cross-examination; and on the ground that what is tendered in evidence is not a book within the meaning of section 120 of the Companies Act, 1929, I reject the evidence.

23. It would appear that the decision turned upon its own peculiar facts as well as upon the circumstances of the case. One thing, however, is clear that Bennett J. was not prepared to treat what was tendered in evidence as book and that decision rested on the fact that the sheets of paper were not permanently fastened together so as to form a material whole.

24. The decisions referred to above bring into limelight the point that whenever the question has arisen before courts whether a particular article or object was book, the test which was commonly applied was whether it had the physical characteristics of a book. In other words, the test applied was : Is it a collection of sheets of paper, fairly securely fastened together at one end, and protected by two covers ? Is it in a book form and does it look like a book ? If this test was satisfied, the article or object was held to be a book no matter that its utility was only for the person who owned it and it was not in the nature of an ordinary book available in the market. This is the very test which we too have indicated should be applied in judging whether a particular article or object is book within the meaning of section 43(3) of the Income Tax Act, 1961, and to that extent the decisions cited support our view.

25. The next question which must necessarily arise for consideration is whether drawings and patterns acquired by the assessee satisfy the aforesaid dual test and it is here that the real difficulty arises in the present case. We will, for the purposes of this point, assume in favour of the assessee - indeed on that point there is a finding of fact recorded by the Tribunal - that drawings and patterns satisfied the functional test since they formed "the basis" of the assessee's business of manufacturing Worm Reduction Gear Units and Conveyor Idlers. The real difficulty, however, arises in regard to the satisfaction of the other test. The real difficulty, however, arises in regard to the satisfaction of the other test. In the statement

of the case, the Tribunal has not stated material facts or its conclusions on material facts which would enable us to hold that drawings and patterns in question were in a book form and possessed the physical characteristics of a book. In the absence of such material, the question referred to us cannot be answered, one way or the other, by confining one's attention only to the inclusive definition of the word "plant". If the case had to be decided solely by reference to the said inclusive definition, we would have been required to call for a supplementary statement of case or to decline to answer the question raised by the Tribunal and to leave the Tribunal to take appropriate steps to adjust its decision u/s 260(1) of the Act in the light of the observations made in this judgment. We find, however, that the Tribunal has alternatively found that drawings and patterns are "plant" even within the ordinary meaning of the said word, apart from the enlarged meaning given to it by the definition clause. This finding of the Tribunal turns upon the interpretation of the word "plant" occurring in section 32 and if we concur in the view of the Tribunal on that point, the question referred to us can be answered in favour of the assessee without calling for supplementary statement or adopting other suitable procedure. We, therefore, now proceed to the consideration of the question whether drawings and patterns in question are comprehended within the ordinary meaning of the word "plant" and shall revert to this point and take either of the two courses referred to earlier only if we are not inclined to uphold the alternative decision of the Tribunal.

26. The word "plant", though an ordinary English word, is not altogether an easy word to construe. It may have a more or less extensive meaning according to its context. It has come up for interpretation before various courts on numerous occasions in the context of different statutes and the catena of judicial decisions shows that it is a word of wide and varied import susceptible of diverse meanings depending upon its setting in the scheme of the statute. Almost all cases bearing upon the interpretation of the word "plant" decided in England and in this country were cited before us and the following enumeration would show as to what an amazing variety of articles, objects or things have been held to be plant or not plant :

PLANT

(i) Horse, *Yarmouth v. France*; (ii) knives and lasts used in manufacture of shoes,

Hinton v. Maden & Ireland Ltd.; (iii) aircraft engine which was being dismantled, Watts v. Enfield Rolling Mills (Aluminium) Ltd.; (iv) moveable office partitions, Jarrold v. John Good & Sons Ltd.; (v) concrete dry dock, Inland Revenue Commissioner v. Barclay, Curle & Co. Ltd.; (vi) electrical fans and other office appliances, Sundaram Motors Pvt. v. Commissioner of Income Tax; (vii) poles, cables conductors and switch boards for distribution of electricity, Commissioner of Income Tax v. Indian Turpentine and Rosin Co. Ltd.; (viii) light-fittings, ceiling and pedestal fans and waterpipe fittings in a hotel, Commissioner of Income Tax v. Jagadeeschandran & Co.; (ix) sanitary and pipeline fittings in a hotel, Commissioner of Income Tax v. Taj Mahal Hotel.

NOT PLANT :

(i) Horse, London and Eastern Counties Loan and Discount Co. v. Creasey; (ii) stallion (used to serve mares), Earl of Derby v. Ayler; (iii) bed of a river, Dumbarton Harbour Board v. Cox; (iv) solicitor's law books, Daphne v. Shaw; (v) water tower, Margrett v. Lowestoft Water & Gas Co.; (vi) electric lamps and fittings in a tea shop, J. Lyons & Co. Ltd. v. Attorney-General; (vii) human body, Norman v. Golder; (viii) wallpaper pattern books, Rose & Co. (Wallpaper & Paints) Ltd. v. Campbell; (ix) designs for wallpaper and furnishing fabrics, McVeigh v. Arthur Sanderson & Sons Ltd.; and (x) water storage tank used for storing water by the supplier thereof for irrigation purposes, Jayasingrao Piraji Rao Ghatge v. Commissioner of Income Tax.

27. Two material facts emerge on a conspectus of these authorities : first, that in each case the word "plant" was construed having regard to its context and circumstances of the case, and, secondly, that in none of the cases the court was concerned with the interpretation of the word "plant" occurring in a statute in which it was defined. The first feature noted above is illustrated by the fact that one and the same thing, namely, a horse, has been held to be plant in one case (Yarmouth's case) in the context of the Employers' Liability Act, 1880, whereas in another case (Creasey's case) in the context of the Bills of Sale Act (1878) Amendment Act, 1882, it has been held not to be plant. These cases, therefore, would be of little utility in seeking to interpret the word "plant" in section 32 of the Act in the context in which it occurs, all the more so because of the fact that

by an inclusive definition contained in section 43(3) its ordinary meaning has been enlarged so as to include many things which could not be comprehended within its ordinary meaning. The problem with which we are concerned is not what is the meaning of the expression ""plant"" in any one of dozen other statutes, but what is its meaning in section 32 of the Act and it cannot be resolved by reference to the decisions given under different statutes. We shall, therefore, look at only those out of the numerous cases cited before us from which any general principles can be deduced which might guide us in deciding the question on hand. For the reasons stated above, we hope that we shall not be taken as neglecting the arguments advanced before us if we make no special reference to each and every case cited before us. With this prefatory remark, we proceed to refer to the relevant decisions.

