SUPREME COURT OF INDIA

Saharanpur Electric Supply Co. Ltd.

Vs.

Commissioner of Income-Tax

(S. Rangnathan and N.D. Ojha JJ.)

15.01.1992

JUDGMENT

RANGANATHAN, J.

The appellants are all electric supply undertakings situated in various parts of the country. All the appeals relate to the assessment year 1962-63 or later. They raise a common question regarding the computation of depreciation on service lines installed by the assesses, a part of the expenditure incurred in connection with the installation of which is recovered by the assesses from consumers of electricity.

Depreciation, under the Income-Tax Act, is computed as a percentage of the "written down value" of the asset in question. The Income-tax Act, 1961 came into force on 1.4.1962. S. 43(6) of the Act defines "written down value" thus :

`Written down value' means-

"(a) in the case of assets acquired in the previous year, the actual cost to the assessee;

(b) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed to him under this Act, or under the Indian Income-tax Act, 1922(11 of 1922), or any Act repealed by that Act, or under any executive orders issued when the Indian Income- tax Act, 1886 (2 of 1886), was in force."

The Act also defines the expression `actual cost' in Section 43(1). It reads thus:

"Actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority : It will be seen from the main paragraph of sub-section (1) of Section 43 that it does not really define what is meant by the actual cost of an asset to the assessee; it only contains a gloss that, whatever the expression may mean, that figure has to be reduced by that portion of it, if any as has been met directly or indirectly by any other person or authority. The question before us arises partly due to this circumstance and partly due to the earlier legislative history of these provisions.

Under Section 10(2)(vi) read with Section 10(5) of the Indian Income-tax Act, 1922, an assessee was entitled to an allowance of depreciation at a percentage of the actual cost to the assessee or the written down value of the relevant asset owned by him and used for the purposes of business. It is

common ground that the service lines constitute machinery or plant on which the assesses are entitled to depreciation. Also, as under the present Act, so under that Act, `written down value' was defined with reference to `actual cost'. Initially, between 1922 and 1952, the expression `actual cost' was defined to mean just `the actual cost of the asset to the assessee'. As already mentioned, a part of the cost of the assets in the present case viz. service lines is met by the consumers with the result that, though the company might have incurred a particular amount as expenditure towards the installation of the service lines, `the actual cost' to it, of the service lines, could, in a loose sense, be said to be the amount of expenditure incurred by it in this behalf less the amount recovered from the consumers in respect thereof. The Income-tax Department tried to adopt this layman's approach and restrict the depreciation on the service lines on the basis of their cost less the amount recovered from consumers. The Bombay High Court in C.I.T v. Poona Electric Supply Company Ltd., [1946] 14 ITR 622, and in C.I.T.V. Bombay Suburban Electric Supply Co. (p) Ltd.[1977] 106 ITR 752 the Kerala High Court in C.I.T. v. Cochin Electric Co. Ltd. [1965] 57 ITR 82, the Punjab High Court in C.I.T. v. Ambala Cantt. Electric Supply Co. Ltd., [1971] 82 ITR 217 and the Patna High Court in C.I.T. v. Ranchi Electric Supply Co. Ltd. [1954] 26 ITR 89 disapproved of this line of reasoning. Relying on the decision of the House of Lords in Birmingham Corporation v. Barnes, [1935] 3 I.T.R. Supp. 26(HL), they held that, in ascertaining the actual cost of an asset to the assessee, it was immaterial that someone else has recouped the assessee, wholly or in part, towards such cost. This general principle is well settled by these decisions and is also not in issue before us now. The 1922 Act was amended by the Income-tax Amendment Act, 1953 w.e.f. 1.4.1952 in this respect. This amendment introduced an explanation to the definition of `actual cost' to nullify the effect of the above decision. Though, at the stage of the Bill, the proposal was to exclude from the concept of actual cost, any moneys reimbursed to the assessee in this regard by any outside source vide [1952] 21 ITR (SC) 40, the amendment, as finally effected, permitted only a limited exclusion. The Explanation read as follows : "For the purposes of this sub-section, the expression `actual cost' means the actual cost of the assets to the assessee reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by Government or by any public or local authority.....

When enacting the Income-tax Act, 1961, however, the legislature revived the earlier proposal of 1953 and the present Act directs the exclusion, in the computation of the actual cost, of all amounts reimbursed to the assessee by any person whatsoever.

