Commissioner of Income-Tax, Madras

Vs

Mir Mohammad Ali. Aruna Mills Ltd.

Civil Appeal No. 145 of 1963

(S. M. Sikri, K. Subha Rao, J. C. Shah JJ)

24.04.1964

JUDGMENT

SIKRI J. -

This is an appeal by the Commissioner of Income-tax, Madras, against the judgment of the High Court, dated November 16, 1959, on a certificate granted by the High Court under section 66A(2) of the Indian Income-tax Act, 1922.

The respondent, Mir Mohd. Ali, hereinafter referred to as the assessee, is a bus owner an transport operator at Vellore, North Arcot District. He had a fleet of buses, and during the year of account ending with March 31, 1950 (relevant to assessment year (1950-51), he replaced the petrol engines in two of his buses (MDJ 583 and MDJ 723) by new diesel engines, incurring an expenditure of Rs. 18,544 in this connection. Before the Income-tax Officer, apart from claiming normal depreciation under the first paragraph of clause (vi) of section 10(2), he also claimed depreciation under the second paragraph of clause (vi) and clause (via) of the Indian Income-tax Act, 1922. The Income-tax Officer only allowed 25% depreciation under the first paragraph of clause (vi). The assessee appealed unsuccessfully to the appellate Assistant Commissioner on this point. There were other points involved in the appeal but as we are not concerned with them in this appeal, they are not being mentioned. On further appeal but as we ar

> "Whether extra depreciation is admissible under the provision of section 10(2)(via) of the Income-tax Act, in respect of a diesel oil engine fitted to a motor vehicle in replacement of the existing engine ?"

We may mention that another question regarding disallowance of interest had also been referred to the High Court but we are not concerned with that in the present appeal.

As the High Court felt that there had been an accidental slip in framing the question, it amended the question and the amended question reads :

> "Whether extra depreciation is admissible under the provisions of section 10(2)(vi) and section 10(2)(via) of the Income-tax Act, in respect of the diesel oil engines fitted to the motor vehicles in replacement of the existing engines ?"

The High Court answered this question in the affirmative, i.e., in favour of the assessee. The Commissioner of Income-tax, on obtaining a certificate under section 66A(2) of the Income-tax Act, has filed this appeal.

Before attempting to answer the question, it is necessary to set out the relevant provisions of the Income-tax Act. The relevant provision, as in force at the relevant time, were :

> "10. (2) : Such profits or gains shall be computed after making the following allowances, namely : . . . .

The point at issue before us has been considered by three High Courts. The Bombay and Andhra Pradesh High Courts have held against the assessee while in the judgment under appeal, the Madras High Court has held in favour of the assessee. The High Court of Andhra Pradesh, in the case of B. Srikantiah v. Commissioner of Income-tax followed the Bombay case and expressly dissented from the Madras case.

In the judgment under appeal the High Court arrived at the conclusion by the following steps :

> (a) Machinery must be given the same meaning with reference to each of the statutory provisions, in section 10(2)(vi) and section 10(2)(via);
>
> (b) A diesel engine is machinery by the test laid down in the case of Corporation of Calcutta v. Chairman, Cossipore and Chitpore Municipa Municipality;
>
> (c) Machinery does not cease to be machinery merely because it has to be used in conjunction with one or more machines. Nor does it cease to be machinery merely because it is, for instance, installed as part of a manufacturing or industrial plant;
>
> (d) The statutory provision for depreciation is in the alternative. Whether it is plant or whether it is machinery without its being itself a plant, the assessee is entitled to claim the statutory allowance for depreciation.

The question then is : Which is the correct view ? First, the history of paragraph two of clause (vi) may be notice. The object of the Income-tax (Amendment) Act, 1946 (VII of 1946), which first inserted the provisions regarding extra depreciation, was to encourage the modernisation and rehabilitations of industry and trade. The Second World War had ended recently and during the long war machinery and plant had not only not been replaced or modernised but had been subjected to excessive wear and tear and needed rehabilitation. During the war, there had also been great advance in technology.