28. The locus classicus for the definition of plant is in the words of Lindley L.J., in Yarmouth's case, which despite the great technological

advances since those days is still of great help and has been adopted for the purposes of the Income Tax law. The question in that case was

whether a horse could be regarded as plant and the main issue was whether the word ""plant"" must be confined to inanimate objects or whether it

would also include animate objects. The learned judge said at page 658 of the report :

There is no definition of plant in the Act : but, in its ordinary sense, it includes whatever apparatus is used by a businessman for carrying on his

business, - not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or movable, live or dead, which he keeps for

permanent employment in his business"" : see Blake v. Shaw.

29. This wide definition sets out in simple words, both positively and negatively, the essential features of plant and accordingly anything which is

used for trading purposes, other than the stock-in-trade, would be plant provided it is kept for permanent employment.

30. Next in point of time is the decision in J. Lyons & Company Ltd.'s case. The question for consideration there was whether elective lamps and

fittings used for lighting a tea-shop could be properly described as ""plant"" within the meaning of section 103(5) of the War Damage Act, 1943. In

that section, the word ""plant"" was used throughout as part of the phrases

""plant or machinery"" and ""machinery and plant"". Uthwatt J., who decided the case, held in the first place that circumstances did not have ""the effect of confining the meaning of the word to such plant as is used for mechanical operations of processes"". In the next place, he accepted the definition of Lindley L.J., but to some extent qualified it. Said he (at page 286) :

..... "plant" includes whatever apparatus or instruments are used by a businessman in carrying on his business.

31. Then he proceeded to state and we think that the underlined portion contains the qualification which he engrafted :

The term does not include stock-in-trade, now does it include the place in which the business is carried on.

32. This decision brings into bold relief two points : first, that the collocation of the words ""plant or machinery"" does not necessarily mean that an apparatus used by a businessman, in order to qualify as a plant, must be such as is used for mechanical operations or processes and, secondly, that it does not include the place used by a businessman for carrying on his business.

33. Then comes the decision of the House of Lords in Hinton's case. One of the questions in that case was whether knives and lasts which were

used in a large number in the making of shoes and the average life of which was about three years were plant within the meaning of section 16 of

the Finance Act, 1954. All the Law Lords held that they were. Lord Reid, in the course of his speech, first set out the definition of the word ""plant

given in Yarmouth's case and then extracted from the judgment of Uthwatt J. in J. Lyons & Co. Ltd., the passages wherein the learned judge had

held that an object, in order to qualify as plant, need not necessarily be used for mechanical operations or processes and that the place in which a

businessman carried on his business was not included within the meaning of the word ""plant"". This would indicate that although Lord Reid does not

in terms say so, he adopted the definition of the word ""plant"" given by Lindley L.J., with the gloss put on it by Uthwatt J. He went on to say (at

page 417) :

Subject to one point, I have no doubt that these knives and lasts are plant in the ordinary sense of the word. It is true that they are numerous,

small and cheap. But one trader may have to use a few large articles while

another may have to use a large number of small articles, and I see no good ground for distinguishing between them as regards investment allowance. The one point is the durability of these articles. When Lindley L.J.

used the phrase "permanent employment in his business" he was using it in contrast to stock-in-trade which comes and goes, and I do not think

that he meant that only very long-lasting articles should be regarded as plant, But the word does, I think, connote some degree of durability, and I

would find it difficult to include articles which are quickly consumed or worn out in the course of a few operations. There may well be many

borderline cases, but these articles have an average life of three years, and if their cost can fairly be called capital expenditure I cannot refuse to

them the description of "plant" unless the Act discloses some special reason for doing so.

34. Lord Tucker concurred in the view of Lord Reid and said that he adopted that reasoning and did not desire to add anything thereto. Lord

Keith of Avonholm held that the articles in question could "'quite properly be described as among the plant to be provided for a similar business set

up for the first time, and their replacements must, I think, continue to be plant'". Lord Denning in his speech stated (at page 422) :

These machines are undoubtedly plant. They are plant used by the manufacturers in the factory. Each of the machines - each mechanical cobbler -

is part of the plant. The knives and lasts too are part of the plant.

35. Lord Jenkins referred to the definition of the word "'plant'" in Yarmouth's case and proceeded to state (at page 424) :

The reference to "permanent employment" in the business demands some degree of durability. This, I think, is satisfied in the present case by the

life of three years attributed to making and finishing lasts, sometimes extended to four or five years in the case of the latter, and to sole knives. The

upper knives are given a life of only 12 months, but the intention, no doubt, is to keep and use them for so long as they are serviceable, and I

cannot regard the circumstance that they wear out in that relatively short period as investing them with so transitory a character as to take them out

of the category of plant to which they would otherwise belong.

36. This decision is important in many respects. The definition of plant in Yarmouth's case was approvingly referred to and applied in interpreting

the word "plant" in the context of a taxing statute by three Law Lords. They also explained that when Lindley L.J. used the phrase "permanent employment in his business" what he really meant was that the article in question should have "some degree of durability" and that it was not intended to suggest that only very long-lasting articles should be regarded as "plant". Three years' life of an article was considered to meet the test of durability in the facts of the case. The other two Lords, though they did not specifically refer to this aspect, concurred in the ultimate decision on this point and, therefore, they must also be deemed to have agreed with this view. Lord Reid in his speech also approved - of course by implication - the gloss put on the definition of Lindley L.J., by Uthwatt J. and further indicated that articles or objects, although they might be numerous, small and cheap, might still qualify as plant.

37. Next we must refer to the decision of the Court of Appeal in Jarrold's case. The question in that case was whether certain movable office partitions installed in the office of the assessee could be regarded as plant for the purposes of initial allowance and annual allowance under the relevant provisions of the Income Tax Act, 1952. The principal contention on behalf of the revenue in that case was that movable office partitions were not apparatus or instruments used by the assessee in carrying on its business but they were merely the "setting" in which the businesses were carried on. A subsidiary contention was that "plant" would only comprise an apparatus or instrument used in carrying out the actual operations of the trade, that is, such parts of the equipment of the works as perform something more than a passive role. Ormerod L.J., who delivered the leading judgment, referred to the definition of the word "plant" given in Yarmouth's case and described it as the "best known.... and most generally invoked". He then referred to the qualification engrafted on it by Uthwatt J. in J. Lyons & Co. Ltd's., case and observed that Lord Reid in Hinton's case must be taken as having approved of the definition of the word "plant" as given by Lindley L.J., with the qualification superimposed thereon by Uthwatt J. Dealing with the principal contention of the revenue, he observed (at page 693) :

The dividing line between what is "plant" and what is not is a narrow one, and the facts of this particular case come near to that dividing line. But,

in my judgment, in the circumstances of this case - and I think each case does depend largely on its own circumstances - the partitions should be regarded as something more than a mere setting for the carrying out of the trade; in other words as coming within the definition of "plant" as contained in section 279.

