

(2000) 08 DEL CK 0060

In the Delhi High Court

Case No : Income Tax A. 32 of 2000

The Joint Commissioner of Income

APPELLANT

Vs

M/s. Anatronics Gen. Co. (P) Ltd.

RESPONDENT

Date of Decision : 29-08-2000

Acts Referred:

Income Tax Act, 1961 — Section 260(A)

Citation : (2001) 247 ITR 25

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

Bench : Division Bench

Advocate : Mr. R.D. Jolly Adv, for the Appellant; Mr. S.K. Aggarwal Advocate, for the Respondent

Judgement

Arijit Pasayat, C.J.—In this appeal u/s 260-A of the Income Tax Act 1961 (in short the Act) order of the Income Tax Appellate Tribunal. New Delhi (in short "Tribunal") in ITA No. 6110/D/95 dated 16th December 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 assessment year 1987-88.

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

assessed company supplies bottles to other concerns on lease basis. For the relevant assessment year, depreciation was claimed on bottles valued of Rs. 14,99,508/- @ 100%. However the assessing Officer allowed depreciation @ 15% under the first proviso to Section 32(i) of the Act. For disallowing assessor's claim of depreciation @ 100%, it was observed that though bottles were plant, each bottle cannot constitute 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 "plant" purchased on the relevant dates exceeded Rs. 5000/-. 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 of Income Tax (Appeals) [in short the 'CIT(A)']. The matter initially was remitted for fresh adjudication by said authority and subsequently another order was passed. 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 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 @ 100%. First appellate authority i.e. C.I.T(A), 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(i)(ii) constitutes a plant and not necessarily all the bottles purchased on a particular date in bulk.

3. Learned counsel for the Revenue submitted that 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. Learned counsel for the assessed on the other hand referred the various decisions, more particularly, decision of this Court in Commissioner of Income Tax Vs. Prem Nath Monga Bottlers (P) Ltd. [1997] 226 ITR 864 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 Vs. Shan Finance (P) Ltd. [1998] 231 ITR 308 has set the controversy at rest. It was held that an assessee 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 Monga's case (Supra) held that even one bottle can constitute a plant. We find no distinction to be permissible, merely because the assessee was a leasing concern as contended by learned counsel for 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 plant. There is no scope for accepting 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 Vs. France*, (1887) 12 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 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?" It is 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 Tribunals' conclusions are on terra firma. No question of law much less a substantial question of law arises out of the order of the Tribunal.

7. Appeal is accordingly dismissed.