
(2003) 04 RAJ CK 0069
In the Rajasthan High Court
Case No : Criminal No. 207 of 2003

C.T.O. APPELLANT

Vs

Sadulshahar Krai Vikrai Sahakari Samiti RESPONDENT

Date of Decision : 23-04-2003

Acts Referred:

General Clauses Act, 1897 — Section 3(26)
Rajasthan Sales Tax Act, 1954 — Section 3
Transfer of Property Act, 1882 — Section 3

Citation : (2003) 4 RLW 2274 : (2004) 135 STC 90 : (2003) 129 TAXMAN 613 :
(2003) 3 WLC 194

Hon'ble Judges : Bhagwati Prasad, J

Bench : Single Bench

Advocate : Sundeep Bhandawat, for the Appellant; S.L. Jain, G.R. Goyal, Dinesh Mehta and K.S. Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Prasad, J.—All these revision petitions circle around a principal question, whether the plant and machinery given on lease by a Co-operative society is a movable property or an immovable property ?

2. A judgment of the Rajasthan Tax Board is under challenge wherein, it has been held that plant and machinery given on lease is immovable property. Aggrieved by the same, the present revision petitions have been preferred by the assessing authority. For the purposes of facts, revision petition No. 207/2003 is taken.

3. Respondent-assessee has given his land, building, plant and machinery on lease for the year 1993-94, He received a lease money of Rs. 6,21,000/- lease included plant, machinery, land and building of the assessee. The Assessing Officer gave rebate as per the Rules of P.W.D. at the rate of 8.5% on land and building. The other amount on account of lease on plant and machinery was subjected to tax treating it to be movable property.

4. The assessee preferred an appeal before the Dy. Commissioner (Appeals), Bikaner. On appeal, the appellate authority waived the penalty holding that the assessee being a co-operative society had no personal interest, and therefore, there being no malafide intention, is not liable to be penalised by putting penalty. The liability of tax was however, maintained.

5. A second appeal was preferred before the Rajasthan Tax Board, Ajmer. By the order impugned, the Tax Board has held that the plant and machinery imbedded to earth are covered by the connotation "immovable property" and therefore, they are not liable to be taxed.

6. Aggrieved by the judgment of the Rajasthan Tax Board, the assessing officer has preferred the present revision petition. It has been contended on behalf of the assessing officer that the plant and machinery used for ginning and pressing cotton, cannot be treated as to be immovable property. They are not imbedded in earth in such a fashion so as to give them a character of immovable property. The General Clauses Act, 1897 (Central) [hereinafter referred to as "General Clauses Act"] defines "immovable property" to be one which include land, benefits to arise out of land, and things attached to the earth. Section 3(26) of the General Clauses Act is quoted hereinbelow for ready reference :-

3(26) "Immovable Property" shall include land, benefits of arise of land and things attached to the earth or permanently fastened to anything attached to the earth."

7. it has further been contended on behalf of the revisionist that definition of "immovable property" as given in Registration Act, 1908 [hereinafter referred to as "the Registration Act"]¹ is also exhaustive. For ready reference, relevant portion of Section 3 of the Transfer of Property Act, 1882 [hereinafter referred to as "Act of 1882"] is quoted hereinbelow for ready reference :-

"3. In this Act, unless there is something repugnant in the subject or context,

"immovable property" does not include standing timber, growing crops or grass;

"attested", in relation to an instrument, means

"registered" means.....

"attached to earth" means -

(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

"actionable claim" means.....

.....

8. According to the learned counsel for the petitioner, to give a particular property a character of immovable property, the plant and machinery should be so imbedded for the permanent beneficial enjoyment of that to which it is attached. For explaining its stand, the petitioner has stated that the degree, manner, extent and strength of attachment of the chattel to the earth or building, are main features to be regarded. According to the petitioner, three aspects narrated hereinabove show that the attachment should be such as to partake the character of the attachment of the trees or shrubs rooted to the earth, or walls or building imbedded in that sense, Further, whether, such an attachment is for the permanent beneficial enjoyment of the immovable property to which it is attached.

