
(2000) 08 DEL CK 0104

In the Delhi High Court

Case No : Income-tax Reference No. 32 of 1978

Modipon Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 28-08-2000

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 32, 32(1), 34

Citation : (2000) 56 DRJ 710 : (2001) 247 ITR 40

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; Surinder Kumar Aggarwal, J

Bench : Division Bench

Advocate : S.K. Aggarwal, for the Appellant; Sanjeev Khanna and Ajay Jha, for the Respondent

Judgement

Arijit Pasayat, C.J.—At the instance of the assessed, the following question has been referred for the opinion of this court u/s 256(1) of the Income Tax Act, 1961 (for short "the Act") :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in upholding the Income Tax Officer's action in rejecting" the assessed's claim for initial depreciation as regards 64 out of total 336 houses constructed for the residence of employees of the assessed getting a salary of less than Rs. 7,500 per annum, in terms of Section 32(1)(iv) of the Income Tax Act, 1961 ?"

2. The dispute relates to the assessment year 1969-70 corresponding to the accounting year ended on February 28, 1969.

3. The factual position giving rise to the reference in a nutshell is as follows :

Modipon Ltd., hereinafter referred to as the assessed, is a public limited company, which was incorporated on August 19, 1965, for manufacturing Nylon-6 yarn. However, the production started in 1968. The previous year relevant for the assessment year, as noted above is from March 1, 1968, to February 28, 1969. In the return of income filed, the assessed claimed initial depreciation of Rs. 4,34,774 for the quarters constructed at a cost of

Rs.21,73,872 as under :

Type of qrs. Nos. of qrs. Total cost

B Type 66 6.38,064

C Type 252 14.79,610

D Type 19 56.198

21.73.872

4. The Assessing Officer required the assessed to submit a list showing the names of employees to whom the above quarters were allotted and salary paid to them with a view to verify whether all the quarters were fully constructed and were put to use for persons drawing "salary up to Rs. 7,500 annually under the head "Salaries". A list was submitted on January 31, 1972. The Assessing Officer noticed that most of the quarters had not been allotted at all and some of the quarters were allotted to employees getting salaries exceeding Rs. 625 per month. A claim of initial depreciation was accordingly disallowed partly and the allowance was restricted to Rs. 2,87,603 and the same was allowed in respect of actual amount spent on the quarters allotted to employees getting salaries up to Rs. 7,500 only. The matter was carried in appeal to the Appellate Assistant Commissioner (in short "the AAC").

5. The Appellate Assistant Commissioner was of the view that the words which have been used are "used solely for the purpose of" and, Therefore, the user may be one of the relevant considerations but not the only consideration. Several practical difficulties were enumerated to conclude that a pragmatic view was necessary to be taken. It was noticed that in the subsequent years when the quarters were constructed for the senior employees, the quarters which were in their occupation during the assessment year concerned, were vacated for the purpose of allotment to junior employees. As such depreciation in respect of B, C and D type quarters were liable to be granted and, accordingly, he directed the Income Tax Officer to allow initial depreciation equivalent to 20 per cent. of the cost of quarters. The matter was carried in further appeal before the Tribunal by both--the assessed and the Revenue--on several grounds. The present reference relates to the appeal filed by the Revenue. The only point which was taken up by the Revenue in the appeal filed by it related to a direction of the Appellate Assistant Commissioner to allow initial depreciation. The Tribunal was of the view that as the language used in Section 32(1)(iv) was clear, there was no scope for taking note of practical difficulties and making a consideration on equitable grounds. It was held that the language of the provision being clear, the order of the Appellate Assistant Commissioner was not sustainable. Accordingly, the order of the Income Tax Officer was restored.

6. The assessed's reference u/s 256(1) was accepted and as aforesaid, the reference has been made. In support of the application, learned counsel for the assessed submitted that a very restricted and narrow interpretation has been

given to the provision by the Tribunal. The word "used" is relatable to both active and passive user of an asset. The expression should not be given a restricted meaning and the provision being one which deals with an incentive a liberal interpretation is warranted. Learned counsel for the Revenue, on the other hand, submitted that the language being clear and unambiguous, there is no question of making a departure from the normal meaning. According to him, the view expressed by the Tribunal is in order.

7. In order to appreciate the rival submissions, it is necessary to take note of the relevant provisions which at the time were as follows :

"32. (1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessed and used for the purposes of the business or profession, the following deduction shall, subject to the provisions of Section 34, be allowed-- . . .

(iv) in the case of any building which has been newly erected after the 31st day of March, 1961, where the building is used solely for the purpose of residence of persons employed in the business and the income of each such person chargeable under the head "Salaries" is seven thousand five hundred rupees or less, or where the building is used solely or mainly for the welfare of such persons as a hospital, creche, school, canteen, library, recreational centre, shelter, rest-room or lunch-room, a sum equal to twenty per cent. of the actual cost of the building to the assessed in respect of the previous year of erection of the building; but any such sum shall not be deductible in determining the written down value for the purposes of Clause (ii) of Sub-section (1)."

8. Originally the figure of salary was Rs. 2,400 up to the assessment year 1965-66 and Rs. 7,500 thereafter. It is to be noted that the words "Rs. 7,500" were substituted by the words "Rs. 10,000" with effect from April 1, 1977, by the Finance Act, 1976. Similarly, the expression "twenty per cent." was substituted by the expression "forty per cent." with effect from April 1, 1979, by the Finance Act 19 of 1978. Finally, the provision itself was omitted by Act No. 46 of 1986 with effect from April 1, 1988. The allowance was to be granted only once, in respect of the previous year of erection of the building".

