Commissioner of Income-Tax, Punjab, Jammu & Kashmir & Himachal Pradesh, Patiala

Vs

M/s. Alps Theatre, Patiala

Civil Appeal No. 26 of 1966

(J. C. Shah, S. M. Sikri, V. Ramaswami - I JJ)

15.03.1967

SIKRI, J. –

At the instance of the Commissioner of Income Tax, the Appellate Tribunal, Delhi Bench "C", referred the following question :

> "Whether the cost of land is entitled to depreciation under the Schedule to the Income-tax Act along with the cost of the building standing thereon ?"

This question arose out of the following facts : The respondent, M/s. Alps Theatre, hereinafter referred to as the assessee, carries on business as exhibitor of films. The Income Tax Officer initiated proceedings under section 34(1) (b) of the Indian Income Tax Act, 1922, on the ground that in the original assessment depreciation was allowed on the entire cost of Rs. 85,091 shown as cost of the building which included Rs. 12,000 as cost of land. The Income Tax Officer, by his order dated February 22, 1959, recomputed the depreciation, excluding cost of land. The assessee appealed to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner upheld the order of the Income Tax Officer. The assessee them appealed to the Appellate Tribunal which accepted the appeal. In accepting the appeal it observed as follows :

> "You cannot conceive of a building without the land beneath it. It is not possible to conceive of a building without a bottom. What Section 10(2) (vi) of the Act says is that depreciation will be allowed on the building. The word "building" itself connotes the land upon which something has been constructed. It was, therefore, wrong on the part of the authorities below to exclude the value of the land upon which some constriction was made. The true meaning of the word 'building' means the land upon which some construction has been made. The two must necessarily go together."

The High Court answered the question referred to it against the Department. Mahajan, J., observed that in Section 10(2) (vi) of the Income Tax Act, a building is placed at par with machinery and furniture and is treated as a unit, and, therefore, for the purposes of depreciation, a building cannot be split up into building material and land. He further observed that if the legislature wanted to exclude land from the building for purpose of depreciation it could have said so. He then added :

> "Moreover, depreciation is allowed on the capital. The capital here is a unit building. If later on it is sold and if fetches more than its written down value the surplus is liable to tax [see in this connection Section 10(2) (vii), proviso.]"

He felt that "the crux of the matter is that the building is treated as a unit for purposes of

depreciation or repair, and there is no warrant in the Act which would permit us to split the unit for the purposes of section 10." He further felt that at any rate two equally plausible interpretations are possible and the one in favour of the assessee should be adopted.

Dua, J., in a concurring judgment, felt that the question was not free from difficulty, but he answered the question in favour of the assessee on the ground that much could be said for both points of view and the view in support of the assessee's submission had found with the Tribunal which had not been shown to be clearly erroneous.

The answer to the question depends upon the true interpretation of section 10(2) (vi), and in particular whether the word "building" occurring in it includes land. Section 10 deals with the profits and gains derived for any business, profession or vocation. Section 10(2) provides that such profits or gains shall be computed after making certain allowances. The object of giving these allowance is to determine the assessable income. The first three allowances consist of allowance for rent paid for the business premises, allowance for capital repairs and allowance for interest in respect of capital borrowed. Sub-clauses (iv), (v), (vi), (vi-a) and (vii) of section 10(2) deal with allowances in respect of building, machinery, plant or furniture. The word "building" must have the same meaning in all these clauses. Sub-clause (iv) runs as under :

> "in respect of insurance against rick of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, profession or vacation, the amount of any premium paid."
>
> "Building" here clearly, it seems to us, does not include the site because there cannot be any question of distraction of the site. Clause (v) reads :
>
> "in respect of current repairs to such building, machinery, plant or furniture, the amount paid on account thereof."

This again cannot include the site. Then we come to sub-clause (vi), the relevant portion of which reads as under :

> "in respect of depreciation of such buildings, machinery, plant or furniture being the property of the assessee, a sum equivalent... as may in any case or class of cases be prescribed."

It would be noticed that the word used in "depreciation" and "depreciation" means :

> "a decrease in value of property through wear, deterioration or obsolescence; the allowance made for this in book-keeping, accounting, etc." (Webster's New Word Dictionary').

In that sense land cannot depreciate. The other words to notice are "such building". We have noticed that in sub-clauses (iv) and (v), "building" clearly means structures and does not include site. That this is the proper meaning is also borne doubt by rule 8 of the Indian Income Tax Rules, 1922. Rule 8 has a schedule, and as far as building are concerned, it reads as under :

> #----------Class of asset Rate per- Remarks centage----------1. Buildings -(1) First class substantial 2.5buildings of selected materials... (Double

these number (taken for factory(2) Second class buildings of (building, excludingless substantial construction... 5 (offices, godowns, (officers' and(3) Third class buildings of (employees' quarters.construction inferior tothat of second class buildingsbut not including purelytemporary erections 7.5(4) Purely temporary erectionssuch as Wooden structures. No rate is prescribed : renewals will be allowed as revenue expenditure.##

The rate of depreciation is fixed on the nature of the structure. If it is a first class substantial building, the rate is less. In other words, first class building would depreciate at a much less rates than a seconds class building. It would be noticed that for purely temporary erections, such as wooden structures, no rate of depreciation is prescribed and instead renewals are allowed as revenue expenditure. But if the contention of the respondent is right, some rate for depreciation should have been prescribed for land under the temporary structures. Further, it would be difficult to appreciate why the land under a third class building should depreciate three times quicker than land under a first class building.

One other consideration is important. The whole object of section 10 is to arrive at the assessable income of a business after allowing necessary expenditure and deductions. Depreciation is allowable as a deduction both according to accountancy principles and according to the Indian Income Tax Act. Why ? Because otherwise one would not have a true picture of the real income of the business. But land does not depreciate, and if depreciation was allowed it would give a wrong picture of the true income.

The High Court relied on Cooperation of the City of Victoria v. Bishop of Vancouver Island, but in our view this case is distinguishable and gives no assistance in determining the meaning of the word 'building' in the context of section 10(2) (vi). In this case the Privy Council had to construe section 197(1) of the Municipal Act, British Columbia, which exempted from municipal rates and taxes "every building set apart and in use for the public worship of God." The Privy Council held that the above exemption applied to the land upon which a building of the description mentioned above was erected as well as to the fabric. The Privy Council was not concerned with the question of depreciation but with the question of exemption from Municipal rates.

In the result the appeal succeeds, the judgment of the High Court set aside and the question referred is answered in the negative and against the assessee. In the circumstance, there will be no order as to costs.

Y. P. Appeal allowed.

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