

(1997) 09 MAD CK 0052

In the Madras High Court

Case No : Tax Case No. 98 of 1988 (Revision No. 18 of 1988)

Greenham Estates (P.) Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 02-09-1997

Acts Referred:

Income Tax Act, 1961 — Section 28, 32, 32(1), 34

Citation : (2000) 241 ITR 630

Hon'ble Judges : R. Jayasimha Babu, J; Akbar, J

Bench : Division Bench

Advocate : Deokinandan, K.M.L. Majele, for the Appellant; R. Gangadharan, S. Sudharsanam, for the Respondent

Judgement

1. In respect of the assessment year 1984-85, the assessee is aggrieved by the order of the Tribunal which has disallowed its claim for deducting a

sum of Rs. 960 by way of depreciation, that amount being the cost incurred by the assessee on purchase of a pedestal fan. The assessee is also

aggrieved by the rejection of its claim for deduction in entirety of the amount spent by it as its share of the expenditure incurred in bringing out a

brochure regarding the enterprises of the Murugappa group.

2. The Tribunal has rejected the claim for depreciation on the sole ground that the amount claimed as depreciation is equivalent to the cost of

acquisition of the asset. The fact that a pedestal fan was purchased and used for the purpose of, the business of the assessee has not been disputed

by the Revenue.

3. Section 5(f) of the Tamil Nadu Agricultural Income Tax Act, 1955, deals with depreciation. That provision reads as under :

5. (f) In respect of depreciation of buildings, machinery, plant and furniture

which are the property of the assessee and are required for the purpose of deriving the agricultural income, a sum equivalent to such percentage on the written down value thereof as may in any case or class of cases be prescribed, and where the buildings have been newly erected or the machinery or plant newly installed, a further sum subject to such conditions as may be prescribed.

4. The provisos and Explanations except the third proviso thereunder are not set out as they do not bear upon the point in issue. The third proviso to section 5(f) reads as under :

Provided also that the aggregate of all such deductions shall, in no case exceed the original cost of the building, machinery, plant or furniture, as the case may be.

5. The rates of depreciation which are left to be prescribed, have been prescribed in rule 4 of the Tamil Nadu Agricultural Income Tax Rules,

1955. The main part of rule 4(1) reads as under :

4. Deductions on account of depreciation of capital assets. - (1) A deduction u/s 5(f) in respect of the depreciation of buildings, machinery, plant

and furniture which are the property of the assessee and are required for the purpose of deriving agricultural income from the land shall be made in

accordance with the rates prescribed from time to time for the purpose of the Indian Income Tax Act, 1922 (Central Act XI of 1922).

6. Though the Indian Income Tax Act, 1922, was repealed and replaced by the Income Tax Act, 1961, the rule framed under the State

Agricultural Income Tax Act, has not been amended. However, the intention of the rule-making authority to make applicable the Indian Income

Tax Act for the time being in force, is manifest from the reference in the rule to the ""rates prescribed from time to time."" The intention obviously

was to adopt the prevailing rates of the depreciation permitted under the Central Income Tax law in force, for determining the amount of deduction

which could be allowed to the assessee under the State Act from its agricultural income, under the head ""Depreciation"".

7. It must, therefore, be held that though rule 4(1) refers to the Indian Income Tax Act, 1922, it must now be read as having reference to the

Income Tax Act, 1961. The Income Tax Act, 1961, is an Act which was enacted to ""consolidate and amend the law relating to Income Tax and

super tax"" and by section 297 of that Act the Indian Income Tax Act, 1922, was repealed. The matters which were dealt with under the repealed

Act are now dealt with by the Income Tax Act, 1961. One such matter is the depreciation allowable as deduction while computing the income of

the assessee for the purpose of taxation.

8. Depreciation is dealt with under the Income Tax Act, 1961 in section 32. That section as it stood at the relevant time, and to the extent relevant

for our purpose is set out below :

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

(ii) in the case of buildings, machinery, plant or furniture, other than ships covered by clause (i), such percentage on the written down value thereof

as may in any case or class of cases be prescribed :

Provided that where the actual cost of any machinery or plant does not exceed five thousand rupees, the actual cost thereof shall be allowed as a

deduction in respect of the previous year in which such machinery or plant is first put to use by the assessee for the purposes of his business or

profession.

9. The Tribunal has declined to allow depreciation to the extent claimed by the assessee on the fan purchased by it on the ground that the proviso

to section 32(1)(ii) cannot be read into rule 4 (1) of the rules framed under the State Act.

10. The rates of depreciation referred to in rule 4(1) would include the allowance of 100 per cent. as depreciation if so allowed under the Indian

Income Tax Act. The rate can vary from zero to 100 per cent. This is recognised in section 5(f) of the State Act where the third proviso states that

the deduction shall not exceed the original cost of the building, machinery plant and furniture. If the deduction of 100 per cent. is allowed in the

very first year, in respect of some items, that does not make it any the less a deduction for depreciation. The whole topic of depreciation as dealt

with in the Indian Income Tax Act has been engrafted to the State Act ""for the purpose of determining the deduction allowable under the head

"Depreciation" ""from the agricultural income of the assessee except to the

extent departed from in the State Act.

11. The assessee was, therefore, entitled to depreciation at the rate of 100 per cent. for the fan which admittedly has been purchased and used for

business purpose as the cost of that fan is less than Rs. 5,000. The ceiling mentioned in the proviso to section 32(1)(ii) of the Income Tax Act,

1961, under which depreciation could be claimed is at the rate of 100 per cent. As regards the disallowance of a part of expenditure incurred by

the assessee on the cost of bringing out a brochure of the Murugappa group, we do not find any error in the order of the Tribunal. We have seen

the copy of the brochure which was placed before us. We are in agreement with the Tribunal that the cost of bringing out the brochure cannot be

regarded as part of the assessee's expenditure contributing to the business of the assessee. The disallowance on the part of the expenditure on this

brochure is fully justified.

12. In the result, this revision is allowed in part so far as the claim for depreciation of fan is concerned. No costs.