9. The petitioner has further averred that attachment of oil engine to earth though it is a fixture, is for the beneficial enjoyment of the engine itself and in order to use engine, it has to be attached to the earth and the attachment lasts only so long as the engine is used. While not in use, it can be detached and shifted to some other place. The inference which is sought to be drawn from above is that no case is made out to make the engine part of the land as immovable property and therefore, it cannot be treated to be immovable property.

10. The petitioner has further defined that when there is immovable property from physical point of view, every benefit arising out of it and every interest in such property is also regarded as immovable property. The Registration Act expressly includes immovable property, benefits to arise out of land, hereditary allowances, right of way, lights, ferries and fisheries. A debt secured by a mortgage of immovable property is an interest in land and is, therefore, regarded as immovable property. The petitioner has illustrated his stand by saying that right to collect lac from jungle, fish from pond, right to take minerals, rent from "hat" or market place or house are various illustrations of benefits arising out of land.

11. According to the petitioner, the present section defines the expression "attached to earth" (a) things rooted in the earth (b) things imbedded in the earth (c) things attached to what is so imbedded and (d) chattel attached to earth or building.

12. This expression has further been expanded by the petitioner by saying that Babool and Seesham trees are standing timber and therefore, they are movable property. If there is a mango tree and intention is to enjoy the fruits, it will be regarded as immovable property. As and when in retrospect, the tree becomes old and cut then; it is treated as movable property. The petitioner has further stated that there are certain things though rooted in earth are treated as movable property.

13. According to the petitioner, everything therefore depends on the circumstances of each case and mainly on two circumstances; (1) the decree or

mode of annexation. For example, looms attached to the floor and beams of a mill or tip up seats fasted to the floor of cinema halls are immovable but not screws vaht resting on brickwork and timber and tapestries, and (2) the object of the annexation. For example; Blocks of stone placed one on the top of. another without any mortar or cement for the purpose of forming a dry stonewall, will become part of the land but not the stones deposited in the builder's yard and for convenience sake stacked on the top of each other in the form of wall. Anchor of a ship will not be a part of land howsoever deeper it may have gone in the earth. But if it is used to support the strain of suspension bridge it will become part of the land. The rule is that if the article stands on the earth upto its own weight it will not be part of the land but if it is caused to go deeper in the earth by external agency, then it is part of a land.

14. It has been emphasised that "things attached to what it is so imbedded" must be for the beneficial enjoyment of that to which it is attached. This expression has been illustrated by saying that doors and windows of a house attached to the house though not intended to be permanent, they become immovable because they are required for beneficial enjoyment of the land.

15. According to the petitioner, the Tax Board has erred in law in not appreciating the facts that building, plant and machinery can be shifted and it does not fit in the definition of "immovable property" as contained in the statutes, therefore, the case as described by the Tax Board is not correct. The assessee was liable to be taxed.

16. Taxing of building, plant and machinery as defined in terms of Clause 3 notification No. 8 No. 816 : F. 4(24)FDGr. IV/90-44 dated 27.6.1990 is as under :-

3. (a) The transfer of the right to use plant and machinery

(b) The transfer of the right to use equipments including office equipments, computers, instruments or appliances.

17. Learned counsel for the petitioner has placed reliance on the Division Bench of this Court Lokashan Jain Udyog Mandir Ltd. v. Kalooram and Anr. (1), wherein it has been held thus :-

"that considering the terms of the tenancy between the plaintiff and the third party, there could be no question of the machinery in the case being permanently fastened to anything which is attached to the earth. Further, the machinery was not fixed by the plaintiff for any such object as the permanent beneficial enjoyment of the building in which the press was located and therefore it did not fulfil the essential requirements of the clause "Attached to the earth" in Section 3, T.P. Act. Therefore the machinery in this case did not fall within the definition of Immovable property in law, and consequently the agreement even if accepted, as a lease was not and would not be a lease with respect to Immovable property requiring compulsory registration within the meaning of Section 17(I)(d) of the

Registration Act."

18. Learned counsel for the Revenue has relied upon a decision of Allahabad High Court Official Liquidator v. Sri Krishna Deo and Ors. (2), wherein, Allahabad High Court has held as under :-

"Machinery fixed to their bases with bolts and nuts although easily removable are not movable property when they have been set up with definite object of running an oil mill and not with intention of being removed after a temporary use."