It is then pertinent to point out that the word "machinery" occurs in clauses (iv), (v), (vi) and (via) of section 10(2). Prima facie, the same meaning must be given to the word "machinery" in all these clause. If a machine is machinery for purposes of giving an allowance in respect of insurance or for repairs or in respect of normal depreciation or for the purpose of paragraph on of giving an allowance in respect of insurance or for repairs or in respect or in respect of normal depreciation or for the purpose of paragraph on of clause (vi), it must also be machinery for the purpose of the second paragraph of clause (vi) and clause (via).

But it is said that the scheme of paragraph two of clause (vi) and clause (via) is different from that of paragraph on of clause (vi) inasmuch as before it can qualify for extra depreciation, the machinery must be new and must be installed, and the rate of depreciation is provided in the Act itself. Keeping in view this scheme, it is urged that the word "machinery" must be given a restricted

meaning in paragraph two of clause (vi) and clause (via), and the meaning suggested is that it must be a "self contained unit capable of being put to use in the business, profession or vocation for the benefit of which it was installed". That this is the true meaning, it is further said, is evidence d by the definition of the words "plant" in section 10(5). It is argued that this definition indicates that for purposes of paragraph two of clause (vi) and clause (via), "plant", including vehicle, should be viewed as a unit and component parts thereof are excluded from its purview, and "machinery" also be considered in the

Let us now examine these contentions. First, we do not think that there is anything in the scheme of the second paragraph of clause (vi) and clause (via) that throws any light on the construction of the word "machinery" in these clauses. It is true that the machinery must be new and it must be installed and the rate of allowance is prescribed in the Act itself. But the requirement that the machinery must be new does not tell us what is "machinery". Assuming for the present that a diesel engine is machinery, if an assessee buys and installs a second hand diesel engine, he will not be given the extra allowance under the second paragraph of clause (vi), and the ground would be that the engine is not new and not that because it is second hand it is not machinery. Similarly, if it is purchased but not installed, the ground of refusal would be that it has not been installed and not that because it has not been installed it has ceased to be machinery. Suppose a new machinery is purchase but not installed, it would

The definition of the word "plant" in section 10(5) equally does not throw any light on the meaning of the word "machinery". The word "plant" is of wide import, but even so it may be argued that vehicles, books, scientific apparatus and surgical equipment are not "plant" in all businesses, professions and vocations. The legislature settled this possible controversy, but without throwing any light on the true meaning of the word "machinery".

What then is the test for determining whether a mechanical contrivance is machinery for the purposes of the second paragraph of clause (vi) and clause (via) ? The Privy Council in the case of Corporation of Calcutta v. Chairman, Cossipore and Chitpore Municipality hazarded the following definition of "machinery" :

> "The word 'machinery' when used in ordinary language prima facie means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and inter-dependent operation of their respective parts generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result."

They had already observed that the word "machinery" must mean something more than a collection of ordinary tools. The Privy Council case was not a tax case but prima facie the ordinary meaning of the word "machinery" - and the word "machinery" is an ordinary and not a technical word - must, unless there is something in the context, prevail in the Indian Income-tax Act also.

According to the above definition, a diesel engine is clearly "machinery". Indeed, rule 8 of the Income-tax Rules treats aero- engines separately from aircraft. It is true that this rule cannot be used to interpret the clauses in the Act but it does show that components of an aircraft, which are machinery, can be treated separately.

Further, when the assessee purchased the diesel engines, they were not "plant" or part of a plant :

because they had not been installed in any vehicle. They were, according to the definition given by the Privy Council, machinery. They were not yet part of a plant, and, according to the Act, 20% of the thereof was allowable to the assessee. All the conditions required by the Act are satisfied. If we look at the point of time of purchase and installation, what was purchased and installed was machinery.