38. Next he dealt with the subsidiary contention and observed :

It is clear, I think, that the word "plant" does not include the walls of the building in which the trade is being carried on. But it may well be going

much too far to say that it cannot refer to such part of the building, or such part of the equipment of the building, as performs anything other than a

merely passive role, which is how it was described by Mr. Beattie. For my part, I am not at all satisfied that these partitions did perform a merely

passive role. It is certainly true that they did not contain working parts such as a machine contains. Had they done so, it may well be that they

would have come within the definition of "machinery" But "plant" is a wider term.

39. Donovan L.J., concurred with Ormerod J. and observed that "Setting" and "plant" were not mutually exclusive conceptions and that the same

thing may be both. He further observed that flexibility of accommodation which the partitions provided was a commercial necessity for the

assessee and that, therefore, they were plant within the meaning of the said word as given by Lindley L.J. He then proceeded to deal with the

subsidiary contention of the revenue and observed (at page 694) :

I do not understand this division of assets into passive and active vis-a-vis the accomplishment of the trading purpose, followed by the argument

that there can be no "plant" among the passive assets. The heating installation of a building may be passive in the sense that it involves no moving

machinery, but few would deny it the name of "plant". The same thing could not doubt be said of many air-conditioning and water softening

installations. All that the Income Tax Acts require in this context is that the plant shall have been provided "for the purpose of the trade" - an

expression wide enough to cover assets which play a passive as well as an active role in the accomplishment of that purpose.

40. Pearson L.J., who also delivered a concurring judgment, referred to the definition of the word "plant" given in Yarmouth's case and J. Lyons &

Co. Ltd.'s case and made the following observations (at page 696) :

There can be no doubt, therefore, as to the main principles to be applied, and the short question in this case is whether the partitioning is part of

the premises in which the business is carried on, or part of the plant with which the business is carried on. Either view could have been taken.... I

think the Commissioners have, in effect, preferred the second view, and it cannot be said that there was no evidence to support it, or that any error

of principle was involved.

41. This decision is important from two points of view : first, the function performed by the partitions and their utility in the trading activity of the

assessee were taken as the guiding test and, secondly, it laid down that even if there be a recognizable distinction between the passive and active

role which an asset can play in the accomplishment of the trading purpose, as an asset which plays a merely passive role would not be any the less

plant. The illustration given in the judgment of Donovan L.J., of heating air-conditioning and water softening installations which involve no moving

machinery effectively demonstrates this point.

42. We may then make reference to the decision of the House of Lords in *Inland Revenue Commissioners v. Barclay, Curle & Co. Ltd.* The main

question in that case was whether a dry dock was plant within the meaning of section 279(1) of the Income Tax Act, 1952, which provided a

certain percentage of initial allowance "... where a person carrying on a trade incurs capital expenditure on the provisions of machinery or plant for

the purposes of the trade..." Dealing with this question Lord Reid in his speech observed (at page 740) :

Undoubtedly, this concrete dry dock is a structure but is it also plant ? The only reason why a structure should also be plant which has been

suggested or which has occurred to me is that it fulfills the function of plant in the trader's operations. And, if that is so, no test has been suggested

to distinguish one structure which fulfills such a function from another. I do not say that every structure which fulfills the function of plant must be

regarded as plant, but I think that one would have to find some good reason for excluding such a structure. And I do not think that mere size is

sufficient.

43. He then proceeded to consider the part which the dry dock played in the assessee-company's operations and said :

It seems to me that every part of this dry dock plays an essential part.... The whole dock is, I think, the means by which, or plant with which, the operation is performed.

44. Lord Guest, dealing with the question in issue, referred to the definition of "plant" given by Lindley L.J. and said in his speech at page 746 :

In order to decide whether a particular subject is an "apparatus" it seems obvious that an inquiry has to be made as to what operation it performs.

The functional test is, therefore, essential at any rate as a preliminary.

45. Lord Donovan referred to the tests formulated in Yarmouth's case, J. Lyons & Co. Ltd.'s case and by Lord Pearson L.J., in Jarrold's case and proceeded to observe (at pages 751-752) :

All these definitions are helpful, but in the nature of things they cannot be exact, and so provide an answer incapable of reasonable dispute in every case. Resort, then, is had to analogies....

At the end of the day I find the functional test propounded by Lindley L.J. and by Lord Pearson L.J., to be as good as any, though, as was said in

Jarrold (Inspector of Taxes) v. John Good & Sons Ltd., some plant may perform its function passively and not actively.... Thus the dry dock is, despite its size, in the nature of a tool of the taxpayer company's trade and, therefore, in my view, "plant."

46. Lord Hodson and Lord Upjohn dissented from the view taken by the other Law Lords and since the opinion expressed by them represents the minority view, it is not necessary to refer to their speeches in detail. This decision is important in so far as it again approves of the definition of plant in Yarmouth's case and adopts the same "functional test" which was adopted in Jarrold's case for the purpose of deciding whether a particular apparatus or article is "plant" for the purposes of the assessee's business. The dry dock was held to be plant by application of the test as to what role it played or operation it performed in the trader's business. It is significant in this connection to note that Lord Donovan read the classic definition in Yarmouth's case as itself laying down the functional test.

47. Coming now to the Indian decisions dealing with the interpretation of the word "plant" reference must be made first to the decision of the

Supreme Court in Commissioner of Income Tax v. Taj Mahal Hotel. This decision is important for our purposes since it interprets the word "plant

in the context of a cognate provision, namely, section 10(2)(vib) of the Indian Income Tax Act, 1922, which dealt with allowance of a sum by way of development rebate on new machinery or plant installed after a particular date. Section 10(5) of the 1922 Act contained an inclusive definition of the word "plant" similar to the one found in section 43 of the present Act. The question in that case was whether the assessee was entitled to development rebate in sanitary and pipeline fittings installed by in its hotel. All the three authorities under the Income Tax Act held that plant meant the same thing both for the purposes of depreciation allowance as well as for development rebate and that the said fittings did not fall within the meaning of the word "plant" and disallowed the claim. On reference, the High Court held that the fittings in question were "plant". On further appeal to the Supreme Court, the contention raised on behalf of the revenue, inter alia, were that development rebate could not be claimed in respect of items which had become a part of the building itself and that the primary meaning of the word "plant" had connection with mechanical or industrial business or manufacture of finished goods from raw goods. The Supreme Court in the first instance dealt with the meaning of the word "plant" and observed (at page 47) :

Now it is well-settled that where the definition of a word has not been given, it must be construed in its popular sense if it is a word of every day use. Popular sense means "that sense which people conversant with the subject-matter with which the statute is dealing, would attribute to it". In the present case, section 10(5) enlarges the definition of the word "plant" by including in it the words which have been included shows that the meaning intended to be given to "plant" is wide.