19. The case of the petitioner is not supported by the present decision of Allahabad High Court and it is not understandable as to how the learned counsel for the Revenue has relied on this case. This case clearly lays down that when fixture machine is fixed to earth for constant use, then it is not considered movable property.

20. Learned counsel for the Revenue has further relied on a decision of Andhra Pradesh in the case of "J Kuppanna Chetty and Ors. v. Collector of Anantapur" (3), wherein, Andhra Pradesh High Court has held as under :-

"It follows from the combined reading of definitions of "immovable property" in Section 3, T.P. Act and Section 2(6), Registration Act and the one given in the Madras General Clauses Act and the definition in the T.P. Act of "attached to the earth", that machinery, if permanently fastened to anything which is attached to earth, is immovable property. The definition of immovable property in the Madras General Clauses Act is in pari materia with the definition in the Registration Act and the Transfer of Property Act, and machinery embedded in the earth for the beneficial enjoyment thereof is immovable property even under the Madras General Clauses Act.

Though "immovable property" has not been defined in the Madras Revenue Recovery Act, the Act prescribes the procedure for effecting the attachment of land and buildings. In the case of a factory owned by an individual, the machinery which is embedded in the building for the beneficial use thereof, must be deemed to be a part of the building and the land on which the building is situated.

Therefore, the boiler engine and decorticator which are fixed and embedded in the factory building for the beneficial use of the building as a factory, are immovable property in addition to land and the building."

21. This case also is of no consequence. On the contrary, it supports the case of the respondent and also supports the reasoning of the Tax Board.

22. Learned counsel for the petitioner has further relied on a Supreme Court decision in the case of Duncans Industries Ltd. v. State of U.P. and Ors. (4), wherein, it has been held as under :-

"The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of

each case. Primarily, the court will have to take into consideration the intention of the party when it decided to embed the machinery, whether such embedment was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance deed alongwith the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that the machineries which have been embedded in the earth to constitute a fertilizer plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertilizer plant. The description of the machines as seen in the schedule attached to in the deed of conveyance also shows that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to be dismantled and removed for the purpose of sale as machinery at any point of time. The facts as could be found also lead to the same conclusion. Hence, the appellant's contention that these machines should be treated as moveables cannot be accepted. Nor can it be said that the plant and machinery could have been transferred by delivery of possession on any date prior to the date of conveyance of the title to the land."

23. This case also supports the case of the respondents and thus, is of no assistance to the petitioner because it is on the facts of every case, where it is decided whether, the machine attached to earth is an immovable property of the factory.

24. Learned counsel for the petitioner has further relied on a case of Sirpur Paper Mills Ltd. v. Collector of Central Excise, Hyderabad (5). Hon'ble Supreme Court has found that by assembling different components, a machine was erected. This erection was from different components which were purchased and is a new market commodity. This case would not govern the facts of the case of the petitioner.

25. Learned counsel for the petitioner further relied on a decision of Madras High Court in the case of Perumal Naicker v. T. Ramaswami Kone and Anr. (6), wherein, Madras High Court has held as under :-

"The question whether when a chattel is attached to the earth or a building, it is immovable property, is a mixed question of law and fact, and has to be decided in the light of particular facts in each case. Obvious cases may not call for tests. Where doubt arises, certain tests have been formulated in particular contexts, which, if literally applied, may not yield always a proper and correct result. While general tests pointed out by judicial decisions, in the light of specific facts may be borne in mind, eventually the decision on the question should depend upon how the Court looking at the facts as a whole, feels on the matter. English law relating to fixtures cannot be bodily applied to conditions in this country.

Broadly speaking, the degree, manner extent and strength of attachment of the chattel to the earth or building are the main features to be regarded. All the three aspects, in the description, show that the attachment should be such as to partake of the character of the attachment of the trees or shrubs rooted to the

earth, or walls or buildings imbedded in that sense, the further test is whether, such an attachment is for the permanent beneficial enjoyment of the immovable property to which it is attached. For a property and to be regarded as such property, it must become attached to the immovable property as permanently as a building or a tree is attached to the earth. If, in the nature of things, the property is a movable property and for its beneficial use or enjoyment, it is necessary to imbed it or fix it on earth, though permanently, that is, when it is in use, it should not be regarded as immovable property for that reason."