9. On a plain reading of the provision, it is clear that in order to be entitled to depreciation, certain conditions were to be fulfilled. They are as follows :

- (a) the building must have been newly constructed after March 31, 1961 ;
- (b) the building must be used solely for the purpose of residence of persons employed in the business ;
- (c) the income of such persons chargeable under the head "Salaries" must be Rs. 7,500 or less annually.

9. The provision also deals with other types of user of the building. Where such building is either solely or mainly used for the" welfare of such persons,

employed in the business, as hospital, creche, school, canteen, library, recreational centre and lunch room, depreciation is also allowable. In both the types of cases at the relevant time a sum equal to 20 per cent. of the actual cost of the building was allowable in respect of the previous year of the erection of the building. But it was stipulated that no such sum shall be deducted in determining the written down value for the purposes of Clause (ii) of Section 32(1). It is to be noted that in the two types of buildings referred to in the provision similar user is not warranted. In the case of buildings which are used for the purpose of residence of employees, the expression used is "solely" and for the purpose of eligibility of deduction. the salary of persons employed in the business has been taken to be a relevant factor. But for other types of buildings, the expression used is "solely" or "mainly". We need not go into the hypothetical question as to whether the expression "used" is relatable to active and passive user. If the language used for the two categories of buildings is analysed, it is to be seen that there is no exception in relation to the first category of building which relates to user for the purpose of residence. In the other type of buildings, the same may be used solely or mainly for the activities enumerated. To put it differently, it is only when the building of the first category is used for the indicated purpose, that depreciation is allowable. So far as the second type of building is concerned, even if it is not used solely for the indicated purpose and yet is mainly used for the same, depreciation is allowable.

10. The expression "solely", means "only", "singular", "belonging exclusively to one category, named". It was observed in *Lambton v. Kerr* [1895] 2 QB 233 that where the language used was "used solely for trade or business" it did not include a house occupied not only for business but also for the actual dwelling of persons, not merely caretakers but were servants of the occupiers. Similarly, in *Speak v. Pawell* LR 9 Ex. 25, it was held that a vehicle sometimes used for advertising being painted and placarded as an advertisement, or used for carrying a band in order to make public announcement was not used "solely" in the course of trade so as to give exemption from duty under the Inland Revenue Act, 1869. *Lambton* 's case [1895] 2 QB 233 has also been dealt with in several other cases, e.g., *Nicholls v. Malim* [1906] 1 KB 272. Unless the conditions clearly stipulated are fulfilled the question of any deduction does not arise.

11. A taxing statute is to be strictly construed. In the illuminating words of Lord Wensleydale and reaffirmed by Lord Halsbury and Lord Simon, "the subject is not to be taxed without clear words for that purpose ; and also that every Act of Parliament must be read according to the natural construction of its words" (see *Michlethwait, In re* [1855] 11 Ex. 452 ; *Tennant v. Smith* (1892) AC 150 and *M/s. Saraswati Sugar Mills Vs. Haryana State Board and others*, . In a classic passage, Lord Cairns stated that "if the person sought to be taxed comes within the letter of the law, he must be taxed however great the hardship may appear to the judicial mind to be" (see *Partington v. Attorney-General* [1869] LR 4 (HL) 100, referred to in *J.K. Steel Ltd. Vs. Union of India (UOI)*, and *Ransom (Inspector of Taxes) v. Higgs* [1974] 3 All ER 949 .

12. It is trite law that a taxing statute has to be strictly construed and nothing can be read into it. In the classic passage from *Cape Brandy Syndicate v. IRC* [1921] 1 KB. 64, it was said (page 71) :

"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used."

13. This view has been reiterated by the apex court time and again. Thus, in *State of Bombay v. Automobile and Agricultural Industries Corporation* [1961] 12 STC 122.(SC), it was observed as follows (page 125) :

"But the courts in interpreting a taxing statute will not be justified in adding words thereto so as to make out some presumed object of the Legislature. ... If the Legislature has failed to clarify its meaning by the use of the appropriate language, the benefit thereof must, go to the taxpayer. It is settled law that in case of doubt, that interpretation of a taxing statute which is beneficial to the taxpayer must be adopted."

14. In a very recent case, the apex court was considering the scope and ambit of the expression "land is used for any industrial purpose", "land is used for any commercial purpose" and "land is used for any other non-agricultural purpose", of the Andhra Pradesh Non-agricultural Lands Assessment Act, 1963 (in short "the A.P. Act"). The apex court held that emphasis is on the words "is used" for the purposes of levy of assessment on non-agricultural land at the rates specified in the Schedule for land used for industrial purpose, and there has to be a finding as a fact that land is in fact in praesenti in use for an industrial purpose. The same would apply to a commercial purpose or any other non-agricultural purpose. The Andhra Pradesh High Court in the judgment, which was impugned before the apex court, had held that the word "used" had to be interpreted to connote a wider meaning. It further held that the contention that the word "used" has to be given a limited meaning is not in tune with the intendment of the Legislature. The Legislature had intended the word "used" to mean to be used or set apart for being used. The apex court held that the wider meaning given by the High Court was untenable having regard to the fact that the said Act is a taxing statute, and no court is justified in imputing to the Legislature an intention that it has not clearly expressed in the language it has employed (see *Federation of Andhra Pradesh Chambers of Commerce and Industry and Others Vs. State of Andhra Pradesh and Others*, .

15. On the factual position found by the Tribunal which is undisputed what clearly emerges is that stipulated conditions u/s 32(1)(iv) were not fulfilled. The Tribunal's conclusions are sustainable in the circumstances of the case. Our answer to the question as referred is in the affirmative, in favor of the Revenue and against the assessed.