Now the question which arises before us, in relation to the assessment year 1962-63, is this. This appellant companies had installed service connections during the relevant previous year. So far as these are concerned, there is no dispute that depreciation has to be allowed on them with reference to their `actual cost' as defined in S. 43(1) i.e. by excluding contributions or reimbursements from consumers. But the appellants have also to be granted depreciation on service connections installed in earlier previous years and it is only in respect of such assets that the present controversy arises. the depreciation on those assets, under Section 43(6) of the 1961 Act, has to be computed with reference to their written down value, that is, their `actual cost' less all depreciation allowed in respect thereof under the 1922 Act till the assessment year 1961-62. Since those assets had been acquired by the assessment years, their actual cost had been duly ascertained for the previous year of acquisition in accordance with the provisions of Section 10(5)(a) of the Indian Income-tax Act, 1922. If the assets had been acquired earlier than the previous year relevant to the assessment year 1952-53, the actual cost of the assets to the assessee would perhaps have been taken without any deductions whatever in respect of the contributions made by other persons towards the cost of the asset. In the case of such of those assets as had been acquired during the previous years relevant to the assessment years 1952-53 to 1961-62, the actual cost would have been determined in accordance

with the relevant law as it stood at that time viz. by taking their actual cost and deducting therefrom contributions made by the Government or any public or local authority to enable the assessee to acquire the assets. The assesses' contention is that there is no justification for disturbing the written down value as so determined and that the depreciation for the assessment year 1962-63 and thereafter should be based only on the actual cost and written down value so determined earlier. They plead for the undisturbed continuance of the earlier depreciation sheets in respect of these assets. On the other hand, the Revenue contends that, though the assets have been acquired in earlier previous years, the statutory mandate of section 43(6)(b) is that their actual cost should be determined afresh for each assessment year and this, for assessment year 1962-63 onwards, can only be in accordance with the definition contained in the 1963 Act. On this view, the Department has ignored the written down value of these assets as per the earlier record, computed the actual cost of the service lines by excluding there from the contribution of consumers but given credit thereafter for all depreciation allowed in respect thereof (on the basis of the higher actual cost as then determined) in all the earlier years. The question is which if these contentions is correct.

All the High Courts have upheld the stand of the Revenue. They have answered the question by holding that the actual cost of all assets for purposes of assessment year 1962-63 and onwards, whatever might have been the date of acquisition of the assets in question, has to be computed in accordance with the new formula laid down by the Income-tax Act of 1961. These decisions are : Riverside (Bhatpara) Electric Supply Co. Ltd. v. C.I.T. (1977] 109 I.T.R. 399 (Cal); C.I.T. v. South Madras Electric Supply Corporation Ltd., [1977] 109 I.T.R. 426 (Mad); C.I.T. v. Saharanpur Electric Supply Co. Ltd., [1977] 109 I.T.R. 545 (All); C.I.T. v. Bassein Electric Supply Co. Ltd., [1979] 118 I.T.R. 884 (Bom); Rohtak & Hissar Districts Electric Supply Co. (P) Ltd., v. C.I.T., [1980] 128 I.T.R. 52 (Del); Ambala Electric Supply Co. Ltd. v. C.I.T., (1983) 139 I.T.R. 925 (Punj); C.I.T. v. Bombay Suburban Electricity Co. Ltd ., [1983] 142 I.T.R. 298 (Bom); British Insulated Callendars, Cables Ltd., v. C.I.T., (1983) 142 I.T.R. 300 (Bom.); C.I.T. v. Panvel Taluka Electrical Development Co. Ltd., [1983] Taxation 71(1)-14 (Bom.);' Ranch Electric Supply Co. Ltd. v. C.I.T., [1984] 150 I.T.R. 95 (Pat.); C.I.T. v. Lonawalla Khandalla Electric Supply Co.Ltd.,(1985) 22 Taxman 77 (Bom.); C.I.T v. Calcutta Electric Supply Corporation Ltd., [1987] 166 I.T.R. 797 (Cal); C.I.T. v. Bassein Electric Supply Co. Ltd., (1989) 177 I.T.R. 482 (Ker.); C.I.T. v. Calcutta Electric Supply Corporation Ltd. [1989] 179 I.T.R. 580 (Cal); and Ahmedabad Electricity Co. Ltd. v. C.I.T., [1991] 190 I.T.R. 413 (Bom.). The appellants before us contest the correctness of this unanimous view of the High Courts. Indeed some of the decisions above referred to form the subject matter of some of these appeals.

