

---

**(1990) 08 GAU CK 0023**

**In the Gauhati High Court**

**Case No :** Income-tax Reference No. 16 of 1987

Frontier Engineering (Prestressed Concrete) Pvt. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

---

**Date of Decision :** 17-08-1990

**Acts Referred:**

Income Tax Rules, 1962 — Rule 5

**Citation :** (1990) 89 CTR 191 : (1991) 191 ITR 416

**Hon'ble Judges :** A. Raghuvir, C.J.;B.P. Saraf, J

**Bench :** Division Bench

**Advocate :** J.P. Bhattacharjee, U. Baruah and S.S. Goswami, for the Appellant;  
D.N. Choudhury and K.H. Choudhury, for the Respondent

---

## **Judgement**

A. Raghuvir, C.J.—This reference is made under the Income Tax Act, 1961, at the instance of the assessee, a limited company. The two questions referred read as follows :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that depreciation on concrete poles is to be allowed at 10% in the assessment years 1977-78 to 1982-83 in terms of Appendix I of Part I of rule 5 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Income Tax Officer was correct in revising the assessment u/s 154 for the assessment years 1977-78 to 1980-81 ?"

2. The assessee is a manufacturer of poles which are used by the electricity department. The subject-matter in the reference relates to moulds used for the manufacture of poles. In the assessment orders for 1977-78 to 1980-81, the Income Tax Officer allowed depreciation at thirty per cent, on moulds and later corrected it and allowed depreciation of ten per cent. The Income Tax Officer similarly in the orders for 1981-82 and 1982-83 ordered 10% depreciation. On appeal by the assessee, the Commissioner of Income Tax (Appeals) allowed the

appeals and held : "There is not much difference between concrete pipes and concrete poles and the assessee was entitled to depreciation at the rate of 30%". On further appeal, the order of the Income Tax Officer was restored by the Tribunal. The reasoning of the Tribunal was that in Appendix I, there is no specific provision for depreciation on moulds of the instant case and, therefore, under the residuary provision, ten per cent. depreciation only can be accorded. Hence, the reference.

3. Learned counsel for the assessee referred to Appendix: I, Part I, Table, in particular Clauses (2) and (10) contained under the heading "Machinery and plant" and argued that the moulds of the instant case are covered by either of the two clauses. Clauses 2 and 10 read as under :

"(2) Concrete pipes manufacture--Moulds (N. E. S. A.)

(10) Patterns, dies and templates (N. E. S. A.)"

4. Counsel stressed that, under Clause (10), moulds of the instant nature are covered by the word "template" and, in support of the assertion, referred to the Oxford Dictionary which defines "template" as under : "pattern, gauge, usu. thin board or metal plate, used as guide in cutting or drilling metal, stone, wood, etc., timber or plate used to distribute weight in wall or under beam etc., molecular pattern governing assembly of protein, etc." In the numerous clauses of Appendix I, unless a specific clause is attracted in other cases, depreciation of ten per cent, is to be allowed is not disputed.

5. In commercial parlance, pipes are far different from poles, and there-fore", Sub-clause (2) has no application as that clause deals with moulds which are used for pipes and, therefore, that clause is not attracted for the poles. By the same parity of reasoning "templates" also does not cover the moulds for poles. In the result, none of the two Clauses (2) or (10) is attracted. The conclusion reached by the Tribunal, therefore, is correct and calls for no interference.

6. The first question for the aforesaid reasons is answered in the affirmative, in favour of the Revenue and against the assessee.

7. The second question is covered by the decision of this court reported in India Carbon Ltd. v. CIT [1988] 2 GIR 341. Following that case the question is answered in the affirmative, against the assessee and in favour of the Revenue. No costs.

B.P. Saraf, J.

8. I agree.