

Commissioner of Income-tax, Bombay

Vs

Gwalior Rayon Silk Manufacturing Co. Ltd.

Civil Appeal No. 2916 (NT) of 1980

(N. M. Kasliwal, K. Ramaswamy JJ)

29.04.1992

JUDGEMENT

K. RAMASWAMY, J.

1. The assessee claimed depreciation on the written down value of roads constructed by it as forming part of the cost of the factory building and also claimed development rebate on industrial transport use for transporting raw materials and finished goods within the factory premises. The I.T.O. disallowed the claims. The assessee went in appeal. The A.A.C. dismissed the appeal. On a further appeal the Tribunal following its earlier order for assessment year 1962-63 in the case of the assessee, allowed the aforesaid two claims with regard to depreciation on the roads as well as rebate on the Tractors, Trailors etc. The revenue filed an application under S. 256(1). The said application was dismissed by the Tribunal. The revenue then filed application under S. 256(2) in the High Court. The High Court accepted the application with regard to questions only and rejected it so far as the question regarding depreciation on roads is concerned. The revenue filed SLP against the order of the High Court. This Court by order dated 5-12-1980 granted special leave confined to question No. 1 only which reads as under:-

"Whether on the facts and in the circumstances of the case, the appellate Tribunal was justified in law in holding that depreciation is admissible on the W.D.V. of the cost of construction of roads in the factory premises on the footing that they constitute building?"

CIVIL APPEAL NO. 1194 OF 1977

C.I.T., Bombay, Appellant v. M/ s. Electro Metallurgical Works Pvt. Ltd., Respondent.

2. The Appellate Assistant Commissioner directed the I.T.O. to allow depreciation on roads inside the factory compound at appropriate rates. It was claimed before the A.A.C. that roads within the factory compound constituted plant and the I.T.O. should be allowed depreciation as admissible for buildings. It was not clear from the order of the A.A.C. whether depreciation was to be granted on roads at the rates applicable to plant and machinery or at the rates applicable to building. The Tribunal while deciding the appeal filed by the revenue observed that it was not concerned with the above aspect regarding the rates. The Department's claim was that no depreciation at all should be given on roads. The Tribunal held that different benches of the Tribunal at Bombay had taken the view that depreciation on roads inside the factory compound connecting different factory buildings and connecting the factory to the outer road should be allowed either on the footing that such roads are a part of the buildings or alternatively that they constituted plant. The Tribunal thus held that

A.A.C. was justified in directing the I.T.O. to grant the necessary depreciation. The appeal of the revenue was dismissed. The revenue filed a petition under S. 256(1). The question number one related to calculating the reliefs under S. 80-1 without taking into consideration the development rebate. The second question related to allowing of depreciation on roads inside the factory at appropriate rates. The Tribunal with regard to second question held that the Bombay High Court itself in the case of Colour Chem Ltd. (1977 (106) ITR 323) had taken the view that depreciation should be granted on the roads. The Tribunal in these circumstances did not consider it worthwhile to refer the second question. As regards the first question also with which we are not concerned the Tribunal did not consider it worthwhile for referring the same to the High Court. The revenue then filed a petition under S. 256(2) in the High Court. In this petition in paragraph 7 it has been stated as under:-

"So far as question No. 2 is concerned, the department has since decided not to pursue the matter further. In the prayer clause also the direction to the Tribunal to state the case and refer the question of law was made in respect of question No. 1 only."

The High Court by order dated June 17, 1976 issued notice as regards question No. 1 only and dismissed the application so far as question No. 2 is concerned. The revenue in the above circumstances filed SLP against the order dated June 17, 1976 and leave was granted.

CIVIL APPEAL NO. 2978 OF 1989

Appellant: C.I.T.

v.

Respondent: M/ s. Hindustan Aeronautics Ltd.

3. I.T.O. disallowed the claim for depreciation on roads and drains for the assessment year 1977-78. The Commissioner Income-tax (Appeals) allowed the depreciation following the decision of the Bombay High Court in C.I.T. v. Colour Chem Ltd., (1977) 106 ITR 323 and Madras High Court decision in C.I.T. v. Loochers T.Vs. Ltd. 110 ITR 346 : (1977 Tax LR 1379). The Tribunal dismissed the appeal filed by the revenue. The Tribunal rejected the reference application filed under S. 256(1). On a reference application filed by the revenue under S. 256(2), the High Court directed the Tribunal to state the case and refer the question of law for its opinion. The High Court followed its earlier decision in C. I. T. v. Bangalore Turf Club case, 150 ITR 23 : (1984 Tax LR 74) and answered the question against the revenue. The question of law raised was whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the assessee is entitled to depreciation on the written down value of roads and drains at the rates applicable to buildings.