26. From the reading of the ruling of the Madras High Court, what has to be understood is the dominant intention of the authority. An oil engine can be removed, therefore, it has been held to be immovable property. With great respect, nothing can be fastened to earth permanently so that, it can never be removed. When machines are attached to earth, not only they are attached for beneficial enjoyment of the machine but also for beneficial enjoyment of the land which is on lease.

27. Learned counsel for the respondent has urged that for better appreciation of facts, it would be necessary to go to the various clauses of the lease deed in question which are reproduced hereinbelow :-

"Sub-clause (a) The cotton and pressing factory owned by the lessor will be leased to RAJFED initially for a period of one year commencing from such date as both the parties agree to.

Sub-clause (b) The total management of the factory will vest in the lessee subject to conditions and obligations of the owner as per provisions contained in laws relating to such industries and for the time being in force. The lessor will not act in any way to obstruct the working of the factory.

Sub-clause (d) The lessor will be entitled to receive annual lease rent of Rs. 6.18 lacs only (Rs. Six Lacs & Eighteen Thousand only) for a period of one year in lieu of the use of the factory machinery and buildings by the lessee.

Sub-clause (f) The plant and machinery including spares and stores held by lessor will be handed over to the authorised representative of the lessee in the presence of an officer nominated by Co-operative Department through its Jt. Registrat. Coop. Societies, Bikaner Zone, Bikaner. A list will be prepared of such plant, machinery, spares and stores. In case of any damage or deteriorated condition of any asset, the same will be mentioned against the item. Such a list will be signed by the authorised representative of the lessor, lessee and the representative of the Cooperative Department.

Sub-clause (h) The lessee will be entitled to use the entire G & P capacity for its own or may sublease any capacity to any other party without being objected to by lessor, during the period of lease."

28. Learned counsel for the respondent has further relied upon the provisions of Rajasthan Sales Tax Act, 1954 [hereinafter referred to as "Act of 1954"] which

are quoted hereinbelow for ready reference :-

Section 3: Incidence of Taxation -

Subject to the provisions of this Act, every dealer whose turn over in the previous year in respect of sales or supplies of goods exceeds.....

"Section 2(s) Taxable turn over" means that part of turn over which remains after deducting there from the aggregate amount of proceeds of sale of goods (i) on which no tax is leviable under this Act, (ii) which have already been subjected to tax under this Act.....

Section 2(o) "Sale" with all its grammatical variations and cognate expressions, means every transfer of property in goods (other than by way of mortgage, hypothecation, charge of pledge) by one person to another for cash or deferred payment or other valuable consideration and includes :-

(i) a transfer, otherwise than in pursuance of a contract, of property in goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) [involved in] the execution of a works contract;

(iii) a delivery of goods on hire-purchase or other system of payment by instalments;

(iv) a transfer of the right to use goods for any purpose (whether or not for a specific period) for cash, deferred payment or other valuable consideration.

(v) a supply of goods by any un-incorporated association or body of persons to a member thereof, for cash, deferred payment or other valuation consideration;

(vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply in for cash, deferred payment or other valuable consideration;

and such transfer, delivery or supply shall be deemed to be a sale and the word "purchases" or "buy" shall be construed accordingly.

Section 2H "goods" means all kinds of movable property other than newspapers, actionable claims, stocks, shares and securities and includes all materials, articles and commodities including goods in some other form involved in the execution of works contract.

29. According to the respondents, a close and conjoint reading of the provisions of Rajasthan Sales Tax Act shows that what can be taxed under the provisions is goods as defined in Section 2(h) of the Act of 1954 and goods as defined in Section 2(h) of the Act are all kinds of movable property.

30. According to the answering respondents, immovable property cannot be

taxed as it is outside the purview of State Legislature under the entry 54 of list second of 7th Schedule of the Constitution. The definition of term "immovable property" has been defined in Section 3(26) of the General Clauses Act has been quoted here in above.

31. If a comprehensive reading is done of all the relevant provisions, then what goes to show that the whole factory premises including the plant, machinery, land and building were given on lease. A lease of entire establishment was necessary for beneficial enjoyment of rights under the lease. If from the lease, plant and machinery is excluded, the land could not have been used for any purposes designed to be fulfilled by lease. The machinery and plant embedded to earth to give it a character of immovable property for beneficial use of land facilitated the lease otherwise, the lessee would not take the premises on lease and land could only be used if the plant and machinery was attached to earth. Thus, according to the definition of "plant and machinery" as contained in General Clauses Act, makes it a immovable property.