48. The Supreme Court then made reference to the decision in J. Lyons & Co. Ltd.'s case on which reliance was placed on behalf of the revenue and observed that, apart from being distinguishable, it hardly supported the contention of the revenue. It was pointed out that in deciding that case the meaning of the word "plant" as given in Yarmouth's case was accepted as correct and that according to that meaning plant including whatever apparatus or instruments as are used by a businessman in carrying on his business. These observations would go to show that the Supreme Court was not inclined to accept the proposition that the meaning of the word "plant"

was confirmed to an apparatus used in mechanical or industrial business or manufacture of finished goods from raw goods. The Supreme court then approvingly referred to the decision in Jarrold's case and particularly adverted to the decision of Donovan L.J., in that case and the illustrations given by him of assets such as heating, air-conditioning and water softening installations which were held to fall within the meaning of the word "plant" although they played a passive role. The Supreme court then considered the function which sanitary and pipeline fittings performed in a hotel and observed (at page 48) :

If the partitions of the business case could be treated as having been used for the purpose of the business of the trader, it is incomprehensible how

sanitary fittings can be said to have no connection with the business of the hotelier.... We are unable to see how the sanitary fittings in the bath

room in a hotel will not be "plant" within section 10(2)(vib) read with section 10(5) when it is quite clear that the intention of the legislature was to

give it a wide meaning and that is why articles like books and surgical instruments were expressly included in the definition of "plant".

49. The Supreme Court next referred to the dictionary meaning of the word "plant" and said (at page 49) :

It is, however, unnecessary to dwell more on the dictionary meaning because, looking to the provisions of the Act, we are satisfied that the assets

in question were required by the nature of the hotel business which the assessee was carrying on. They were not merely a part of the setting in

which hotel business was being carried on.

50. This decision throws a flood on the true approach required to be adopted in deciding whether a particular article or object is plant in the

context of section 32. The ratio of the decision is :

(i) that the word "plant" must given a wide meaning having regard to the fact that articles like books and surgical instruments are expressly included

in the definition of plant;

(ii) that its meaning is not confined only to an apparatus used in mechanical or industrial business or manufacture of finished goods from raw goods;

and

(iii) that the definition of plant in Yarmouth's case as expanded in Jarrold's case furnishes the true apposite test for Judging whether a given article

is plant.

51. Next, we may refer to the decision of the Madras High Court in Sundaram Motors Pvt. Ltd. v. Commissioner of Income Tax. The question in

that case was whether development rebate was allowable u/s 10(2)(vib) in respect of electric fans, bicycles, etc., used by the assessee who were

dealers in motor cars and other allied articles and engineering contractors. The court took into account the genesis of development rebate and the

ordinary meaning of the word "plant" and held :

It is indisputable that in these days of advanced commercial price it is difficult to draw a line as to which of the plant or machinery engaged in trade

by a businessman could with reasonable certainty be said to be not for carrying on its trade or for purposes of its business or intended to earn

income therefrom. The conservative view expressed by the Tribunal that such plant or machinery should be such that income can be deemed to be

derived by the direct use of such plant or machinery is, to our minds, a proposition which cannot be warranted having regard to the historic

development of law in the grant of such concessions to industries with a view to afford in impetus and an encouragement to them to secure more

and more of such machinery and plant so that they could be an aid to the developing economy of our country.

52. It is true that in that case the word "plant" had to be construed in the context of development rebate. Those observations would, however,

apply with equal force while interpreting the word "plant" in relation to depreciation allowance since all these deductions are granted on commercial

principles and plant is intended to be given the same meaning in both the sections (vide section 43(3)).

53. In Commissioner of Income Tax v. Indian Turpentine & Rosin Co. Ltd., the question again was whether electrical installations such as poles,

cables, switch-boards, etc., were plant on which development rebate could be allowed. The court observed :

The definition of plant contained in sub-section (5) of section 10 is very wide. The term "plant" includes such articles as books and scientific

apparatus. There should, therefore, be no difficulty in treating poles, cables, conductors and switch-boards for distribution of electricity as plant

within the meaning of clause (vib) of section 10(2) of the Act.

54. This decision has its importance since it was specifically referred to and approved by the Supreme Court in Commissioner of Income Tax v.

Taj Mahal Hotel, as having ""rightly understood the meaning of the word "plant" in a wide sense"".

55. The decision of the Bombay High court in Jayasingrao Piraji Rao Ghate v. Commissioner of Income Tax is not of much assistance in view of

the later development of law though we must refer to it since it is a decision directly in point given prior to the bifurcation of the State of Bombay

and accordingly has the effect of binding precedent. The question there was whether a water storage tank constructed by the assessee in

connection with his business of supplying water to farmers was plant within the meaning of section 10(2)(vi) of the Indian Income Tax Act, 1922,

on which depreciation allowance could be granted. The court observed that the primary meaning of the word ""plant"" had connection with

mechanical or industrial business or manufacture of finished goods from raw products. The extended meaning of the word also, in the opinion of

the court, had reference to capital invested in the manufacturing trade of business (other than that spent on the raw material or the manufactured

product). The court was of the view that since in the case before it no manufacturing or industrial business was involved and the storage tank of the

assessee was nothing but a contained for water which was the stock-in-trade of the assessee, it was not comprehended within the primary or

extended meaning of the word ""plant"". Now, it appears to us 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. This interpretation is not justified having regard to the decision in Taj

Mahal Hotel's case well as in Hinton's case which in its turn approved the decision in J. Lyon's & Co. Ltd. Thirdly, it ignores the ""functional test

which, accordingly to the ration of the decision of the House of lords in Barclay's case as also of the Supreme Court in Taj Mahal Hotel's case, is

the material test. In this connection it is worth-while to note that there is a close parallel between this decision and the decision of Finlay J. in

Margrett v. Lowestoft water and Gas Company's case, whether a water tower constructed for the purpose of increasing the pressure of supply of water to certain parts of a town was held not to be plant mainly on the ground that it was no more than structure and as such it could not also be plant and that it was not enough, in order that it may qualify as plant, to show that it was used in particular way. This decision was expressly overruled in Barclay's case by Lord Guest and Lord Donovan (at pages 747 and 752 respectively) and its reasoning and ultimate conclusion were disapproved by Lord Reid (at page 741) by applying the functional test. It appears to us, therefore, that this decision must be taken as no longer good law and cannot be of any assistance.