Dr. Debi Pal, Sri Dastur and Sri Ramachandran, who appeared for the assessees, submitted that the various High Courts have not correctly appreciated the arguments put forward before them and failed to see that the interpretation approved by them will result in absurdities and anomalies. In view of the consensus of views of the High Courts against them, they have taken considerable pains to address elaborate arguments which merit serious consideration in these appeals.

We may, at the outset, dispose of an argument raised by Dr. Pal. His point was that the figure of actual cost ascertained in respect of any asset in any of the earlier previous years cannot be altered in a subsequent year. According to him, both the 1922 Act as well as the 1961 Act envisage a continuance of the figure of actual cost once arrived at in respect of any plant or machinery throughout the life-time of such plant or machinery. He says that, for the assessment year 1962-63, the question of determination of actual cost can arise only in respect of assets acquired during the relevant previous year under clause (a) of S. 43(5). So far the assets in question are concerned,

which had been acquired in earlier previous years, depreciation has to be calculated on the basis of the written down value. Since the written down value in respect of these assets had already been ascertained for the assessment year 1961-62, all that has to be done further, to find out the written down value for the assessment year 1962-63, is to deduct therefrom the depreciation allowed for the assessment year 1961-62. Attractive as this argument appears, there are two difficulties in accepting it. The first is the language of S.43(6) and, even, its predecessor s. 10(5)(a) of the 1922 Act. Though, in substance, depreciation on an asset for any assessment year is calculated on its written down value which is normally carried forward from an earlier assessment year, the phraseology of the Act does not bear out the contention that the actual cost of the asset has to be determined only once viz. in the previous year of its acqui- sition. S. 43(6) specifically deals with two categories of assets : (i) those acquired during the relevant previous year and (ii) those acquired earlier to that. Even in re- spect of the latter class of assets, the Act envisages a computation of the actual cost of the asset and the deduc- tion therefrom of all depreciation allowed in earlier years in respect of the asset. Thus the first step, statutorily prescribed, for the determination of the written down value of any asset for any year, is for the Assessing Officer to determine its actual cost. This is a mandatory step which the Officer cannot be prevented from taking merely because the actual cost of the asset has already been determined in one or more earlier years, though it may be true that in ninety nine (and perhaps even more) percent of the cases, the result (barring mistakes and some special situations) will just be the equivalent of the written down value take for the immediately preceding assessment year less the depreciation allowed for that year. This mechanics of the definition was explained by the Calcutta High Court in Karnani Industrial Bank v. C.I.T. [1954]25 I.T.R. 558, approved by this Court in Maharana Mills v. I.T.O. [1959]36 I.T.R. 350 and followed in Habib Hussein v. C.I.T. [1963]48 I.T.R. 859 (Bom.). In the light of these decisions and the clear language of the statute, it is not possible to accept the contention that the Income Tax Officer had no justifica- tion to compute first the actual cost of an asset which had been acquired before the previous year. The second difficul- ty in the way accepting the argument of Dr. Pal is that, whatever its validity over the period of continuous opera- tion of the same Act (of 1922 or 1961), it can have no application for the assessment year 1962-63. There is no provision in the 1961 Act which permits or compels the adoption or continuance of the figure of actual cost and written down value determined under the provisions of the earlier statue which has been repealed by the 1961 Act. We, therefore, reject this contention of Dr. Pal. Perhaps realizing the above difficulty, Sri Dastur put forward a slightly modified contention. He concedes that the actual cost as determined for the earlier years is not sacrosanct or untouchable and that there may be circum stances in which it may have to be modified in the light of subsequent events. According to learned counsel, however, changes in actual cost in three situations can be taken into account for purposes of the definition in S.43(1) read with sub-sec. (6). These, according to him, are :- (i) Subsequent factual occurrences which call for a modification of the figure of actual cost as at the time of acquisition determined earlier: (ii) Discovery of arithmetical errors in the earlier computation of the actual cost or written down value of any asset; and

(iii) Redetermination of the original actual cost necessitated by a specifically retrospective statutory provision.

