
(1991) 01 CAL CK 0038

In the Calcutta High Court

Case No : Income-tax Reference No. 260 of 1987

Tribeni Tissues Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 29-01-1991

Acts Referred:

Income Tax Act, 1961 — Section 32A, 43

Citation : (1991) 190 ITR 487

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : D. Pal and A.K. Roy Choudhury, for the Appellant;S.K. Mitra, for the Respondent

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, for the assessment year 1978-79, the following question of law has been referred to this court :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in confirming the disallowance of investment allowance on tubewells and weighing machines ?"

2. The facts are in a narrow compass. In the original assessment, which was completed u/s 143(3) on September 24, 1982, the Inspecting Assistant Commissioner had disallowed the entire claim for investment allowance despite the fact that the appropriate investment allowance reserve had been created and that details of the plant and machinery were filed and were on record. In appeal, the Commissioner of Income Tax (Appeals) in his order dated February 23, 1983, held that the Inspecting Assistant Commissioner was not justified in withholding the investment allowance due to the appellant.

3. The Inspecting Assistant Commissioner, while giving effect to the order of the Commissioner of Income Tax (Appeals), by his order passed u/s 143(3)/251 dated January 18, 1985, disallowed the investment allowance on electrical

equipment, air-conditioning machines, tube-well and weighing machines with the following observations :

"It is necessary now to determine the quantum of investment allowance admissible to the assessee. Investment allowance was claimed, inter alia, on motors, underground cables, overhead cables, electrical installations, air-conditioning machines, tube-wells and weighing machines. The above are electrical machinery and/or are in the nature of additional equipments and accessories which do not take part in the actual task of manufacturing or processing. Electrical installations and machineries are contradistinguished from the actual plant of the assessee which manufactures paper.

Law has treated electrical machinery and installations differently from plant inasmuch as no extra shift allowance is admissible on electrical installations whereas the same is allowable on general plant and machinery.

In view of the above, I consider that the electrical equipment, air-conditioning machines, tube-wells and weighing machines" are in the nature of additional accessories which are not part and parcel of the actual paper-producing plant."

4. An appeal was filed against the said order of the Inspecting Assistant Commissioner. In appeal, the Commissioner of Income Tax (Appeals) by his order dated March 12, 1985, allowed the entire investment allowance. He held that the tube-well and weighing machines could not have been excluded from the purview of the investment allowance. The Revenue went in appeal before the Tribunal. Before the Tribunal, counsel for the appellant strongly supported the order of the Commissioner of Income Tax (Appeals) on this issue and urged that all the items constituted plant and machinery necessary in connection with manufacture of paper. He further argued that the tube-well was not an ordinary one, It was a deep-sunk tube-well. Water is essential for the manufacture of -tissue paper and, therefore, the tube-well was very much plant used in the course of manufacture. He also argued that the weighing machine is necessary at various stages of production. Therefore, there could be no objection to grant of investment allowance on the tube-well and weighing machines. The Tribunal confirmed the disallowance observing as follows :

"However, the assessee is not entitled to allowance or relief on tube-well and weighing machines. The tube-wells and weighing machines could not be considered as plant and machinery within the meaning of Section 32A of the Act. Even after considering the nature of the use of tube-well and weighing machines, the assessee could not be allowed investment allowance and, consequently, the relief allowed on these items by the Commissioner of Income Tax (Appeals) is withdrawn."

5. The question which calls for determination is whether the tube-well and weighing machines could be treated as plant and as such eligible for investment allowance. It is therefore necessary to ascertain the precise meaning of the word "plant". The word "plant" has not been defined in the Act. The Supreme Court, in

Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh, had occasion to consider the intention and purport of the word "plant". There, the Supreme Court was concerned with the question whether drawings, designs, plans, processing data and other literature could be treated as "book" so as to constitute "plant". The Supreme Court considered the classic definition of "plant" as given by Lindley L. J. in *Yarmouth v. France* [1887] 19 QBD 647. This was a case in which it was decided that the cart-house was plant within the meaning of Section 1(1) of the Employers' Liability Act, 1880. The Supreme Court quoted the relevant passage occurring at page 658 of the Report which runs thus (p. 96 ITR 157) ;

"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."

6. Then, the Supreme Court proceeded to hold (p. 96 of 157 of ITR) :

"In other words, plant would include any article or object, fixed or movable, live or dead, used by a businessman for carrying on his business and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. In order to qualify as plant, the article must have some degree of durability, as for instance, in *Hinton v. Maden and Ireland Ltd.* [1960] 39 ITR 357 , knives and lasts having an average life of three years used in manufacturing shoes were held to be plant. In *Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad* , the respondent, which ran a hotel, installed sanitary and pipeline fittings in one of its branches in respect whereof it claimed development rebate and the question was whether the sanitary and pipeline fittings installed fell within the definition of plant given in Section 10(5) of the 1922 Act which was similar to the definition given in Section 43(3) of the 1961 Act and this court after approving the definition of plant given by Lindley L. J. in *Yarmouth v. France* [1887] 19 QBD 647, as expounded in *Jarrold v. John Good and Sons Ltd.* [1962] 40 TC 681, held that sanitary and pipeline fittings fell within the definition of plant.