The learned counsel next contended that the assessee is not entitled to extra depreciation because a diesel engine cannot be said to be installed. He urges that the word "installed" is wholly inappropriate to cover the fixing of a diesel engine in a motor vehicle. We are of the opinion that there is no force in this contention. As observed by the Bombay High Court in the case of Commissioner of Income-tax v. Saraspur Mills Ltd. the expression "installed" did not necessarily mean "fixed in position" but was also used in the sense of "inducted or introduced"; or to use the language of the Madras High Court in the case of Commissioner of Income-tax v. Sri Rama Vilas Service (Private) Ltd. "installed" would certainly mean "to place an apparatus in position for service or use". We are of the opinion that when an engine is fixed in a vehicle it is installed within the meaning of the expression in clauses (vi) and (via).

Accordingly, we hold that the High Court was correct in answering the question referred to it in the affirmative. The appeal, therefore, fails and is dismissed with costs.

SHAH J. ◆

I am unable to hold that the respondent is entitled to the allowance under section 10(2)(vi), paragraph 2, in respect of the diesel engines claimed by him.

Section 10 of the Indian Income-tax Act provides that tax shall be payable on the profits and gains of an assessee under the head "Profits and gains of business, profession or vocation". By sub-section (2) in the computation of taxable profits certain allowances prescribed therein are permissible.

We are primarily concerned in this appeal with the initial allowance permissible under the second paragraph of clause (vi) of sub-section (2). But clauses (iv), (v), (vi), (via) and (vii) are inter-related and it may be necessary briefly to refer to those provisions. By clause (vi) allowance for premium paid in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purpose of the business, profession or vocation is admissible. Under clause (v) an amount paid on account of any current repairs to such buildings, machinery, plant or furniture is an admissible allowance. Clause (vi) recognises by the first paragraph a right to normal depreciation of a percentage on the prescribed valuation of such buildings, machinery, plant or furniture, which are the property of the assessee. The second paragraph, at the material time, stood as follows :

> "...and where the buildings have been newly erected, or the machinery or plant being new has been installed, after the 31st day of March, 1945, a further sum (which shall however not be deductible in determining the written down value for the purpose of this clause) in respect of the year of erection or installation equivalent, etc. etc."

Clause (via) which was inserted by Act 67 of 1949 permitted a further depreciation allowance in respect of building newly erected or of machinery or plant being new which had been erected or installed after March 31, 1948, in not more than five successive assessments, for the financial year

next following the previous year in which such buildings were erected, or machinery or plant installed. Clause (vii) permitted as an allowance the difference between the written down value and the sale price or scrap value of such building, machinery or plant which had been sold, discarded, demolished or destroyed.

All these clauses dealt with allowances in respect of assets of the specified description and used for the purpose of business, profession or vocation. The depreciation allowance permitted under the first paragraph of clause (vi), which may be called the normal allowance, is in respect of all buildings, machinery, plant and furniture of the assessee used for the purpose of his business. By the second paragraph of clause (vi) an initial allowance in the year in which buildings have been newly erected or the machinery or plant being new has been installed after March 31, 1945, is allowable. Use of the definite article "the" in the second paragraph indicates that the building, machinery or plant referred to in that paragraph must also be used for the purpose of the business, profession or vocation of the assessee. However, to qualify for the initial allowance under paragraph two, the buildings must be newly erected or the machinery or plant being new must have been installed after March 31, 1945.

The rival views are pressed upon us in support of the respective cases of the Commissioner and the assessee as to the meaning of the second paragraph. The Commissioner contends that the building, machinery or plant for which the initial allowance is admissible must be a self- contained unit capable of being put to use in the business, profession or vocation for the benefit of which it is erected or installed. It is submitted that the second paragraph of clause (vi) was enacted with the object of giving a fillip to industry which had been starved during the war years of new machinery and building activity. But the buildings, machinery or plant, to qualify for the initial allowance, were not intended to be in the nature of replacement, addition or repair to existing units : they had to be buildings newly erected or machinery or plant being new installed. On behalf of the assessee it was contended that the legislature has not put any restriction of the nature suggested on behalf of the Commissioner and, therefor

