
(1960) 01 MAD CK 0022
In the Madras High Court
Case No : T. C. No. 21 of 1959

State of Madras

APPELLANT

Vs

Glenburn Estates Ltd.

RESPONDENT

Date of Decision : 27-01-1960

Acts Referred:

Citation : (1962) 44 ITR 643

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Judgement

Rajagopalan, J.—In this application preferred by the State u/s 54(1) of the Madras Plantations Agricultural Income Tax Act (V of 1955), two questions arise for determination : (1) was the Tribunal right in allowing the bonus paid to the Assistant Superintendent employed by the assessee as a permissible deduction u/s 5(e) of the Act; and (2) was the Tribunal right in allowing the whole of the depreciation claimed by the assessee with reference to one item of machinery, referred to as the pulper ? The first of these questions we have to answer against the petitioner and in favour of the assessee in view of our decision in T. C. No. 32 of 1957, etc., in which we have just delivered judgment. The payment of bonus was not to a "worker" as defined by Central Act LXIX of 1951, and so fell outside the scope of section 5(1). As it was however a payment it was an expenditure wholly and exclusively laid out for the purpose of land or plantation, the Tribunal was right in allowing this claim of the assessee for deduction.

2. The amount allowed as depreciation under the second head was Rs. 36. But the question has been raised as one of importance to the department. Section 5(f) provides for depreciation allowances for buildings, machinery, plant or furniture. Section 5(f) itself contemplates rules being made for regulating the grant of statutory depreciation allowance. The proviso to section 4(3) of the Rules runs :

Provided that where any building, machinery, plant or furniture in respect of which any allowance is due is not wholly used for the purpose of agricultural

plantations or is used for the purpose of agricultural plantations only during part of a year, the allowance shall be restricted to the fair proportional part of the amount which would be allowable if such building, machinery, plant or furniture was wholly so used.

3. The facts of this case are not in dispute, and they lie within a narrow compass. The assessee has a coffee plantation, and the work on the plantation was necessarily seasonal. Apparently, work on the pulper could be carried on only for about six months in the year. During those six months, the pulper was used for agricultural purposes. It was not the case of the department that either during those six months or at any other time of the year, the pulper was put to any other use. Nor was it in dispute, that the pulper was in the possession of the assessee available for use all through the year. But the use had necessarily to be restricted to the working season. Whether under those conditions, the assessee was entitled to the whole of the depreciation allowance or whether only to a proportionate part of the depreciation allowance is the question for determination. The Tribunal held that the proviso did not justify the claim being reduced proportionately on the basis that, though the pulper was available for work all through the season, it was actually used for a portion of the year.

4. As the Tribunal pointed out, the provision to rule 4 (3) has apparently been framed on the model of the rules regulating the computation of allowances under the Income Tax Act. The rule itself has not been elegantly framed and in trying to include within the scope of the proviso to rule 4 (3) more than one concept, difficulty of actual application may arise. But if the scope of the rule read with the form to which it refers is considered, there should be no difficulty in holding that the Tribunal was right in the view it took, that merely because the pulper was worked for a portion of the year, the assessee was not disentitled to the full depreciation allowance, because the pulper had necessarily to be used only during the working season; and as we have already pointed out, it was a seasonal business which could not be undertaken all through the year.

5. Rule 4 (3) itself refers to the particulars to be furnished in Part III of the prescribed Form No. I-column 7 of Part III requires the assessee to give the date from which the addition etc., referred to in column 6 have been used for the purpose of agricultural plantations. There is no specific column in Part III to apply, for instance, to seasonal factories to verify during what season or what portion of the year the factory worked. As the Tribunal pointed out, there was a specific provision in the rules framed under the Income Tax Act for granting depreciation allowances to factories where the working was seasonal. Though it is seasonal, it is deemed to be at work all through the year for regulating grant of depreciation allowance under the Income Tax Act. As we read rule 4 (3) and the proviso along with it, we do not understand it was the intention of the Government in the case of factories working only during seasons to restrict the depreciation allowance with reference to the time factor, that is, with reference to the working season in relation to the year. The test really should be, in the case

of seasonal factories, whether the machinery was available for use and for the whole use of agricultural purposes right through the working season. If that condition were to be satisfied, we see nothing in the rule or in the proviso thereto to disentitled the assessee to the whole of the depreciation allowance for that year, though the machinery could have been used only for a portion of the year, that is, during the working season. A very literal interpretation of the proviso would lead even to this absurdity. Obviously, the machinery could not be used all day and every day right through the year. There are the normal working hours even during the day. There are holiday in the year. If depreciation allowance is to be calculated only with reference to the actual time the machinery was used, obviously, the provision in section 5(f) read with rule 4 (3) would lead to this, that the provision for deprecation allowance would be robbed of much of its content. That obviously was not intended by rule 4 (3), nor was that its effect.

6. The second limb of the proviso to rule 4 (3), considered in the light of Part III of Form No. 1, would appear to us to provide for a positions where machinery is acquired in the course of a year. There might also be cases where machinery is sold in the course of the year. Now, with reference to a seasonal factory, machinery might have been acquired after the working season was over or machinery might have been sold before the working season commenced. In either case, though the machinery might have been with the assessee during a portion of the accounting year, the machinery might not have been available for use at all in the year, in the sense it was not available during the working season which alone was really material. The second limb of the proviso to rule 4 (3) would appear to apply to such cases where the machinery itself was purchased in the course of the year or sold away in the course of the year, that is, the machinery was available for use not throughout the year but only during a portion of the year; and in the case of a factory which had only a working season, the position would be more or less the same, that is, the machinery was available only for a portion of the working season. We are not attempting to exhaust the classes of cases to which the second limb of the proviso to rule 4 (3) would apply. We refer to these only by way of examples. But, as we understand the proviso to rule 4 (3), there is no scope for working out proportionately on the basis of the time factor, where in the case of a seasonal factory the machinery was available for use throughout the working season, in which case the assessee would be entitled to the whole of the depreciation allowance permissible for the year u/s 5(f). That test was obviously satisfied in this case, and the Tribunal was right in granting the deprecation allowance claimed by the assessee. On both the points taken, the petitioner State failed. The petition is dismissed with costs. Counsels fee Rs. 100.