(1998) 04 MAD CK 0062

In the Madras High Court

Case No : Tax Case No. 865 of 1987 (Reference No. 568 of 1987)

Siddarth Agencies APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 22-04-1998

Acts Referred:

Income Tax Act, 1961 — Section 32

Citation : (2000) 160 CTR 48 : (2000) 244 ITR 826 : (1998) 244 ITR 826 : (2002) 123 TAXMAN 1061

Hon'ble Judges : Janarthanam, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : P.H. Aravindh Pandian, for Subbaraya Aiyar, Padmanabhan and Ramamani, for the Appellant; R. Sivaraman, for C.V. Rajan, for the Respondent

Judgement

Janarthanam, J.—The assessee, Siddarth Agencies, Madras, is a registered firm, carrying on business in poultry farming.

2. For the assessment year 1983-84, the assessee claimed depreciation on building used by it to house the cages for keeping of fowls, at the rate

applicable to third class buildings by treating them as factory buildings.

3. The Income Tax Officer rejected the assessee''s claim and allowed depreciation in respect of such buildings at the rate applicable to non-factory

buildings.

4. Aggrieved by the order of the Income Tax Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who,

following the order of his predecessor in the assessee''s own case for the assessment year 1982-83, upheld the Income Tax Officer''s order.

5. The aggrieved assessee preferred an appeal before the Tribunal.

6. The Tribunal rejected the assessee''s appeal by following its own order for the

assessment year 1982-83 in I.T.A. No. 2056/Mds of 1984,

dated October 25, 1985.

7. It is on these facts, the Tribunal, at the instance of the assessee referred the question of law as below, u/s 256(1) of the Income Tax Act, 1961,

for the opinion of this court :

Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the building used by the assessee to house the cages

and the chickens in its poultry business is not a factory building for the purpose of allowance of depreciation ?

8. Arguments of Mr. P. H. Aravindh Pandian, learned counsel, representing Subbaraya Aiyar, Padmanabhan and Ramamani, learned counsel

appearing for the applicant, and of Mr. R. Sivaraman, learned counsel representing Mr. C. V. Rajan, learned junior standing counsel, representing

the Revenue, were heard.

9. In the old Appendix I, buildings for the purpose of depreciation were classified into three categories--first class buildings, second class buildings

and third class buildings. The depreciation rate prescribed for the above- said three classes of buildings is, respectively, 2.5 per cent. 5 per cent.

and 7.5 per cent. Any of those buildings if used as factory building, excluding offices, godowns, officers'' and employees'' quarters, the prescribed

rate of depreciation for the specified class of building will be doubled.

10. The moot question that arises for consideration in the instant case is as to whether the building, which is used for housing cages and chickens,

could ever be construed to be a factory building for the purpose of getting double the rate of depreciation prescribed under the old Appendix I.

11. No doubt true it is, that the term ""factory"" is not defined under the Income Tax Act. But, none the less, as had been stated earlier, the

depreciation for the building used for the purpose of factory is double the rate of depreciation prescribed for the ordinary buildings. The reason is

rather obvious. In the case of buildings used for factories, the wear and tear and stress and strain for the building by the operation of the machinery

installed in the factory buildings are more, and in such process, the life of the building will be shortened. If the building is used for only habitation

purposes, there may not be stress and strain and wear and tear and the likelihood of the extended life of such building cannot at all be ruled out of consideration. Housing of cages and chickens in the building in question by the assessee cannot at all be expected to cause any wear and tear and

stress and strain as in the case of factories. The assessing authorities, inclusive of the Tribunal consistently took the view that the building used for

housing cages and chickens cannot at all be construed as a factory building, entitling it to double the rate of depreciation. It is not as if the taxing

authorities took such a view for the assessment year in question. Such a view had been consistently taken for the previous assessment years

concerning the assessee. In such circumstances, we are of the view that there is no warrant to interfere with the order of the Tribunal, on the facts

and in the circumstances of the case.

12. We, therefore, hold that the Tribunal was rather right in holding that the building used by the assessee to house the cages and chickens in its

poultry business is not a factory building for the purpose of allowance of depreciation. This question is answered accordingly.

13. This tax case is thus disposed of. There shall, however, be no order as to costs, on the facts and in the circumstances of the case.