56. On reviewing these authorities, a broad consensus emerges from which the essential characteristics of plant can be clearly gleaned. The word "plant", in its ordinary meaning, is word of wide import and in the context of section 32 it must be broadly construed. It includes any article or object, fixed or movable, live or dead, used by a businessman for carrying on his business. It is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. It would not, however, cover the stock-in-trade, that is, goods brought or made for sale by a businessman. It would also not include an article which is merely a part of a premises in which the business is carried on as distinguished from a part of the plant with which the business is carried on. An article to qualify as plant must furthermore have some degree of durability and that which is quickly consumed or worn out in the course of a few operations or within a short time cannot properly be called "plant". But an article would not be any the less plant because it is small in size or cheap in value or a large quantity thereof is consumed while being employed in carrying on business. In the ultimate analysis the inquiry which must be made is as to what operation the apparatus performs in the assessee's business. The relevant test to be applied is : Does it fulfill the function of plant in the assessee's trading activity ? Is it the tool of the taxpayer's trade ? If it is, then it is plant no matter that it is not very long-lasting or does not contain working parts such as a machine does and plays a merely passive role in the accomplishment of the trading purpose.

57. Now, applying this test to the drawings and patterns acquired by the assessee, let us consider whether they qualify as plant. There is no doubt that they have vital function to perform in the manufacture of Gear Units and conveyor Idlers which are the articles which the assessee produces. It is with the aid of these drawings and patterns that the assessee was able to commence its manufacturing activity and they amongst other things constituted the technical data which lay at the root of the assessee's production venture. In the agreement entered into by the assessee with its foreign collaborator, this aspect is brought into bold relief by the use of the expressions that the assessee would receive "all existing and up-to-date patterns, drawings and information which the authorised manufacture requires" (see clause 4 of the Alfred Wiseman agreement) and "complete drawings... adequate and reasonably necessary... to manufacture the said Idlers in accordance with the... designs and specifications" [see clause 2 of the Spencer (Melksham) agreement]. The Tribunal has also found as a matter of fact that drawings and patterns formed "the basis of the business of manufacturing the machinery in question". It is true that they by themselves do not perform any mechanical operations or processes or that on the commencement of the production of Gears and Idlers it might not be necessary to consult them or that owing to technological advances they might not be necessary to consult of time become obsolete. These factors, however, cannot militate against their being plant since they are, as it were, the basic tools of the assessee's trade having a fairly enduring utility. We are, therefore, inclined to agree with the Tribunal that drawings and patterns are plant within the meaning of section 32.

58. Before we proceed further, however, we must take notice of two decisions in which question similar to the one under consideration was directly in issue in relation to articles of analogous nature and where a different view was taken. The first is the decision in *McVeigh v. Arthur Sanderson & Sons Ltd.* One of the questions there was whether designed used in the manufacture of wallpaper and printed furnishing fabrics were plant and the argument on behalf of the revenue in that case was that they were not, since they lacked the "gross materiality" necessary to qualify them as plant. Cross J., who decided the case, expressed the view that the limitation sought to be imposed on the meaning of the word "plant" be

confining it to a "purely physical object" was not justified. He felt, however, that the question whether the meaning of the word "plant" could be

extended beyond purely physical object was not *res integra* in view of the decision in *Daphne v. Shaw* and that an extended meaning could be only

given by a higher court. We shall have occasion to revert to this point and to the decision in *Daphne's* case a little later in the course of this

judgment. For the present, suffice it to say that Cross J. took that view much against his own inclination and because he felt bound by the decision

in *Daphne's* case. The said decision, therefore, on its own reasoning has little persuasive value. The next is the decision in *Rose & Co. v.*

Campbell. The point at issue in that case was whether the assessee was entitled to investment allowance u/s 16(3) of the Finance Act, 1954, in

respect of its expenditure on certain wallpaper pattern books. The life each set of pattern books was little more than two years and their sole

function was to supply prospective customs during that period with patterns of papers currently in stock. In order to qualify for investment

allowance, the assessee had to establish two distinct facts; first, that the expenditure was capital expenditure and, secondly, that the article on the

provision of which the expenditure had been made was plant. Pennycuik J., who decided the case, found in the first place that the expenditure did

not represent capital expenditure. He then proceeded to observe that on the view that he had taken as to capital expenditure, the question whether

the pattern books were plant did not survive. Still, however, he proceeded to make "certain brief observations" on the point at page 409. He

referred to the definition of "plant" in *Yarmouth's* case as explained in *Hinton's* case and adverted to the fact that plant must accordingly have some

degree of durability. He further observed that one must take into account all the circumstances including the character and the function of the

chattel in judging whether it was plant. He then said that the taxing authorities had attributed the right meaning to the word "plant" and that, on the

facts of the case before him, their conclusion that pattern books did not constitute plant was a reasonable one. Now, it would books were not

plant is clearly obiter. Secondly, it is expressly confined to the facts of the case and appears to have been founded, *inter alia*, on the ground that the

durability test was not satisfied. The functional test appears to have been applied but is found not to have been satisfied on the facts of the case.

The discussion on the whole is too brief to throw any light on the larger question. In our opinion, having regard to the above factors, this decision too is not of much help and is in any case clearly distinguishable.

59. The learned Advocate-General appearing on behalf of the revenue, when confronted with this position, adopted an alternative line of reasoning. He contended that plant within the meaning of section 32 must be capital set of tangible and that such capital asset must be subject to diminution in value year after year by reason of wear and tear by its application to earn profits in the course of business. These two conditions, according to him, were implicit in section 32 as a result of the nature of the assets thereunder was in the nature of depreciation allowance. Counsel urged the both these conditions were not satisfied the present case. In the first place, drawings and patterns were merely the material record of the technical know-how which was the real asset acquired by the assessee from foreign collaborators for use in its manufacturing business and that they should not be equated with the know-how itself and since know-how was an intangible asset which lacked the gross materiality of plant, it could not qualify as "plant" within the meaning of section 32. In the next place, it was contended that know-how by its very nature was incapable of depreciation by wear and tear in the process of its application to earn profits in the course of the assessee's manufacturing activities and that, therefore, also it could not properly be called "plant" within the meaning of section 32. Support was sought for the first prong of this argument in the decision is *Daphne v. Shaw*, *Jeffrey v. Rolls-Royce Ltd.* and *Musker v. English Electric Co. Ltd.*, and for the second leg of the argument in the decisions in *National Petroleum Corporation Ltd. v. Minister of National Revenue*, *Earl of Derby v. Aylmer* and *Norman v. Golder* reference was also made to the decision of the Supreme Court in *Sitalpur Sugar Works v. Commissioner of Income Tax* which, in the submission of counsel, broadly supported his argument. We shall deal with both the aspects of the argument separately. Before we do so, however, we might refer to the decision in the case of *Sitalpur Sugar Works*.