CIVIL APPEAL NO. 5535 OF 1990

Appellant C.I.T., Bangalore

v.

Respondent: M/ s. Hindustan Aeronautics Ltd.

4. I.T.O. allowed depreciation on roads and drains in the original assessment for the assessment year 1973-74, C.I.T. set aside the order of the I.T.O. under S. 263. Reassessment by the I.T.O. disallowing the assessee's claim for depreciation on roads and drains to the extent of Rs. 15,50,526/- . On appeal the C.I.T. (Appeals) allowed the assessee's claim for depreciation. The Tribunal dismissed the appeal of the revenue. At the instance of the revenue on a reference under S. 256(1) High Court answered the question against the revenue. The High Court by order dated October 25, 1983 answered the question in favour of the assessee relying on its earlier decision reported in C. I. T. v. Bangalore Turf Club Ltd., 150 I.T.R. 23: (1984 Tax LR 74).

CIVIL APPEAL NO. 1404 OF 1991

Appellant: The Commissioner of Income- tax

v.

Respondent : I.D.L. Chemicals Ltd.

5. I.T.O. rejected the claim for depreciation on roads A.A.C. allowed depreciation on roads treating the same as buildings. The Tribunal relying on its earlier order held that depreciation on roads should be allowed by treating them as plant. On reference application, the Tribunal referred two questions to the High Court for its opinion (1) whether the assessee was entitled to depreciation on roads as part of the plant, (2) whether the assessee was entitled to depreciation for the assessment year 1972-73 on the written down value of the sum of Rs. 3,41,595/- referred in question No. 1 and also on the questions to plant and machinery of Rs. 1,52,767/- made during the previous year relevant for the assessment year 1971-72. The High Court by order dated 12-10-1984 held that the same was covered by a consolidated order passed on June 15, 1983 in favour of the assessee. The question was, therefore, answered against the revenue and in favour of the assessee. As regards the second question, High Court held that it was covered as a result of an amendment to the Act which has been noted in B.C. No. 80/78 dated April 18, 1983. The answer was therefore recorded against the assessee and in favour of the revenue. In the S.L.P., it is stated that both the questions referred to were answered in favour of the assessee which is not correct.

6. Since this bunch of appeals raised common questions of law for decision, they are disposed of by a common judgment. The facts in Civil Appeal No. 2916/ 80 are sufficient for decision. Hence they are extracted. For the assessment year 1963-64 for the previous year ending 31st March, 1963, the respondent assessee, a company incorporated under the Company's Act claimed depreciation on the roads constructed by it as forming part of cost of factory building. The Income-tax Officer and on an appeal the Asstt. Appellate Commissioner rejected the claim. On further appeal, following the decision of the Bombay High Court for previous year, the Tribunal allowed the appeal and held that the assessee is entitled to depreciation. Then the revenue sought for reference on the question:

"Whether on the facts and in the circumstances of the case the Appellate Tribunal was justified in law in holding that the depreciation was applicable on the written down value of the cost of construction of roads in the factory premises on the footing that they constitute building?"

7. The High Court by its impugned order under S. 256(2) of the Income-tax Act, 1961 for short 'the Act' declined to call for a reference.

8. The contention of Sri Manchanda, learned counsel for the Revenue, is that the word "building" in

its connotation is referable to something that a constructed one as a structure or super-structure on land with walls and roof. According to the counsel since the Act did not give a definition of its own, the dictionary meaning of the "building" which means "a house or anything which built a structure" is to be adopted which was made manifest by subsequent amendment to appendix I under Income-tax, 4th Amendment Rules, 1983 for short the Rules having come into force with effect from 2nd April, 1983 which includes roads. Therefore, till 2nd April, 1983 the roads did not form part of the building. It is also further contended that the Rules made manifest that they would be applicable only prospectively from 2nd April, 1983. By necessary implication till that cut off date the legislature excluded roads from the connotation of the building. The capital expenditure incurred by an assessee on construction of road even within factory premises is not entitled to depreciation as a deduction in the computation of profits and gains of the assessee's income of the previous year. Sri Harish Salve, the learned senior counsel and other counsel appearing for the assessee resisted the contention. Sri Salve contended that the purpose of allowing depreciation is to compute the net taxable income; unless roads are laid it is not possible for the convenient carrying on of the business activity, the assessee laid roads and incurred expenditure thereon. Therefore, the roads form part of building as capital asset which is admissible for depreciation under S. 32 of the Act. The Rules only regulate the rate of depreciation at which the assessee is entitled to Preceding the 4th Amendment Rules with effect from 2nd April, 1983, the rates were variable and the assesseees were entitled to claim either as plant or building etc. To set at rest that part of the controversy the rules were amended and came into force with effect from 2nd April, 1983. The subordinate legislature gave effect to the interpretation given by various High Courts to the word building which included roads as well. Sri Manchanda further contended that taxing statute should be strictly construed; common sense approach, equity, logic, ethics and morality have no role to play. The words in the taxing statute should be given literal interpretation. Nothing is to be read in, nothing is to be implied; one can only look fairly at the language used and nothing more and nothing less.

