

(1931) 08 BOM CK 0032
In the Bombay High Court
Case No : Civil Reference No. 3 of 1931
In Re: The Saraspur Mills Co. Ltd.

Date of Decision : 19-08-1931

Acts Referred:

Income Tax Act, 1961 — Section 10(2)(vi)

Citation : AIR 1932 Bom 216 : (1932) 34 BOMLR 104 : (1932) ILR (Bom) 129 : 137 Ind. Cas. 898

Hon'ble Judges : Rangnekar, J;John Beaumont, J

Bench : Division Bench

Judgement

John Beaumont, Kt., C.J.—In this reference the facts are simple and not disputed. There was a company called Saraspur Manufacturing Company, Limited, which I will call the old company, which went into liquidation in the year 1924, and in the year 1928 its assets were sold to the assessee company, and a valuation was placed for the purposes of the sale on various assets. The only asset to which reference need be made is the machinery and plant which were valued and purchased at Rs. 16 lakhs. The question which has arisen is this. The assessees have claimed a deduction on their assessment for Income Tax in respect of depreciation of machinery, and the question is whether that deduction should be based on the cost of the machinery to the assessee or on the cost to the old company. Section 10(1) of the Indian Income Tax Act provides that

The tax shall be payable by an assessee in respect of the profits or gains of any business carried on by him.

2. Section 10(2)(vi) provides that

Such profits or gains shall be computed after making the following allowances, namely :—

(vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed.

3. There are certain provisos to Section 10(3)(vi), and under proviso (6) an allowance to which full effect cannot be given in any one year or years may be made up in any subsequent year or years ; and then in proviso (c) it is enacted that the aggregate of all such allowances made under the Act shall in no case exceed the original cost to the assessee of the buildings, machinery, plant or furniture as the case may be. Upon the language of the Act, therefore, it seems clear that depreciation of machinery is to be based on a percentage on the original cost to the assessee, and the word " assessee " is denned in Section 2(2) as meaning " a person by whom Income Tax is payable." It is quite plain here that the Income Tax is payable by what I may call the new company and cannot be paid by the old company which has ceased to exist. Therefore, looking at the plain words of the Act I should have thought that no question could possibly arise and that the depreciation must be based on the sum of Rs. 16 lakhs which was the cost of the machinery to the assessee company. The learned Commissioner himself takes that view, and the Advocate General has not argued to the contrary. But in the reference which he has submitted the Commissioner points out that a full bench of the Madras High Court in a very similar case arrived at the conclusion that the depreciation should be based on the cost of the machinery to the old vendor company. The case to which the Commissioner refers is the case of Massey & Co v. The Commissioner of Income tax, Madras (1929) 3 I. T.C. 302. Certainly the Court in that case did arrive at the decision alleged by the learned Commissioner. But the Judges do not appear to have considered the language of the Indian Income Tax Act. The then learned Chief Justice who gave the leading judgment starts his judgment by saying " The only question I propose to ask myself in this case is whether or no there is anything to distinguish it from the Scottish case of the Scottish Shire Line, Ltd. v. Lethem (1912) 6 T.C. 91." The learned Chief Justice of the Madras High Court then says that he has scrutinized the Indian Act and the English Act, and he is quite clearly of the opinion that there is no material difference in the language of both these Acts. With great respect to the learned Chief Justice I do not take that view. The phraseology and the scheme of the Indian Act seem to me to differ widely from the English Act upon this question of deduction on account of depreciation of machinery. Under the English Act depreciation is to be based on the diminished value of the machinery and plant by reason of wear and tear. There is no such thing in the Indian Act, under which deduction for depreciation is based upon a percentage on the cost price. Therefore, a decision on the English Act can have little or no bearing upon the question we have to determine, and certainly cannot justify us in ignoring the plain language of the Indian Act. With all respect to the learned Chief Justice who decided the case, I think that we must refuse to follow the Madras decision, and answer the questions as follows:

(1) When an assessee succeeds another in business, the words " on the original cost thereof to the assessee " in Section 10(2)(vi) of Indian Income Tax Act, 1922, refer to the original cost to the person who is being actually assessed, and not to the previous owner of the business.

(2) Consequently in the present case the assesseees are entitled to have the depreciation allowance u/s 10(2)(vi) of the said Act calculated on the original cost to them and not to the old company from whose liquidators they purchased the business.

4. No order as to costs.

Rangnekar, J.

5. I agree.