60. The assessee-company in that case, with a view to improving its business, shifted its factory from one place to another and in the process of dismantling and refitting existing plant at the new site incurred certain

expenditure. In the course of its assessment to Income Tax, the assessee claimed, inter alia, that that expenditure was a permissible deduction u/s 10(2) (vi) of the Indian Income Tax Act, 1922. The contention was that depreciation was allowable on the amount of expenditure thus incurred in the same way as depreciation was allowed on capital. The said claim was negative by the Income Tax authorities and, on reference, by the High Court. The Supreme Court also refused to uphold the claim, inter alia, on the ground that "no such depreciation could be claimed because no tangible asset had been acquired by the expenditure which could be said to have depreciated". Now, it is true that this ruling does support the revenue in so far as it indicates that to sustain a claim for depreciation allowance the assessee must show that the expenditure incurred by him resulted in the acquisition of a capital asset of tangible nature and that such capital asset was capable of depreciation. The decision, however, is not of much assistance in deciding the precise questions raised for our determination, namely, (i) whether drawings and patterns, which are merely the material vehicle or physical record of know-how (that being the real asset of intangible nature acquired by the assessee) could be held to be plant, and (ii) whether depreciation can be allowed in respect of such asset which did not diminish in value year after year by wear and tear. In the case before the Supreme Court, the expenditure was incurred not for acquiring any asset but for shifting the existing asset to a better site for improving business. The benefit which there accrued to the assessee did not have any material form whatever nor was it capable of any depreciation. It was in the context of those peculiar facts that the rather ingenious claim for depreciation allowance was disallowed in that case. In our opinion, the decision, though it was given in the context of a provision which is in pari materia with section 32, does not throw any light on the real questions which we have to resolve in this case.

61. Turning now to the first prong of the argument urged on behalf of the revenue, it will be convenient to deal with it side by side with the authorities on which it was founded. In *Daphne v. Shaw* the assessee, a solicitor, claimed that in computing his assessable income, a deduction by way of allowance for wear and tear and obsolescence of certain books forming part of his law library should be made since the books were "plant" for the

purposes of his profession. Rowlatt J., who decided the case, negated the claim on the ground that "... books which he consults on his shelves,

and which he does not use as "implements", really, in the direct sense of the word, at all, I cannot believe are included in it...." (by "it" what was

alluded to was "plant"). In the opinion of the eminent judge, "books which man consults for the purpose of information" were not comprehended

within the "commonsense meaning of the word 'plant'" notwithstanding the fact that allowance in respect of wear and tear and cost incurred in

replacing obsolete plant, which was ordinarily allowed to traders and manufactures, was by a legislative enactment extended also to professions

and vocations. It is pertinent that in *McVeigh v. Arthur Sanderson & Sons Ltd.* Cross J. doubted this line of reasoning and in terms observed

(even though the point was not directly before him) :

If a barrister has to buy a new edition of a textbook in order to help him to write his opinions, I cannot see as a matter of principle why the book

should not be regarded as a tool of his trade just as much as the typewriter on which his opinions are typed.

63. It is true that he ultimately followed the ratio of the decision in *Daphne's* case because he felt that it was binding on him but the discordant note

is clearly audible and to that extent it erodes the persuasive value of this decision in *Daphne's* case. That apart, it appears to us that the real basis

of that books were not plant since they were not used as "implements in the direct sense of the word". The real emphasis appears to have been on

the lack in books of the characteristics of implements such as the tools of an artisan or moving parts of machine and on the passive role it played in

the profession of the taxpayer. The decision is, therefore, clearly distinguishable.

64. In *Jeffrey v. Rolls-Royce Ltd.*, the assessee-company, which was engaged in the manufacture of aero-engines, had acquired a fund of technical

knowledge and experience (commonly called know-how) in regard to the design and manufacture of aircraft engines. Between 1946 and 1953,

the company entered into a number of agreements with foreign governments and companies under which it agreed to supply to them a very large

number of drawings and other technical information relevant to the manufacture of aero-engines and to grant them licence to manufacture those

engines. It also agreed to the interchange of staff with the end in view of

imparting know-how personally and supervising operations. In consideration of these agreements, the assessee received lump-sum payments and royalties. The profits of the assessee for the relevant accounting periods were assessed to Income Tax and other taxes on the footing that the sums received under the agreements were trading receipts. The matter ultimately went to the House of Lords where the argument on behalf of the assessee was on the following lines : Know-how, mostly embodied in documents, drawings and technical data, is an item affixed capital; the agreement with foreign governments and companies wherein essence sales of such fixed capital and lump sums received in consideration were capital receipts. In view of this posture adopted by the assessee, the question as to what was the nature of the asset called know-how was examined in some of the speeches made in the House of Lords in that case. Those observations are relevant for the purposes of the present case and we shall confine ourselves to those parts of the speeches which dealt with that question. Viscount Simonds observed at page 490 :

My Lords, it appears to me to beg the question to refer to that which the company sold as a fixed capital asset.... It may be said compendiously, in the words of Pearce L.J., that what the Chinese Government received and the company gave were technical knowledge, plans, a licences and facilities for the interchange of staff. An important and valuable part of the consideration was, I think, the undertaking by the company, to communicate, so far as it was permitted to do so, future improvements and developments. Can these things be regarded as a fixed capital asset and the communication of them as the disposal of that asset ? I do not think so.

65. Lord Reid observed at page 491 :

I do not find it necessary to decide whether that fund was a capital asset : I shall assume that it was.

66. Lord Radcliffe made pertinent observations on the point and since his speech has been heavily relied upon on behalf of the revenue it would be necessary to set out copious extracts from his speech (at page 493 and 494). Said he :

First, as to "know-how", I see no objection to describing this as an asset. It is intangible : but then so is goodwill.... But it is a reality when

associated with production and development such as that of Rolls-Royce, and a

large part, though not the whole of it, finds its material record in all those lists, drawings and manufacturing and engineering data that are specified in the various licence agreements.