He points to instances of such modifications permitted by judicial decisions. In Karnani Industrial Bank Ltd. v. C.I.T. [1954]25 ITR 558 (Cal.) the assessee claimed to have purchased a machinery for Rs. 3,94,000 and obtained depreciation on that basis from assessment year 1939-40 onwards. In proceedings for assessment year 1946-47, the Officer discovered that the cost of the machinery was only Rs. 2,80,000 and, since assessee had already obtained depreciation beyond this, refused the

grant of depreciation for assessment years 1946-47 and 1947-48. This was upheld by the Calcutta High Court. In Maharana Mills (P) Ltd. v. I.T.O. [1959]36 ITR 350(SC) the Officer rectified the assessments of the assessee to re-work the written down value computed and the depreciation granted for earlier years as not being in accordance with law. The validity of these rectifications was upheld. In Habib Hussein v. C.I.T., [1963]48 ITR 859 (Bom) the asset in question had been acquired in the previous year relevant to the assessment year 1950-51. The assessee had acquired the asset under an agreement dated 4.6.48. But that agreement had been revised on 10.7.50 (after the close of the relevant previous year). The assessee claimed, nevertheless, that a sum of Rs. 3,30,000 payable by virtue of the subsequent agreement, also formed part of the actual cost of the asset. This claim was upheld by the High Court. According to learned counsel, this was also a case where the original figure of actual cost was more precisely defined and quantified later. Counsel con- cedes that, in cases of this type the actual cost as deter- mined in earlier years might need to be modified and that the assessing officer will be at liberty to do so. He, however, contends that the actual cost cannot be altered merely because a subsequent legislation provides for a different formula for ascertainment of actual cost; that formula may very well apply in respect of assets acquired in and after the previous year to which the new law will be ap- plicable but it cannot be retrospectively made applicable to assets which had been acquired much earlier and the actual cost of which had been determined in accordance with the earlier prevalent law, unless the statute specifically says so. As an example, he refers to Explanation 8 to S. 43(1) which, though inserted in 1989, provides that certain expenditure, of the nature specified therein, "shall not be included, and shall be deemed never to have been included in the actual cost of such asset."

We are of the view that it is difficult to read any limitations into the statutory provision in S. 43(6) as contended for by counsel. As already explained, the definition envisages the computation of the actual cost of each asset, for every assessment year, not only in respect of assets acquired during the previous year but also in respect of assets acquired before the previous year. This naturally has to be done with reference to the factual or legal position that may prevail during the relevant previous year and can be taken into account for the relevant assessment year. The section does not say that the computa- tion of the actual cost of the asset has to be based only on the facts or law as they stood at the time of acquisition of the asset and as could have been taken into account for the assessment year relevant to the previous year of acquisi- tion. It is one thing to contend, as Dr. Pal did, that once the actual cost as at the date of acquisition has been computed, that figure is final and cannot be interfered with subsequently. But that contention is not acceptable for reasons already discussed. Once it is conceded that the figure of actual cost can require modifications it is not possible to confine such modifications in the manner con- tended for by Sir. Dastur. Where subsequent information- factual or legal reveals that the actual cost determined originally was wrong, there can be no doubt that the origi- nal figure of actual cost has to be altered, if need be, and, if possible, by reopening the earlier assessments and, if that be not be possible, at least for the future. This is illustrated by the situations in Karnani and Maharana Mills and this is also the position in cases to which Explanation 8 applies. These are situations which have a retrospective impact on the original actual cost. But it is equally con- ceivable that the `actual cost' may undergo a change which does not relate back in fact or law and there is no reason why such change should not be given effect to in future, irrespective of what may have happened in the past. In fact this is what happened in Habib Hussein's case. It was not a case of the category suggested by Sri Dastur. It was a case where the figure of original cost underwent a change by reason of a subsequent agreement and the High Court directed that the sum of Rs. 3,30,000 or part thereof attributable to the acquisition of the assets "should be included in the actual cost of these assets to the assessee in the respec- tive year or years of account at the commencement of which the liability to pay it or part thereof had