9. It is settled law that the expressions used in a taxing statute would ordinarily be understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative animation. In *Raja Jagadambika Pratap Narain Singh v. C.B.D.T.*, (1975) 100 ITR 698: (AIR 1975 SC 1816), this Court held that "equity and income-tax have been described as strangers". The Act from the very nature of things cannot absolutely cast upon logic. It is to be read and understood according to its language. If the plain reading of the language compels the Court to adopt an approach different from that dictated by any rule of logic the Court may have to adopt it, vide *Azam Jah Bahadur (H. H. Prince) v. E.T.O.*, 83 ITR 92:(AIR 1972 S C 2319). Logic alone will not be determinative of a controversy arising from a taxing statute. Equally, common sense is stranger and incompatible partner to the Income-tax Act. It is not concerned itself with the principles of morality or ethics. It is concerned with the very limited question as to whether the amount brought to tax constitutes the income of the assessee. It is equally settled law that if the language is plain and unambiguous one can only look fairly at the language used and interpret it to give effect to the legislative animation. Nevertheless tax laws have to be interpreted reasonably and in consonance with justice adopting purposive approach. The contextual meaning has to be ascertained and given effect to. A provision for deduction, exemption or relief should be construed reasonably and in favour of the assessee. The object being that in computation of the net income, the statute provides deductions, exemptions or depreciation of the value of the capital assets from taxable income. Therefore, buildings which have not been specifically defined to include road in the Act must be taken in the legal sense.

10. The question emerges, therefore, whether roads and drains include building under S. 32 of the Act. S. 32 provides depreciation of capital assets in respect of buildings, machinery, plant or furniture. This Court in *C.I.T. v. Ram Gopal Mills Ltd.*, 41 ITR 280 : (AIR 1961 SC 338) held that

"the basic and normal scheme of depreciation under the Act is that it decreases every year being a percentage of the written down value which in the first year is the actual cost and in succeeding years the actual cost less all depreciations actually allowed under the Act or any Act repealed thereby". The depreciation allowance, therefore, is in respect of such assets as are used in the business and each to be calculated on the written down value. The allowance towards depreciation is for the continuation of the use of the assets wholly or in part during the accounting year and its contribution to the earning of the income. The object is to determine net income liable to tax. In *C.I.T. v. Alps Theatre*, (1967) 65 ITR 377: (AIR 1967 SC 1437) heavily relied on by the revenue, this Court considering S. 10(2) of the Income-tax Act, 1922 held that S. 10(2) provides that such profits or gains shall be computed after making certain allowances. The object of giving these allowances is to determine the assessable income. Therein the question was whether the land on which the theatre was constructed is a building within the meaning of S. 10(2) of the Income-tax Act, 1922. This Court held that land is not a building and, therefore, depreciation allowance for land separately is not admissible. The ratio therein has no application but the principle laid would be considered in the light of the purpose of the Act. In *C.I.T. v. Taj Mahal Hotel*, (1971) 82 ITR 44: (AIR 1972 SC 168), this Court adopting purposive approach held that sanitary and pipeline fittings fell within the definition of plant. 1922 Act intended to give wide meaning to the word "Plant". The rules are meant only to carry out the provisions of the Act and cannot take away what is conferred by the Act or whittle down its effect. In *Municipal Corporation of Greater Bombay v. Indian Oil Corporation Ltd.*, (1990) 4 JT (SC) 533: (AIR 1991 SC 686) the oil tanks for storage of petrol were held to be buildings exigible to property tax.