It is fundamental to the company's case that we should categorise this asset as being part of its fixed capital. Indeed, its argument proceeds from the premises that it is fixed capital. This, I think, is to start from too assured a base. An asset of this kind is - I am afraid that I must use the phrase - *sui generis*. It is not easily compared with factory or office buildings, warehouses, plant and machinery, or such independent legal rights as patents, copyright or trade marks, or even with goodwill. "Know-how" is an ambience that pervades a highly specialised production organisation, and, although I think it correct to describe it as fixed capital so long as the manufacturer retains it for his own productive purposes and expresses its value in his products, one must realise that in so describing it one is proceeding by an analogy which can easily break down owing to the inherent differences that separate "know-how" from the more straightforward elements of fixed capital. For instance, it would be wrong to confuse the physical records with the "know-how" itself, which is the valuable asset : for if you copy on a duplicator and produce one hundred copies, you have certainly not multiplied your asset in proportion. Again, as the facts of the present appeal show, "know-how" has the peculiar quality that it can be communicated to or shared with others outside the manufacturer's own business, without in any sense destroying its value to him. It becomes, if you like, diluted, and its value to him may be affected, though in my view, it begs the question to say that that value is necessarily reduced because the asset is put to use outside the business. These considerations lead me to say that, although "know-how" is properly described as fixed capital by way of analogy, it is the kind of intangible entity that can very easily change its category according to the use to which its owner himself decides to put it. I am not sure that it is too much to say that it is his use of it that determines the category. It is not like a single physical entity which must be employed for production or else broken up : it is more like a fluid in a pipe which can be pumped down several channels. I do not, therefore, think that this appeal can be decided by the simple set of propositions : "know-how" is an item of fixed capital. A lump sum received

by a trader on a sale of an item should not go to his income account. It makes no difference that the item is disposed of by several separate

transactions divided from each other by time intervals.... No doubt the things to be supplied are tangible objects, but then, so are text books,

formulae or recipes. The company is teaching at long range.

67. Lord Morris of Borth-y-Gest did not express any opinion on the question. He proceeds on the footing that whatever description was given to

that which was denoted in that case as know-how, the licensing agreements amounted to a trading in that case as know-how was put to the most

advantageous available use. The agreements did not involve sales of successive portions of fixed capital asset, since the assessee did not part with

or get rid of its know-how (vide pages 496-497). Lord Guest too in his speech did not make any specific observations of the question whether

know-how was a part of the capital asset of the assessee.

68. In *Musker v. English Electric Co. Ltd.*, the assessee-company, in the course of carrying on of its trade of engineering manufactures, acquired a

fund of specialised knowledge, information and technique in engineering processes. In 1949, 1950 and 1952 it entered into three agreements under

which it, inter alia, undertook to grant licence for manufacture of some of the articles designed and developed by it and to impart manufacturing

technique, engineering data and specified information (compendiously known as know-how) to the licenses and, in consideration thereof, the

assessee received specified lump sum payments. These receipts were taxed as trading receipts and the matter ultimately went to the House of

Lords. Viscount Radcliffe said that the case was fully covered by the principle of the decision in *Rolls-Royce's* case and proceeded to observe :

The other point is that "know-how", though very naturally looked upon as part of the capital equipment of a trade, is a fixed asset only by analogy

and, as it were, by metaphor. The nature of receipts from it depends essentially, I think, upon the transaction out of which they arise and the

context in which they are received. Where, as in *Evans Medical Supplies Ltd. v. Moriarty* "know-how" is imparted as one element of a

comprehensive arrangement by virtue of which a trader effectively gives up his business in a particular area, the moneys paid for the "know-how",

whether or not independently quantified, may properly rank as capital receipts.

But the Rolls-Royce case provides a different context, in which the imparting is no more than service, of however special kind, attendant upon an activity that arises out of the appellant's trading.

69. Lord Guest said he concerned and Lord Upjohn said that in his opinion the case was completely covered by the decision in Rolls-Royce's

case. Lord Donovan did not express any specific opinion on the question whether know-how was an item of fixed capital asset, though he said that

an industrialist might understandably look upon his fund of accumulated knowledge as being a vital part of his capital equipment. In his opinion,

however, the case was analogous to Rolls-Royce's case since the transaction in question involved only the teaching of a manufacturing technique

for reward and such reward was required to be treated as trading income inasmuch as there was no exceptional circumstances which gave that

reward the character of capital. Lord Reid agreed with Lord Donovan.

70. Now, it is true that there are some observations in these two cases, particularly in the speech of Lord Radcliffe, to the effect that know-how is

an intangible asset, that it is fixed capital asset only by an analogy and that it would not be tight to confuse know-how with its material record in the

shape of drawings, lists, etc. But these observations must not be taken in isolation and will have to be read in the context in which they were made.

It cannot be overlooked that in the two cases before the House of Lords the real question under consideration was much different from that with

which we are concerned in the present case. The question there was as to the nature of the receipts arising from agreements under which the

owner of the know-how, while retaining the knowledge and intending to go on using it himself by producing goods with its aid, agrees to impart or

teach it to others so that they can manufacture their own material by exploiting it and gets in return certain lump sum payments. We are not

concerned in the present case with any such situation or question. Indeed this is not the case of the importer of know-how at all but of its recipient

for value and the question here is whether know-how in the purchaser's hands is a tool of his trade so as to qualify as plant. All the observations in

those two cases cannot, therefore, be applied whole sale in such a different situation, which is really the converse of that which was obtain in those

cases. That apart, even according to those observations, know-how is a kind of

asset the category and characteristic of which charges according to the use to which its owner himself decides to put it. It would be, as it were, an item of fixed capital so long as the owner retains it for his own purposes and express its value in his own products and earns profits by the sale of such products. Accordingly, in the hands of the recipient of know-how also, it would be in a sense a vital part or element of his capital equipment so long as he exploits it for making goods for sale at profit. In the present case, the assessee has acquired the know-how only for such a purpose and, therefore, it can be correctly described as an item of his fixed capital asset.

71. It is true that Lord Radcliffe - and he alone - said in those cases that know-how is an intangible asset and that it should not be confused with its material record in the shape of drawings, lists, data, etc. Now, in the first place, it appears to us, with the greatest respect, that this emphasis on the intangible nature of know-how and the distinction between know-how and its material record, though theoretically or academically accurate and proper, is not in accord with actuality. Know-how is a peculiar kind of asset. It is the accumulated fund of knowledge acquired by years of observation, research, experimentation and experience. The whole of it is not in an intangible form even while it is in the process of being acquired and very often it takes a physical form, as it grows, in the shape of formulae, drawings, patterns, blue-prints, specifications and so on. The material form it takes not only facilitates preservation, collation and ready reference, but also makes it perceptible and visible and easily capable of being transmitted to others. When it assumes such a concrete asset which can be brought or sold, lent or borrowed, exchanged or stolen or imparted gratuitously to others. Secondly, we cannot lose sight of the fact that those observations were made by Lord Radcliffe with a view to emphasis that merely because the physical record of know-how such as lists, drawings and manufacturing and engineering data is imparted to another person, know-how is not lost to the owner thereof who still continues to retain it for his own use and, therefore, income arising from an agreement under which such record is parted with cannot properly be termed as capital receipt. The observations, which may be apposite in that context, cannot be pressed into service in a case where the question is of a wholly different nature

and has to be viewed from a different angle, namely, the angle of the person who acquires the know-how by transfer, for, to the recipient, for all practical purposes, know-how finds its manifestation mainly in its material record handed over to him. So far as he is concerned, know-how largely exists in its physical record and the finer emphasis on the intangible nature of know-how and the nice distinction between know-how and its material record would be to some extent unreal and illusory in his case. Know-how which he acquires does not exist except to a large extent in its material record which he receives. Unlike the owner of the know-how, it has no formless existence for the recipient who gains access to it primarily through its material record. For him, know-how and its medium form a single entity and in his case to make a distinction between the two would be to ignore the reality. It appears to us, therefore, that so far as the assessee is concerned, designs and patterns can be equated with the know-how itself and as such it cannot be said that such know-how is an intangible asset and, therefore, not plant.