accrued or would accrue". That the redetermination of actual cost permitted by the provision with which we are concerned is not restricted to cases of the limited range of retrospective change in the actual cost suggested by Sri Dastur is also illustrated by the decision in C.I.T. v. Hides & leather Products P. Ltd., [1975]101 I.T.R. 61 (Guj.). In that case, "the assessee who maintained its accounts on the mercantile system purchased a piece of machinery from a foreign firm in 1955. No amount was paid towards the price thereof on the ground that there was some defect in the machinery the liability to the foreign supplier was shown in the books of account and balance-sheet of the assessee. But in 1960, by making appropriate entries the assessee wrote back the amount of Rs. 30,572 being the price of machinery, debited the amount in the account of the foreign supplier and credited the same amount in the capital reserve account. On the question whether the assessee was entitled to depreciation on the actual cost computed at Rs. 30,572 for the assessment years 1961-62 to 1965-66". The High Court held that "in view of the fact that the foreign supplier had not recovered the amount of Rs. 30,572 and no legal steps had been taken towards its recovery for so long a time, it was not unreasonable to infer that the foreign supplier had treated the liability of the assessee to itself as having ceased and in fact and in substance there had been a cessation of this liability. The Act of 1922 applied to the assessment year 1961-62, and as the foreign supplier was neither Government nor public nor local authority, though there was cessation of liability the assessee was entitled to have the benefit of the entire amount of Rs. 30,572 as the actual cost. Depreciation was allowable to the assessee for the assessment year 1961-62 on the basis that the cost to it of the machinery was Rs. 30,572. The Act of 1961 applied to the assessment years 1962-63 to 1964-65 and under Section 43(1) of the Act, since there was cessation of liability, the actual cost of the machinery to the assessees for these assessment years should be reduced by Rs. 30,572". Sri Dastur challenged the correctness of this decision in so far as it held that the original cost itself did not stand modified as a result of the subsequent development. We are not concerned with that aspect here. All that is relevant is that this is a decision which permits as alteration in the figure of actual cost consequent on subsequent factual occurrences that do not relate back. It also shows that the actual cost for 1961-62 could be scaled down for the assess- ment year 1962-63. There are also other decisions which make it clear that the original cost of an asset may change after the year of installation or erection as a result of further liabilities arising later : C.I.T. v. U.P. Hotel- Restaurant Ltd. [1980]123 I.T.R. 626 (All.) and Kilkotagiri Tea and Coffee Estate Ltd. v. C.I.T., (1978) 113 I.T.R. 729 (Ker.) decided in the context of depreciation allowance and C.I.T., v. Mithlesh Kumari, [1973]92 I.T.R. 9 (Del.) and C.I.T. v. Gupta, [1979] 119 I.T.R. 372 (A.P.) decided in the context of the allied "cost of acquisition" for purposes of capital gains.

These apart, there are clearly situations in which the actual cost does get altered prospectively and not retrospectively. One such instance is where the cost of an asset increases or decreases on account of a fluctuation in the value of the currency. Suppose an asset was purchased in 1965 for $10,000 (equivalent to say, Rs. 1,00,000) and the price or the moneys borrowed by the assessee in foreign currency for its payment, remained outstanding. The evalua- tion of the rupee in June 1966 would result in the increase of the price to say, Rs. 1,20,000. It may be arguable wheth- er this is a retrospective enhancement in the price or not. But it would be only reasonable to say that the actual cost has increased to Rs. 1,20,000 in June 1966 and that the assessee should be entitled to the grant of depreciation and other allowances at least thereafter, on the basis of the altered cost. This is what S. 43A provides. Another situa- tion would be where, subsequent to the acquisition of the asset, substantial capital expenditure has been incurred thereon (not amounting to the addition of a separate asset on which depreciation etc. could be independently allowed). Such expenditure is added, under the rules, in practice to the actual cost and allowance given thereon subsequently, vide : the third column in the table set out at p. 878 in Habib Hussein [1963]48 I.T.R. 859(Bom.). This is

quite cor- rect and fully accords with the Department's interpretation of the provision. On the assessee's interpretation, no such increased allowances can at all be granted as there is no other provision permitting the additional cost being taken into account as part of the `actual cost' even for years subsequent to the addition or alternation. In principle, therefore, we are unable to accept the contention that the actual cost cannot be determined year after year on the factual or legal position applicable for the relevant previ- ous year and that the actual cost once determined cannot be altered except in the three situations outlined by counsel where the original figure itself required a modification. Sri Dastur, however, contends that there are three formidable reasons why the interpretation suggested by the Department should not be accepted. We shall proceed to consider these objections:

1. Legislation cannot be given retrospective effect so as to affect existing rights unless it says so expressly or by necessary implication:

