Commissioner of Income-Tax, Andhra Pradesh

Vs

Taj Mahal Hotel

Civil Appeal No. 1368 of 1968

(K.S. Hegde, A.N. Grover JJ)

12.08.1971

JUDGMENT

GROVER J. -

This is an appeal by certificate from the judgment of Andhra Pradesh High Court, in a case referred under section 66(1) of the Indian Income-tax Act, 1922 (hereinafter referred to as "the Act").

The respondent who is the assessee is a registered firm running a hotel at Secunderabad with branches at Sultan Bazar and King Kothi in Hyderabad. During the previous year ending 30th September, 1959, relating to the assessment year 1960-61, the assessee incurred an expenditure of Rs. 57,154 in installing sanitary fittings and of Rs. 1,370 for pipe-line fittings. The assessee claimed development rebate on these two items at the rate of 25 per cent. Under section 10(2) (vib) of the Act amounting in the aggregate to Rs. 14,629. The Income- tax Officer disallowed the claim. On appeal, the Appellate Assistant Commissioner upheld the disallowance. An appeal was taken to the Appellate tribunal. The tribunal rejected the appeal holding treat the definition of "plant" must necessarily be the same, whether it was for claiming depreciation under section 10(2) (vi) or for development rebate under section 10(2) (vib). Accordingly, it was held that the sanitary and pipe-line fittings did not fall within the meaning of the word "plant". On being moved under section 66(1) of the Act, the following question was referred for the opinion of the High Court :

> "Whether the sanitary fittings and pipelines installed in the King Kothi branch of the hotel constituted 'plant' within the meaning of the section 10(5) of the Indian Income-tax Act and whether the assessee is entitled to development rebate in respect thereof under section 10(2) of the Act ?"

The High Court answered the question in the affirmative and in favour of the assessee.

The only question that was argued before the High Court and which has been debated before us is whether sanitary and pipe-line fittings in a building which is run as a hotel would fall within the meaning of the word "plant" in section 10(2)(vib) of the Act.

Section 10(1) of the Act provides that tax shall be payable by an assessee in respect of the profits and gains of any business, profession or vocation. Sub-section (2) gives the allowances which have to be made in the computation of such profits and gains. Clause (vi) of that sub-section relates to the depreciation in respect of "such buildings, machinery, plant or furniture being the property of the assessee."

Clause (vib) of section 10(2) is as follows :

> "In respect of a new ship acquired or new machinery or plant installed after the 31st day of March, 1954, which is wholly used for the purposes of the business carried on by the assessee, a sum by way of development rebate in respect of the year of acquisition of the ship or of the installation of the machinery or plant, equivalent to..."

Section 10(5) provides, inter alia, that in sub-section (2) "plant" includes vehicles, books, scientific apparatus and surgical equipment purchased of the purpose of the business, profession or vocation."

The main argument of the learned counsel for the Commissioner of Income-tax, who is the appellant, is that the word "plant" should not have been given a wide meaning and should have been interpreted according to the common under standing in commercial circles among person who deal in plant and machinery. It is asserted that the development rebate cannot be claimed in respect of the items which have become a part of the building itself. It has also been pointed out that the assessee while claiming depreciation allowance has included the assets in question under the head "furniture and fittings", the rate claimed being 9 per cent. which was duly allowed by the Income-tax Officer. This rate of 9 per cent. was applicable under rule 8 only to furniture and fittings used in hotels, etc. If the assets were to be treated as plant, only the general rate of 7 per cent. would be applicable. The definition of "plant" must necessarily, therefore, be the same whether it be for claiming depreciation under section 10(2) (vi) or for development rebate under section 10(2) (vib). It has also been suggested that the primary meaning of the word "plant" has connection with mechanical or industrial business or manufacture of finished goods from raw goods and that sanitary and pipe-line fittings could not possibly satisfy those conditions.

Now it is well-settled that where the definition of word has not been given it must be construed in its popular sense if it is a word of every day use. Popular sense means "that sense which people conversant with the subject-matter with which the statute is dealing, would attribute to it". In the present case, section 10(5) enlarges the definition of the word "plant" by including in it the words which have already been mentioned before. The very fact that even books have been included shows that the meaning intended to be given to "plant" is wide. The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the rods or phrases occurring in the body of the stature. When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import, but also those things which the interpretation clause declares that they shall include. The word "include" is also susceptible of other constructions which it is unnecessary to go into.