In *IRC v. Barclay Curie and Co. Ltd.* [1970] 76 ITR 62 the House of Lords held that a dry dock, since it fulfilled the function of a plant, must be held to be a plant. Lord Reid considered the part which a dry dock played in the assessee company's operations and observed (at p. 67) :

"It seems to me that every part of this dry dock plays an essential part . . . The whole dock is, I think the means by which, or plant with which, the operation is performed."

Lord Guest indicated a functional test in these words (p. 75 of 76 ITR) :

"In order to decide whether a particular subject is an "apparatus", it seems obvious that an enquiry has to be made as to what operation it performs. The functional test is, therefore, essential at any rate as a preliminary."

In other words, the test would be : Does the article fulfil the function of a plant in the assessee's trading activity ? Is it a tool of his trade with which he carries on his business ? If the answer is in the affirmative, it will be a plant."

7. Our attention has been drawn to a decision in the case of Commissioner of Income Tax Vs. Hindusthan Motors Ltd., to which one of us was a party. There the question was whether a tube-well would fall within the definition of the expression "plant" in Section 43(3) of the Income Tax Act, 1961. There, the Division Bench held that a tube-well is an apparatus with equipment necessary for drawing water from subterranean sources and where water is necessary not only for production but also for industrial labour and where such tube-well is required by an assessee in its capacity as an employer as also in its capacity as a businessman, the tube-well falls within the meaning of the term "plant" u/s 43(3) and the same is entitled to development rebate u/s 33 of the Act.

8. This aforesaid decision was followed in the case of Commissioner of Income Tax Vs. Hindustan Motors Ltd., .

9. Mr. Bagchi has relied on a decision of this court in S.B. Cold Storage Industries Pvt. Ltd. Vs. Commissioner of Income Tax, . There, a Division Bench of this court was concerned with the meaning of the expressions "processing" and "production". There, the only question was whether the assessee which stores potatoes in its cold storage plant carries out an operation of processing within the meaning of the said expression as understood in legal parlance. The court held that the object of putting the goods in cold storage is mainly to preserve their original condition and not to produce anything new. By such preservation, no new article is brought into existence. This case has no application to the facts of this case as we are concerned with the question whether tube-well and weighing machines would fall within the meaning of the term "plant" or not.

10. In view of the decision of this court in Commissioner of Income Tax Vs. Hindustan Motors Ltd., it must be held that tube-well falls within the meaning of the term "plant". The question that remains to be considered is whether "weighing machine" can be treated as plant. The word "plant" as we have noticed is one of the words used in fiscal legislation of which no statutory definition is provided, so that it is left to the court to interpret it, having regard to the context in which it occurs. Admittedly, it is not a term of art. The natural or dictionary meaning has been extended from case to case as a result whereof the meaning of the word gradually diverges from its natural or dictionary meaning. There is no fixed definition of plant ; nor are there any exhaustive rules for application to any particular set of circumstances. What is properly to be regarded as "plant" can only be answered in the context of the particular industry concerned, since most of the cases are illustrations rather than authorities. It cannot be disputed that a

weighing machine is not the stock-in-trade which the assessee buys or makes for sale but it is an apparatus used by the assessee in its business. It is not necessary that to constitute plant, an item must fulfil an active role. It is a tool of business which is used in the course of business of manufacture or production, although by itself it may be having a passive role.

12. We may add that Rule 5 of the Income Tax Rules, 1962, provides that depreciation on plant and machinery shall be calculated as provided in Part I of Appendix I. This appendix enumerates the class of assets and the rate at which depreciation is admissible. One of the items of assets which is not entitled to extra shift allowance but which is eligible for depreciation at the general rate is weighing machine.

13. Our attention has been also drawn to the decision of the Supreme Court in the case of COMMISSIONER OF Income Tax, MADRAS Vs. MIR MOHAMMAD ALI. ARUNA MILLS LTD. : INTERVENER., . There, the Supreme Court held that the same meaning ought to be given to the word "machinery" in all the clauses, namely, Clauses (iv), (v), (vi) and (via) of Section 10(2) of the Income Tax Act. If an item was machinery for the purpose of giving an allowance in respect of insurance or for repairs or in respect of normal depreciation, or for the purpose of the first paragraph of Clause (vi), it was also machinery for the purpose of the second paragraph of Clause (vi) and Clause (via).

14. In our view, tube-wells and weighing machines form part of the plant of the assessee in the production of paper. These are necessary in the various stages of production. It is not necessary that, to constitute plant, the asset should be directly engaged in the manufacture of articles. Having regard to the facts and circumstances of the case, we are of the view that the Tribunal fell in error in holding that the tube-well and weighing machines do not fall within the meaning of plant.

15. For the reasons aforesaid, we answer this question in this reference in the negative and in favour of the assessee.

16. There will be no order as to costs.

Shyamal Kumar Sen, J.

17. I agree.