The rule as to the prospective application of statutes is well settled. It is sufficient here to refer to some basic rules enunciated by prominent authors on construction of statutes. To start with, the position has been explained in Craies on Statute Law (7th Edition) at page 389. The learned author first discusses the meaning of the word `retrospective' and points out : "a statute is to be deemed to be retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obliga- tion, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past". But a statute "is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing". A little later, it is explained that while Parliament has competence to make the provisions of an Act of Parliament retrospective. ".....no rules of construction is more firmly established than this - that a retrospective operation is not to be given to a statue so as to impair an existing right or obligation otherwise than as regards a matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only". Maxwell on Interpretation of statutes (12th Ed.) contains passage to like effect at page 215 to 219. We may also refer to a passage from "Principles of Interpretation of Statutes" by G.P. Singh (Fourth Ed.) where the learned author warns against a departure from the ordinary meaning of the words used in a statute merely on grounds of hardship, injustice or absurdity. At page 81, he points out : "..... considerations of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. `The argument abin- convenienti' said Lord Moulton, `is one which requires to be used with great caution'. Explaining why great caution is necessary, Lord Moulton further observed : `There is a danger that it may degenerate into a mere judicial criticism of the propriety of the Act of legislature. We have to interpret statutes according to the language used therein, and though occasionally the respective consequences of two rival interpretations may guide us in our choice in between them, it can only be where, taking the Act as a whole and viewing it in connection with the existing state of the law at the time of the passing of the Act, we can satisfy our- selves that the words cannot have been used in the sense to which the argument points'. According to Brett L.J. "the inconvenience necessitating a departure from the ordinary sense of the words should not only be great but should also be what he calls an "absurd inconvenience". Moreover indi- vidual cases of hardship or injustice have no bearing for rejecting the natural construction, and it is only when the natural construction leads to some general hardship or injustice and some other construction is reasonably open that the natural construction may be departed from". Examining the provisions with which we are concerned in the lights of the principles succinctly summarised above, it will be apparent that what we are concerned with here is not at all a case of

retrospective operation of the statute. It is not the case of the revenue that the actual cost as determined in the assessment year 1962-63 should be applied to revise the computations for earlier year. All that the department says is that, though in respect of these particular assets, the assessee might have obtained depreciation for earlier assessment years on the basis of a higher figure, that will no longer be available in future and that the figure of actual cost should be taken not as was originally calculated but only at a lower figure for the assessment years 1962-63 and onwards. It is just the case of a provision, a part of the requisites for the operation of which is drawn from a time antecedent to its passing. It is argued on behalf of the assessee that the provi- sion should be considered to be retrospective because it affects the vested or existing rights of the assessee. This argument is based on the provisions of clause (c) of the proviso to Section 10(2) (vi) of the 1922 Act (corresponding to section 34(3) of the 1961 Act) which lays down that the aggregate of all deductions in respect of depreciation made in the Act or its predecessor Acts shall "in no case exceed the actual cost to the assessee of the building, machinery, plant, furniture, structure or work, as the case may be". Mr. Dastur's argument is that, when the asset was acquired, its actual cost had been determined in a particular manner and that, by virtue of the above provision, the assessee acquired a vested right to obtain depreciation thereon equal to the actual cost as so determined. He also points out that, under the provisions of 1922 Act as well as 1961 Act, there are elaborate provisions to adjust the allowances of depreciation so as to accord with reality. If, on the basis of the depreciation already granted the written down value of the asset becomes too low and the assessee is able to sell the asset for a higher price, the surplus is brought to tax. On the other hand, where the depreciation allowed is inadequate and the amount realised by the assessee on the sale, demolition or destruction of the asset is much less than the written down value, the assesee is allowed to write off the difference between the written down value and the scrap value of the asset. In other words, the Act has pro- vided a machinery which ensures that the assessee gets by way of depreciation allowance is correlated to reality. According to him, this right of the assessee, whether it is described as a vested right or an existing right, is affect- ed by the provision with which we are presently concerned. To this argument, Sri Ramachandran adds the further point that, under the provisions of Section 10(2)(vi) of the 1922 Act and Section 33 of the 1961 Act, the amount of deprecia- tion which cannot be adjusted against the profits of a particular year can be carried forward, treated as the depreciation for the subsequent year and set off against the profits of subsequent years. He points out that the result of accepting the department's interpretation of Section 43(6) of the Act is that the depreciation allowed to the assessee in the earlier years may be higher than the actual cost as arrived at subsequently under the provisions of 1961 Act. In such an event the written down value of the asset i.e. the actual cost minus the depreciation allowed to the assessee will be a negative figure. The result of this, according to counsel, will be that the carried forward unabsorbed depreciation will be a negative figure in so far as this asset in concerned and will reduce the amount of depreciation that will be allowable to the assessee for the same year against the other assets and in subsequent years against other profits. In this way, according to counsel, the construction advocated by the department would result in affecting rights which had been available to the assessee prior to the amendment.

