
(2000) 08 DEL CK 0109

In the Delhi High Court

Case No : IT Reference No. 32 of 2000 29 August 2000 A.Y. 1987-88

JOINT COMMISSIONER OF INCOME TAX

APPELLANT

Vs

ANATRONICS GENERAL CO. (P) LTD.

RESPONDENT

Date of Decision : 29-08-2000

Acts Referred:

Citation : (2001) 165 CTR 210 : (2001) 113 TAXMAN 511 : (2000) 113 TAXMAN 511

Hon'ble Judges : Arijit Pasayat, C.J.; D.K. Jain, J

Bench : Full Bench

Advocate : R.D. Jolly, for the Revenue S.K. Aggarwal, for the Assessee, for the Appellant;

Judgement

Pasayat, C.J.

In this appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), order of the Tribunal, New Delhi, in IT Appeal No. 6110 (Del) of 1995, dated 16-12-1998 is under challenge, in respect of the question as regards the rate of depreciation on the bottles given on lease to another concern. The dispute relates to the assessment year 1987-88.

2. Factual position which is almost undisputed is as follows:

The assessee-company supplies bottles to other concerns on lease basis. For the relevant assessment year, depreciation was claimed on bottles valued at Rs. 14,99,508 at the rate of 100 per cent. However, the assessing officer allowed depreciation at the rate of 15 per cent under the first proviso to section 32(1) of the Act. For disallowing the assessee's claim of depreciation at the rate of 100 per cent, it was observed that though bottles were plant, each bottle cannot constitute a plant and only all the bottles which were acquired can be taken as plant. Reference was made to purchases on several dates to hold that the value of bottles, treated as on the relevant dates exceeded Rs. 5,000. Ultimately, he held that each bottle did not constitute a plant and all the bottles purchased by

the assessed in bulk constituted a plant. To justify the conclusion, it was pointed out that bottles were supplied in bulk after they were purchased in bulk. The matter was carried in appeal before the Commissioner (Appeals). The matter initially was remitted for fresh adjudication by the said authority and, subsequently, another order was passed. The assessing officer held that the question would be different in case of bottling plant where the bottles are individually used and are capable of being used. In those circumstances, an individual bottle separately constitutes a plant. But in case of a leasing company, there is no actual or real use of the bottles in the hands of the owner. The bottles are used for leasing business and bottles are handled only in bulk and, hence, each bottle cannot be treated separately as a plant for allowance of depreciation at the rate of 100 per cent. First appellate authority, i.e., the Commissioner (Appeals), upheld the view. Such conclusion was reversed by the Tribunal by the impugned order. It was held that (a) in case of a leasing company depreciation is allowable on the articles leased out, (b) each bottle for the purpose of first proviso to section 32(1)(ii) constitutes a plant and not necessarily all the bottles purchased on a particular date in bulk.

3. The learned counsel for the revenue submitted that the question whether a particular bottle would constitute a plant would depend upon the nature of activities carried on by the assessee. In the case at hand, the assessed being a leasing concern, each bottle cannot be construed to be a plant and only the bulk purchases made which were leased out can be treated as plant.

4. The learned counsel for the assessee, on the other hand, referred to the various decisions, more particularly, decision of this court in CIT v. Prem Nath Monga Bottlers (P) Ltd. (1997) 226 ITR 864 (Del) to contend that each bottle would constitute a plant.

5. So far as the grant of depreciation on assets which are leased out is concerned, decision of the Apex Court in Commissioner of Income Tax, Karnataka, Bangalore Vs. M/s. Shaan Finance (P) Ltd., Bangalore, has set the controversy at rest. It was held that an assessed is entitled to depreciation on the assets which were given on lease. The only question that needs adjudication, Therefore, is whether each bottle would constitute a plant. This court in Prem Nath Monga Bottlers (P) Ltd.'s case (supra) held that even one bottle can constitute a plant. We find no distinction to be permissible, merely because the assessed was a leasing concern as contended by the learned counsel for the revenue, that would not really change the nature of the plant, i.e., a single bottle. It has been accepted by the revenue authorities that bottles would constitute a plant. There is no scope for accepting the revenue's contention to restrict the operation to purchase on a single day in bulk or on different dates.

6. The definition of "plant" given by Lindley, L.J. in *Yarmanth v. France* (1887) 1D QBD 647 has become locus classicus. He said "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." It is of relevance to note that section 43(3) of the Act defines "plant" by way of an inclusive definition, thereby intending to enlarge meaning of the expression. In Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh, *deserved* (sic) that in order to qualify as plant, the article must have some degree of durability. The test to be applied for such determination is "Does the article fulfill the function of a plant in the assessor's trading activity" is it a tool of his trade with which he carries on his business? If answer is in the affirmative, it will be a plant. Judged in the above background, the Tribunal's conclusions are on terra firma. No question of law, much less a substantial question of law, arises out of the order of the Tribunal.

Appeal is, accordingly, dismissed.