32. Learned counsel for the respondents has placed reliance on (Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Bobby Rubber Industries (7), wherein it has been held thus :-

"dismissing the petition, that only movable property is comprehended within the definition of "goods". The hydraulic press, the use of which was allowed to various customers was part and parcel of the plant and machinery installed by the respondent in its premises. There was no agreement or understanding between the parties that before the grant of permission to use the hydraulic press by various customers it was to be served from the earth. In such circumstances, it could not be held that the hydraulic press was movable property falling within the definition of "goods" and, therefore, the rent received for the use of the hydraulic press by various customers could not be subjected to tax under the Act. Moreover, by allowing the use of the hydraulic press installed in the premises of the respondent by various customers on machine-hour basis it could not be said that there was a transfer of the right to use the hydraulic press by the respondent to various customers so as to attract the provisions of Explanation (3-B) to Section 2 (xxi) of the Act. It was at best a permission to use and no more, or a fruitful utilisation of an asset otherwise lying idle."

33. Learned counsel further placed reliance on Duncans Industries Ltd. v. State of U.P. and Ors. (supra), wherein it has been held thus :-

"The plant and machinery in the instant case are immovable properties. The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such embedment was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and

taking into consideration the nature of machineries involved clearly shows that the machineries which have been embedded in the earth to constitute a fertiliser plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertiliser plant. The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time."

34. Learned counsel for the respondent further placed reliance on Commissioner of Sales Tax v. Bombay sound Service (8), wherein it has been held thus :-

"accordingly, that undisputedly, recording of songs, background music and dubbing of sound can be done only in studios which are fully equipped for that purpose. It is not possible to undertake these activities anywhere and everywhere even with the aid of the very same machines or equipments which are fitted or installed permanently in the studies. In fact, what is really required is the studio and the instruments for recording of songs, etc., are essential part of the studio. There cannot be any studio without such equipment. The construction of studio is a very sophisticated task and what is taken on hire is the studio and not the recording machines and instruments installed there. The various instruments for recording music, etc., are annexed or embedded to the earth for the purpose of beneficial enjoyment of the studio which is an Immovable property and not for the beneficial enjoyment of those instruments. The instruments are essential fixtures of studios. Therefore, the hiring of studios for the purpose of recording songs, background music and dubbing of sound did not amount to transfer of right to use any movable property and hence such transactions did not fall within the definition of "sale" as contained in Clause (10) of Section 2 of the Act."

35. According to the answering respondents, earlier, a Tax Tribunal was functioning in the State and the Tribunal had held in a case of non-petitioner assessee vide its judgment dated 4.7.96 that factory, building and machinery embedded into earth cannot be taxed. That judgment has attained finality.

36. I have given my thoughtful consideration and perused the record. The incidence of tax has been sought to be related to the plant and machinery in question vide notification dated 27.6.1990 referred to hereinabove. In this notification what is contained in Clause (3)(a) is that what is taxable is transfer of right to use plant and machinery. The taxability of plant and machinery is only possible, if they are movable and can come in the definition of "goods" as contained in Section 2(20) of the Rajasthan Sales Tax Act. Broadly, tax on immovable property is generally the domain of Central Government as per the entry No. 86 in the List I of the Seventh Schedule of the Constitution of India. Any income from the property again is taxable under Entry 82 of List I of the Seventh Schedule of the Constitution of India. The taxing authorities have taken a view that plant and machinery in a ginning factory has the character of a

movable property. Hence, taxable. Rajasthan Tax Board on appeal from the assessee has held that the view taken by the assessing authority is not correct. The plant and machinery of a factory is immovable property and, therefore, cannot be taxed.

37. There is no definition of immovable property shown to me from the taxing statutes. For reference, two definitions in another statute were made available. One in the Central General Clauses Act and another in the Act of 1882. The definition of immovable property as given in the General Clauses Act defines immovable property as the land and benefits arising out of land and things attached to earth or permanently fastened. The case of the Revenue is that fastening of plant and machinery to earth in ginning factory does not hold in itself any such character which can be said to be such as to give it a character of permanently fastened. The term "permanently fastened" cannot be understood in abstract. Such treatment would mean defying the nature itself, where change is the rule and there is nothing which can be said to be permanent.