We are of the opinion that these contentions are unfounded. It is incorrect to view the position as if, when an assessee acquires an asset, he acquires a right to obtain depreciation thereon equal to the actual cost of the asset as originally determined for tax purposes. The effect of clause (c) to the proviso to Section 10(2) (vi) of the 1922 Act and Section 34(3) of the 1961 Act is only this that, while allowing depreciation in respect of any asset the officer should be careful to see that the aggregate of the depreciation allowed to the assessee in respect of that asset does not exceed the actual cost of the asset. In other words, as and when the provision is applied for each and every

assessment year and the depreciation on any asset is calculated, it should be ensured that the depreciation allowed does not exceed the actual cost of the asset. In other words, the "actual cost" referred to is not the actual cost as originally determined at the time of acquisition. Thus, in the cases before us, while examining whether a particular asset is entitled to any depreciation for the assessment year 1962-63, the officer will find that it has already secured depreciation much more than the actual cost of the asset as determined by him and will grant no further depreciation in respect thereof. It is no doubt true that in past years the asset had become eligible to amounts of depreciation the aggregate of which exceeds the actual cost as presently determined and, if that depreciation is deducted from the actual cost subsequently arrived at, a negative figure may result. But such a situation will arise even in the category of the cases in which, according to counsel, the revision of actual cost is permissible. Thus, even in Karnani Industrial Bank (supra) cited by him, the assessee had obtained for earlier years depreciation for exceeding the real cost of the asset. This is an "anomaly" which arises because the assessee was erroneously granted higher depreciation than he deserved. But, even here, there was no negative written down value in earlier years and, equally, there will be none in the year of revision as the effect of the proviso is not to produce a negative written down value but only to preclude further grant of depreciation on the asset in future. Read thus as a limitation on the maximum amount of depreciation that an assessee can claim in respect of a particular asset, there is no question of arriving at a negative written down value. We are, therefore, unable to accept the contention of counsel that the interpretation contended for by the depart- ment operates against the well known principle that retrospective operation-assuming that the provision has a retrospective effect-should not be presumed where existing or past rights are interfered with. Nor do we think that there is any doubt or ambiguity about the provision. It is clear and explicit, as already pointed out, that the actual cost has to be determined, in each assessment year, even of assets acquired before the commencement of the previous year relevant to the assessment year. Not only is this intention plain and clear, it does not create any injustice or hardship; on the contrary, it is only reasonable and just. It should be remembered that object of the provision dealing with the grant of depreciation is, generally speaking, to enable him to get the capital expenditure incurred by him in acquiring the asset written off to his profits over the years though it is true that, in certain situations, the statute specifically relaxes this rigidity. In earlier years, he had been obtaining depreciation on a particular footing. But the language used lent itself to an interpretation that he could get a deduction even in respect of expenditure he did not incur. The correctness of this interpretation is not in doubt. Where a person purchases an asset, it may be correct to say that the cost of the asset does not change because a part of the cost is met by some one else. But the legislature had to decide whether an assessee should be allowed to claim an allowance of depreciation in respect of the asset on the artificial basis of the cost of the asset rather than what he has actually spent to acquire that asset and whether the wording of the original provision, as interpreted by courts, had not conferred an undue advantage or benefit on the assessee. This was not considered by the legislature to be equitable and, therefore, it was altered by legislation. It accords with reason that the provision should be interpreted to say that, at least after the amendment, the assessee should not be allowed depreciation on the basis of the earlier figure of actual cost. It is, therefore, incorrect, in our opinion, to describe this provision as creating any undue hardship or injustice or inconvenience to an assessee. It is in this context that the passages cited earlier from Brett L.J and Lord Moulton become relevant. They appear to be particularly apt to the context of the present provisions. For the above reasons, we are unable to accept the contention addressed on behalf of the assessee or to draw any support therefor from the obser- vations in Govind Das v. I.T.O., [1976]103 I.T.R. 123 at p. 132; relied upon by counsel.