72. There is yet another way of looking at the matter. It cannot be disputed that the legislature has intended to give a wide meaning to the word

plant" in section 32. section 43(3) specifically declares that articles like books are also included in the definition of "plant". Now, what are books ?

Are not certain books, in a sense, the physical record of know-how ? Take, for illustration, a standard book in the field of medicine, science or

engineering. What is it other than the condensation of a life-time of work in any one of those fields and the material record of research, experience

and experimentation in such field ? It might have been written for the purpose of systematic presentation of collected data or for preservation of the

valuable material gathered by research or for facility or reference or to "teach at long range". If such books, which one consults to inform

one's mind and thereby uses them in the course of one's business or provision, are expressly included within the meaning of the word "plant", there

is no reason to exclude from the wide range of its meaning objects of similar nature as drawings, patterns, designs, specifications, etc., which also

like books are the embodiment of know-how and serve the purpose of teaching at long range. We are of the opinion, therefore, that having regard

to the clear legislative intent to give a wide meaning to the word "plant",

material record of know-how (even assuming that know-how itself is intangible) is clearly included within the meaning of the word "plant" in section 32. The observation made in an entirely different context in the above-referred two decisions cannot, therefore, be pressed into service to persuade us to take a different view.

73. Coming now to the submissions that the word "plant" in section 32 denotes an object which must diminish in value year after year by wear and

tear, we must say straight away that the submission has failed to impress us. Counsel relied in support of his submission of the following definition

of the word "depreciation" in *National Petroleum Corporation Ltd. v. Minister of National Revenue* :

The term "depreciation" apparently is here in its commercial sense to apply only to wasting fixed assets, such as plant, machinery and equipment,

which inevitably diminish in value while applied to the purpose of seeking profits, or advantage otherwise than by purchase and sale. In measuring

annual depreciation in such cases the nearest approach to accuracy will ordinarily be obtained by estimating the whole-life period, in years, of such

class of industrial plant, with due regard to all known facts, as well as to future probabilities, and the distributing the cost, less the estimated

remainder or scrap value, to future revenue accounts, in equal installments over each year of the estimated whole-life period.

74. We are unable to read this definition as laying down that depreciation in its ordinary meaning is confined to diminution in value year after year

by wear and tear only. The underlined words in the extracted portion on the contrary indicate that the word is to be understood in a commercial

sense and that in estimating the life period of an asset, all known facts and future probabilities must be taken into account. We shall presently show

that in a commercial sense the word "depreciation" has not the limited meaning for which the revenue contends and that wear and tear is not the

only relevant factor in judging the life-span of a capital asset. The Canadian decision does not, therefore, support the revenue.

75. Counsel for the revenue also relied upon the decisions in *Earl of Derby v. Aylmer* and *Norman v. Golder*, where stallion in one case and tax-

payer's body in the other were held not to be plant on which depreciation could be claimed because it was found that they did not diminish in value

after an year by reason of wear and tear during the year. Now, one must bear in mind that those decisions were based on the peculiar language of the statutes with which the courts were there concerned. Take, for illustration, the case of Earl of Derby. The deduction in that case was claimed u/s 12 of the Customs and Inland Revenue Act, 1878, which in substance provided that in assessing the profits of a trade chargeable under Schedule D, the Commissioner shall "allow such deduction as they may think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of concern." Similarly, in Norman's case the expenditure incurred by a professional shorthand-writer for medical aid was sought to be claimed, inter alia, as a permissible deduction under Schedule D, Cases I and II and rule 3 which was also very similarly worded. It is apparent the an allowance in the nature of depreciation could have been claimed by the taxpayer in those cases only if the machinery or plant used for the purposes of the trade had diminished in value by reason of wear and tear during the relevant year and that it was for the Commissioners having jurisdiction in the matter to allow such deduction as they considered just and reasonable. It was in the light of this statutory requirement and the facts of those cases that it was held that the claim made there was not sustainable. However, the position is entirely different u/s 32 of the Income Tax Act. The depreciation allowance thereunder is a statutory allowance not confined expressly to diminution in value of the asset by reason of wear and tear and the assessee is thereunder entitled as of right to the full amount of prescribed allowance once the conditions laid down therein are satisfied irrespective of whether there has in fact been any depreciation in the value of the asset by wear and tear or otherwise. The allowance can be claimed if the asset in question is shown to be capable of diminishing in value on account of any factor known to the prevailing accounting or commercial practice. It is now a recognised fact that the principle factors responsible for the retirement of capital asset and, therefore, responsible for depreciation are : (i) ordinary wear and tear, (ii) unusual damage, (iii) inadequacy, and (iv) obsolescence. The factors listed above include not only those relating to physical deterioration but also those referring to the suitability of the asset as an economically productive unit after a period of

time. In depreciation accounting, the cost of the asset is spread over the years of its usefulness in a systematic and sensible manner and in so doing

all the aforesaid agents or causes of depreciation are taken into account before the true profits are ascertained (vide Accountancy by William

Pickles, third edition, page 168, Accountant's Hand Book by Dickson, fourth edition, section 17.2 and Principles of Accountancy by Filney and

Miller, fifth edition, pages 289-90). Apart from accounting practice or principles, section 32(1)(iii) itself speaks of allowance in the case of any

plant which is "discarded" in the previous year and the word "discarded" has been understood to cover the case of obsolescence. It appears to us,

therefore, that it would not be correct to limit the meaning of the word "plant" in section 32 to only such articles as are capable of diminution in

value after year by reason of wear and tear in the course of their application for the purposes of the assessee's business or profession. It would

also taken in other articles which diminish in value on account of other known factors such as obsolescence. It cannot be disputed that know-how,

in whatever form it may be, is capable of diminishing in value over years by obsolescence. It would, therefore, be included within the meaning of

the word "plant" in section 32.

76. From the foregoing discussion it would appear that the Tribunal was right in taking the view that it did, namely, that drawings and patterns were

plant within the meaning of section 32 and that, therefore, the assessee was entitled to depreciation in respect of those assets on the pro rata cost

of their acquisition. Our answer to the question referred to us is, therefore, in the affirmative and in favour of the assessee and against the revenue.

The Commissioner will pay the costs of this reference to the assessee.

77. Question answered in the affirmative.