11. The question whether the roads would include within the meaning of the word buildings was considered by various High Courts. The leading decision is of the Bombay High Court in *CIT v. Colour Chem Ltd.*, (1977) 106 ITR 323. While negating the contention that roads are part of the plant, the Bombay High Court held that the roads within the factory premises are used for the purpose of carrying raw materials, finished products and workers. Therefore, it must be regarded as building or buildings within the meaning of sub-clause (iv) of S. 10 (2) of 1922 Act. It was also held that dictionary meaning of the word "building" cannot be confined to a structure or superstructure having walls and roof over it. The roads and roadways are adjuncts of the buildings lying within the factory area linking them together and are being used for carrying on its business by the assessee. Therefore, they must be regarded as forming part of the factory building. The expenditure incurred, therefore, will have to be regarded as expenditure on buildings and the depreciation must be allowed. The appeal filed against the judgment in *Colour Chem Ltd.* case the leave was refused on the grounds of delay. More or less though for different reasons on "common sense principle" same is the ratio in *CIT v. Locas-TVS Ltd.*, (1977) 110 ITR 346 : (1977 Tax LR 1379) (Mad). When the appeal was filed, this Court dismissed the Special Leave Petition on the ground of delay. Same is the view in *Panyem Cement and Chemical Industries Ltd. v. Addl. CIT*, (1979) 117 ITR 770 : (1978 Tax LR (NOC) 191) (AP), *CIT v. Kalyani Spinning Mills Ltd.*, (1981) 128 ITR 279: (1981 Tax LR 358) (Cal), *CIT v. Mec. Gaw Laboratories India (Ltd.)*, (1981) 132 ITR 401 (Guj), In *CIT v. Bangalore Turf Club Ltd.*, 150 ITR 23: (1984 Tax LR 74) (Kant), when the appeal was filed this Court dismissed the same in Special Leave Petitions Nos. 5198-99/ 85 dated December 16, 1987.

12. In *Permanent Words and Phrases*, Vol. 5A 'building' was defined that every thing that is necessary to perfect a manufacturing establishment and fit for use designed as a part of it is a building. The roads would serve as necessary links between the raw material and finished products in the business activity. The roads are liable to wear and tear and need constant repairs or re-laying the road afresh.

13. While amending Income-tax 4th Amendment Rules, 1983, the rule making authority accepted this interpretation consistently laid by various High Courts that building includes roads and also elongated bridges, culverts, wells and tubewells as building but prescribed fixed rates of depreciation setting at rest the variable rates claimed by the assessee. Rules validly made have the same force as the sections in the Act. The contention of the respondents that unless the Act itself is amended, the rules would not cut down the meaning of the word 'building' is without substance. The inclusive definition of the building to include roads etc. enlarges the scope of S. 32 and does not whittle down its effect. It is true that in CIT v. Coromandel Fertilisers Ltd., (1985) 156 ITR 283 : (1984 Tax LR 340) (AP), the High Court of Andhra Pradesh interpreted that roads fell within the meaning of "plant" and granted depreciation at the rates admissible to plant. In CIT v. Sanavik Asia Ltd., (1983) 144 ITR 585: (1983 Tax LR 758) (Bom), took opposite view and held to be building. In view of the consistent view of the other High Courts and in our view which is the correct one, the view of the High Court of A.P. is not correct in law.

14. It is true, as contended for the Revenue that the Income-tax 4th Amendment Rules, 1983 were given effect from 2nd April, 1983 thereby manifested that the rates enumerated in the rules would be applicable prospectively from the later assessment years. It by no means be construed that the legislature expressed its intention that for the earlier period building does not include roads. If it were to be so it was open to the Parliament to expressly bring out an amendment to the Act to that effect. On the other hand we are of the view that the subordinate legislature accepted the interpretation given by the High Courts and included roads as integral part of the building. In Bangalore Turf Club Ltd. case, 150 ITR 23 : (1984 Tax LR 74), the, Karnataka High Court held that the amendment was by way of clarification in conformity with the law laid by the High Courts. It is also equally settled law that an interpretation consistently given over years and accepted and acted upon by the department may not normally be upset even though a different view of law may reasonably be possible unless' the new perceptions and circumstances warrant fresh look. The ratio in Saharanpur Electric Supply Co. Ltd. v. CIT, (1992) 194 ITR 294, is not in conflict with the above view. It is also settled law that, unless it is expressly stated or by necessary implication arises, a statute should always be read as prospective. The ratio therein is also in consonance with the view we are taking.

15. Accordingly we have no hesitation to hold that the roads laid within the factory premises as links or provided approach to the buildings are necessary adjuncts to the factory buildings to carry on the business activity of the assessee (and) would be building within the meaning of S. 32 of the Act. The capital expenditure incurred thereon is admissible to depreciation of written down value. It has to be worked out for the purpose of depreciation as per the provision of the Act read with the Rules in appendix. Equally the drains also would be an integral part of building for the convenient enjoyment of the factory. The expenditure incurred in laying the drains or written down value of the cost of its construction would equally be entitled to depreciation. It is to be worked out in terms of S. 32 of the Act read with the rules in the Appendix. In view of the settled position the reference sought for in CA No. 2916/ 80 and CA No. 1194/77 is unnecessary. The appeals are accordingly dismissed. No costs.

CIVIL APPEAL NO. 1404/91

16. The appeal is partly allowed. The I.T.O. would compute roads as building and depreciation should be given accordingly. In view of the circumstances the parties are directed to bear their own costs.

CIVIL APPEALS NOS. 2978/ 89 & 5535/ 90

17. The civil Appeals are dismissed. No costs. Order accordingly.

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