2. The language used in the provision :

It was next suggested that there is an indication in the language of Section 43(6) itself to show that it is available to be invoked only in respect of assets which had been acquired in earlier years. Reference is made in this context to the use of the words "as has been met" in Section 43(1) and the use of similar language in the notes on clauses of the corresponding provision in the Income-tax Bill, 1961 (see 1961 Act 42 ITR supp. at page 161). It is argued that if the intention had been that the actual cost of assets which had been acquired earlier to the previous year should also be covered, the legislature would have used the words "as had been met". In support of this contention, Sri Dastur referred to the decision in Carson v. Carson and Stoyek, [1964]1 All England Law Reports 681. In that case, S. 3 of the Matrimonial Causes Act, 1963, which came into operation on July 31, 1963, provided that "adultery which has been condoned shall not be capable of being revived". While it was quite clear that, as a result of this provision, no petition could rely on a course of conduct subsequent to July 31 as reviving previous condoned adultery, the question that arose was whether the section had retrospective effect and whether a course of conduct before that date could be relied upon as reviving previously condoned adultery. The question was answered in the negative. We do not think the decision is of help in the present context. The nature of the provisions with which we are concerned and the mode of its operation are totally different. The use of the words "has been met" is very appropriate and proper in the present context once we understand the mechanics of the provision. As we have already explained, it is incontrovertible that, under S. 43(1) read with S. 43(6) the officer has to determine the actual cost for all assets, new and old, and the definition in S. 43(1) only requires that, at the time of doing so, he has to examine whether the actual cost has been fully laid out by the assessee or has been met by some one else in whole or in part. The words "has been met" squarely fit into this reading of the section and it is difficult to accept the suggestion that the use of the words "has been met" lends support to an interpretation restrict- ing the definition in S. 43(1) to assets acquired in the previous year.

3. Absurdities and anomalies :

It is contended that the Revenue's interpretation will result in absurdities and anomalies. The first of these is said to be that it may lead to the computation of a negative written down value and consequent difficulties in applying various other statutory provisions. We have already negatived the contention and pointed out that the proviso to clause (c) really places a limitation on the depreciation deductible at any point of time and, hence, there can never be a negative written down value as contended. The second anomaly is said to be that the interpretation favoured by the Revenue is incompatible with the terms of Explanations 2, 4 and 6 to S. 43(6). We see no such difficulty. Explanations 2 and 4 fall in line with the suggested interpretation, once it is understood that the reference to "depreciation actually allowed" should be read subject to the limitation of clause (c) of proviso to S. 10(2)(vi) [now section 34(3)]. Explanation 6 offers no difficulty as the relationship as "parent" and "subsidiary" between the companies involved in the transfer for the purposes of this clause has to be determined as at the time of the transfer of the asset and will not be a wobbling or fluctuating one as suggested by counsel for the assessee. Another difficulty pointed out is that the interpretation put forward by the Department might lead to difficulties in the calculation of assessable profits under section 41(2) or the allowance under section 32(1)(iii). Sri Ramachandran illustrated the difficulty by giving the instance of an asset purchased for, say, Rs. 10,000 entirely with monies contributed by others. If the asset had been purchased in 1958 and was eligible for depreciation at 10 per cent, the assessee would have secured depreciation of Rs. 2710 in the assessment years 1959-60, 1960-61 and 1961-62. Suppose in the previous year relevant assessment year 1963-64, it is sold for Rs. 5000. Mr. Ramachandran points out that, according to the

Department's interpretation the actual cost of the asset will be nil and, therefore, its written down value at the end of the previous year relevant for the assessment year 1962-63 would be nil with the result that the entire sum of Rs. 5000 for which the asset is sold will become chargeable under section 41(2). In other words, the assessee will have to pay tax on Rs. 5,000 by way of balancing charge though he had been allowed depreciation only to the extent of Rs. 2710. Again if the asset is sold for Rs. 2,500 in the previous year relevant for assessment year 1963-64, according to the Department he will have to pay a tax on Rs. 2,500 whereas under the old provisions he would have got an allowance under section 32(1)(iii). But this is only a seeming anoma- ly. For, the sums of Rs. 5,000 and Rs. 2,500 will be taxed not as balancing charge but as capital gains which is quite consistent with the department's position that, the assessee having paid nothing for the asset, its actual cost should be taken at nil, a stand in which there is no absurdity. We do not, therefore, think that any difficulty or anomaly results from the interpretation suggested.

For the reasons discussed above, we agree with the view taken by the several High Courts and dismiss these appeals. N.P.V. Appeal dismissed.

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