

SUPREME COURT OF INDIA

Commissioner of Income Tax, Karnataka

Vs.

Karnataka Power Corporation

(S.P. Bharucha, R.C. Lahoti and N. S. Hegde JJ.)

27.07.2000

ORDER

1. The High Court answered the following three questions in the affirmative and in favour of the assessee. The Revenue is in appeal there against by special leave.

2. The three questions read thus:

1. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in upholding the order of the Commissioner (Appeals) who deleted the addition of Rs. 1,30,44,518/- being interest receipts and hire charges from contractors by holding that the same are in the nature of capital receipts which would go to reduce capital cost?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in upholding the order of the Commissioner (Appeals) holding that the work-in-progress is to be treated as opening capital for the purposes of determining the relief admissible Under Section 80J and the assessee is entitled to relief admissible Under Section 80J in respect of the said work-in-progress?

3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in upholding the order of the Commissioner (Appeals) holding that the assessee is entitled to investment allowance on the generating station building considering it as 'plant'?

3. It is not in dispute that the first two questions must be answered in the affirmative and in favour of the assessee having regard to the judgments of this Court in Commissioner of Income Tax, Bihar v. Bokaro Steel Limited, Bokaro and Commissioner of Income Tax v. Alock Ashodown & Co. Ltd. 224 I.T.R. 353 respectively.

4. The issue to be decided relates to the third question.

5. It was the case of the assessee that it was entitled to investment allowance as applicable to a plant in respect of its power generating station building. In a note filed before the Commissioner (Appeals) it stated that it had included for the purpose the value of its Potential Transformer Foundation. Cable Duct System, Outdoor Yard Structures and Tail Race Channel. It explained that

the process of generation started from letting in water from the reservoir into the penstocks and ducts which were the water conductor system into the turbines. Once electricity had been produced by generation, it had to be conducted, as it was not possible to store the same, and the process of generation continued until the electricity was led to the transmission tower. The water that was used for rotation of the turbines had to be removed and this was done through the Tail Race Channel. For stepping up the electricity, transformers were used in the outdoor yard. The conduction of the electricity was through conductors held in ducts, called the Cable Duct System, which were specifically designed for the purpose. The case of the assessee, therefore, was that all these were part of the special engineering works that were an essential part of a generating plant and, therefore, it was entitled to have the same treated as a plant for the purposes of investment allowance. The Commissioner accepted the correctness of the assessee's case. He held that it was clear that the generating station buildings had to be treated as a plant for the purposes of investment allowance. These buildings could not be separated from the machinery and the machinery could not be worked without such special construction. He, therefore, allowed investment allowance on the generating station, building, as claimed. The Tribunal affirmed this finding, as, indeed did the High Court.

6. We, therefore, have before us a finding of fact recorded by the fact finding authority that the generating station building is an integral part of the assessee's generating system.

7. Our attention has been drawn by learned Counsel for the Revenue to the judgment of this Court in Commissioner of Income Tax v. Anand Theatres 224 I.T.R. 192. He submits that, in that judgment, this Court has held that, except in exceptional cases, the building in which the plant is situated must be distinguished from the plant and that, therefore, the assessee's generating station building was not to be treated as a plant for the purposes of investment allowance.

8. It is difficult to read the judgment in the case of Anand Theatres so broadly. The question before the court was whether a building that was used as a hotel or a cinema theatre could be given depreciation on the basis that it was a "plant" and it was in relation to that question that the court considered a host of authorities of this country and England and came to the conclusion that a building which was used as a hotel or cinema theatre could not be given depreciation on the basis that it was a plant. We must add that the Court said, "To differentiate a building for grant of additional depreciation by holding it to be a plant in one case where a building is specially designed and constructed with some special features to attract the customers and the building not so constructed but used for the same purpose, namely, as a hotel or theatre would be unreasonable." This observation is, in our view, limited to buildings that are used for the purposes of hotels or cinema theatres and will not always apply otherwise. The question, basically, is a question of fact, and where it is found as a fact that a building has been so planned and constructed as to serve an assessee's special technical requirements, it will qualify to be treated as a plant for the purposes of investment allowance.

9. In the instant case, there is a finding by the fact finding authority that the assessee's generating station building is so constructed as to be an integral part of its generating system. It must, therefore, be held that it is a "plant" and entitled to investment allowance accordingly. The third question is answered in the affirmative and in favour of the assessee.

10. The civil appeal is dismissed.

11. No order as to costs.