The question to be decided is one about the intention of the legislature. Can it be said that when to an existing building a room or even a floor is added that the additional construction is a building newly erected ? In my view, that does not appear to be the intention. Such an addition to an existing structure, becomes a part of the structure, and cannot be said to be a building newly erected. If every alteration or addition in an existing building is covered by the second paragraph of clause (vi) mere repairs falling within the words of clause (vi) may also qualify for initial allowance. If a mere addition to a building cannot be regarded as such an erection as is contemplated by the second paragraph of clause (vi), it would be difficult to hold that the machinery or plant would include part of machinery or plant.

Counsel for the assessee concedes that replacement of a petrol engine by a diesel engine in a motor transport vehicle is not installation of plant. The question is whether it is installation of machine. In may view replacement of a petrol engine by a new diesel engine in a motor- car cannot be said to be installation of machinery within the meaning of the relevant clauses. To be installed the machinery being new must for the purpose of the business be brought into service as a self- contained unit. If the argument of the assessee is sound, every bolt, nut, rod or flywheel which constitutes a part of machinery would qualify for the initial allowance and the difference between the allowance for repairs and initial allowance may be obliterated. Counsel for the assessee also did not, as I understood him, contend that replacement of a mere part of machinery was installation of machinery within the meaning of the second paragraph of clause (vi). The legislature has not given any

definition for that expression, and t

> "If their Lordships were obliged to run the hazard of the attempt (to define 'machinery') they would be inclined to say that the word 'machinery', when used in ordinary language, prima facie means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation of their respective parts generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result."

But we are not called upon in this case to decide whether a diesel engine is in the abstract machinery : the question is whether a diesel engine, which is used for replacing a petrol engine, in a vehicle used by a transport operator for the purpose of his business is machinery installed within the meaning of section 10(2)(vi), paragraph 2. Whether "machinery" is some contrivance for supplying motive power to another contrivance which directly produces an article or is a mechanical contrivance which produces or assists in the production f an article, it would be difficult to regard introduction of a mere part, which has no independent use in the business conducted by the assessee, as machinery installed for the purpose of the second paragraph of clause (vi). The legislature has provided for the normal depreciation by paragraph 1 of clause (vi) and in respect of newly installed machinery it has provided for the initial allowance, the object being to induce industrialists to start new industries or to extend th

A diesel engine by itself may undoubtedly be used in a business other then that of a transport operator, for instance, for working a pump to draw underground water and may for that purpose be regarded as a self- contained unit. But that is not decisive of the question whether in the business of a regarded as as machinery installed. Machinery installed within the meaning of paragraph 2 of section 10(2)(vi) is qualified by the expression "used for the purposes of the business", and therefore, unless as a self-contained unit the machinery is used for the purposes of the business, initial depreciation would not be admissible in respect thereof. That it may be capable of being used in another business by the same or another assessee as self-contained unit is irrelevant in considering its admissibility for initial allowance in the business in which it is actually used.

It would be fruitless to refer to the schedule under rule 8 of the Income-tax Rules for computing the allowance in respect of the depreciation under section 10(2)(vi). The schedule catalogues different items in respect of which depreciation is admissible at the rates prescribed. But whether a particular item is admissible for initial allowance in the second paragraph must depend upon two factors -(i) that it is in respect of the year of erection or installation that the initial allowance is permissible; and (ii) the building or the machinery is used for the purposes of the business. If it is a predicate of admissibility to initial allowance that the machinery must be new and a self-contained unit in the particular business in the carrying on of which the initial allowance is claimed, the fact that in certain conditions that machinery may be regarded as self- contained for the purpose of another business in which it is used, would furnish no guide in ascertaining whether initial allowance is permissible as a d

In my view the appeal should be allowed and the question referred for opinion should be answered in the negative.

ORDER. - In accordance with the opinion of the majority the appeal is dismissed with costs.

Appeal dismissed.

</html