38. The plant and machinery to be judged whether, it is permanently fastened or attached to the earth is to be seen from the point of utility. If such plant and machinery can be used without being attached to the earth, it can be found to be movable. Heavy machineries are in common used after being fastened to earth. Because unless that is done, their vibration will not only impair the efficiency but would affect them and therefore, any heavy machinery or plant when put to use, it has to be fastened to earth on some foundation. Unless, such fastening is there, the Plant and machinery cannot be put to a rational use. Whether such fastening partakes the character of a thing which is fastened on one day and taken away on another day has to be understood. The plant and machinery of a factory does not generally move, unless the factory becomes obsolete or becomes such that it is not possible for the owner to make use of it or he becomes in-capable of running the factory. Such contingency do not arise every day. Such are the contingencies which occur not only occasionally but in rare circumstances. Thus, it is not a situation where such contingencies can be said to be available for askance.

39. Removal of a plant and machinery from earth is a very tough decision which the owner of such plant has to take and that being the position, the point canvassed by the Revenue that since the plant and machinery can be removed after use, therefore, it should be treated to be movable property does not stand to reason.

40. In the instant case, it is not the plant and machinery alone. The land too was leased out to the lessee. The question which has to be considered at this point is that without the land, was it possible to use the plant and machinery? The answer cannot be in the positive. Because for making use of plant and machinery, the land has to be there and unless, plant and machinery is imbedded to the land, the use of plant and machinery would not have been to its optimum capacity.

41. The definition of term "attached to earth" as given in the Act of 882 defines that if something is attached to earth for the beneficial enjoyment to which it is attached, such embedment would be permanent. Had the plant and machinery been not imbedded to earth, the lessee could not have used the plant and machinery. Such fastening is for the beneficial enjoyment of the land and plant and machinery taken on lease. Therefore, the attachment of plant and machinery to the land would generally be covered by the term "attached to earth". Thus, the argument of the learned counsel for the Revenue is not convincing that since the plant and machinery can be removed after use, it should be treated to be movable property.

42. Further, Archimedes has said that "Give me but one firm spot on which to stand, and I will move the earth." In that view of the matter, in scientific terms nothing can be treated to be immovable. The only thing one has to conceive is the perceivable character of a particular property. In ordinary parlance, nobody conceives the plant and machinery imbedded to earth to be movable property as the plant and machinery is not shifted in routine.

43. In the modern day times, science and engineering skills are capable of moving the built in houses. Houses have been considered to be immovable from time immemorial. This situation creates doubt about the movability or immovability of a particular property. The taxing of an immovable property is the domain not covered by Sales Tax Act. Only goods can be taxed. They of course are movable property. By virtue of the notification, a device has been brought on by the State Government to tax immovable property by treating it to be movable property by fiction. Therefore, the claim of the Revenue is not sustainable.

44. The courts are almost unanimous that whether a chattel attached to earth or a building is an immovable property or movable property is a mixed question of law and fact. It depends on facts and circumstances of each case. Reference in this connection may be made to the law laid down by Hon'ble Supreme Court in *Duncans Industries Ltd. (Supra)*. Facts of the present case have been defined in detail in the judgment. Plant and machinery in a ginning and pressing factory can only be used when they are imbedded to earth and thereby, become attached to earth for its beneficial enjoyment.

45. The arguments of the learned counsel for the Revenue is not convincing "Sale" as defined in Section 2(38) of the Rajasthan Sales Tax Act means sale of "goods" defined in Section 2(20) of the Act. By creating a fictional definition of plant and machinery imbedded to earth makes the whole factory. The whole factory having been given on lease, for taxing purposes, it is sought to be fragmented. Thus, sought to be subjected to taxation as goods. This cannot be treated to be proper exercise of jurisdiction by the taxation authorities. Thus, following the law laid down in *Duncans Industries Ltd. (Supra)*, I am of the definite opinion that if the Tax Board has come to the conclusion that plant and machinery has to be treated as immovable property, no different view can be taken while exercising revisional jurisdiction. That being the position, the revision

petitions are meritless and hence, dismissed.