The case, J. Lyons & Co. Ltd. v. Attorney-General, relied upon by the learned counsel for the appellant, apart from being distinguishable, hardly supports the contention of the appellant. In that case, it was held that electric lamps and fittings in a tea shop were not part of the apparatus used for carrying not he business but were part of the setting in which the business was carried on, and, therefore, were not "plant", within the meaning of certain provisions of the War Damage Act, 1943. It was observed at page 286 :

> "It these articles are plant, it can only be by reason that they are found on premises exclusively devoted to trade purposes. Trade plant alone need be considered." The meaning of "plant" as given in Yarmouth v. France was accepted as correct. According to that meaning "plant" includes whatever apparatus or instruments are

> used by a businessman in carrying on his business. In our judgment, the more apposite decision is that of the Court of Appeal in Jarrold (Inspector of Taxes) v. John Good & Sons. Ltd. There the nature of the assessee's business required that its office accommodation should be capable of sub-division into a number of rooms varying in size, etc., according to the requirements from time to time of the agencies which it carried on. The office accommodation consisted of a large open floor space in which partitions could be erected so as to subdivide the floor space into a number of rooms of any size. Certain partitions were made which were screwed to the floor and ceiling only and could be easily moved if it was desired to alter the size or number of the rooms. The question was whether these partitions were plant within sections 279 and 280 of the English Income Tax Act, 1952, so an to entitle the company to allowances under those sections. There the material words in the statute were "whether the person carrying on trade in any year of assessment has incurred expenditure on the provision of machinery or plant for the purposes of the trade". It was held that the partitions were "plant" as they were used in the carrying not of the company's trade or business. Donovan L. J. held that the partitions were used to enable the trader to cope with the vicissitudes of the business as it increased and diminished and relied on the finding of the commissioners that the flexibility of accommodation which the partitions provided was a commercial necessarily for the company. Further illustrations were given of assets which would fall within the meaning of "plant" :
>
> "The heating installation of a building may be passive in the sense that in involves no moving machinery, but few would deny it the name of 'plant'. The same thing could, no doubt, he said of many air conditioning and water softening installations."

It cannot be denied that the business of a hotelier is carried don by adapting a building or premises in a suitable way to be used as a residential hotel where visitors come and stay and where there is arrangement for meals and other amenities are provided for their comfort and convenience. To have sanitary fittings, etc., in a bath room is one of the essential amenities or conveniences which are normally provided in any good hotel, in the present times. If the partitions in Jarrold's case could be treated as having been used for the purpose of the business of there trader, it is incomprehensible how sanitary fittings can be said to have no connection with the business of the hotelier. He can reasonably expect to get more custom and earn larger profit by changing higher rates for the use of rooms if the bath rooms have sanitary fittings and similar amenities. We are unable to see haw the sanitary fittings in the bath rooms in a hotel will not be "plant" within section 10(2)(vib) read with section 10(2) (5) when it is quite clear that the intention of the legislature was to give it a wide meaning and that is why articles like books and surgical instruments were expressly included in the definition of "plant". In decided case, the High Courts have rightly understood the meaning of the terms "plant" in a wide sense. (See Commissioner of Income-tax v. Indian Turpentine and Rosin Co. Ltd.).

If the dictionary meaning of the order "plant" were to be taken into consideration on the principle that the literal construction of a stature must be adhered to unless the context renders it plain that such a construction cannot be put on the words in question - this is what is stated in Webster's Third New International Dictionary :

> "Land, buildings, machinery, apparatus and fixtures employed in carrying on trade or other industrial business...."

It is, however, unnecessary to dwell more on the dictionary meaning because, looking to the provisions of the Act, we are satisfied that the assets in question were required by the nature of the hotel business which the assessee was carrying on. They were not merely a part of the setting in which hotel business was being carried on.

The High Court was right in not accepting the reasoning of the tribunal based on the rates relating to depreciation under section 10(2) (vi) and the assessee having claimed that the sanitary and pipe- line fittings fell within the meaning of "furniture and fittings" in rule 8(2) of the Rules. It has been rightly observed that the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle done its effect. If the assessee had claimed higher depreciation allowance that would not detract from the meaning of the word "plant" in clause (vib) of section 10(2).

In the result, this appeal fails and it is dismissed with costs.

</html