ANDHRA PRADESH HIGH COURT

B. Srikantiah

Vs.

Commissioner of Income-Tax, A.P

Case Referred No. 7 of 1959

(P. Chandra Reddy, C.J. and Kumarayya, J.)

07.09.1960

JUDGMENT

Chandra Reddy, C.J.

1. The following question is referred for the opinion of this court under Section 66(1) of the Indian Income Tax Act by the Income Tax Appellate Tribunal, Hyderabad Bench :

> "Whether the assessee is entitled to claim initial depreciation under Section 10(2)(vi) and additional depreciation under Section 10(2)(vi-a) on the sum of Rs. 17,415/- ?"

2. This point, though a short one, is by no means a simple one. Before we consider the various aspects of the controversy, it is necessary to state the facts which lie in a very short compass. The assessee runs a bus service. In the account year, he spent Rs. 21,855/- in replacing the petrol engines of the buses by diesel engines, as the former were worn out beyond repair. The cost of the two new diesel engines was Rs. 17,415/-. In computing the income from the bus-service the assessee claimed a deduction of Rs. 21,855/- under Sections 10(2)(v), 10(2)(xv), 10(2)(vi). and 10(2)(vi-a), the last claim bearing on the initial and additional depreciation, aggregating Rupees 17,415.

3. The claim as made by the assessee was wholly rejected but here we are concerned only with the third head of the claim as the question referred to us by the Tribunal concerns only with that branch.

4. This was confirmed on appeal by the appellate Assistant Commissioner and by the Income-Tax Appellate Tribunal on further appeal.

5. However, at the request of the assessee the Tribunal referred the question cited above.

6. In this reference, the view of the Department as also of the Tribunal is assailed by the assessee on the plea that the diesel engines could form the objects of claim of initial and additional depreciation allowances, as they fall within the denotation, of the term 'machinery'. This claim is

supported by the decision of the Madras High Court in *Mir Mohd. Ali v. Commissioner of Income Tax*[1],

7. There is divergence of judicial opinion on the interpretation of the relevant statutory provisions which provide for allowance for depreciation of machinery and plant among other things which belonged to the assessee and which he utilised for his business, vocation or profession.

8. As the answer to the problem posed by this reference turns on the interpretation of the relevant statutory provisions, it is profitable to read them here.

9. Section 10, which deals with the computation of the income of an assessee from the profits and gains of a business, profession or vocation which is exigible to tax, provides also for granting certain depreciation allowance. One of such reliefs is contained in clause (vi) of Sub-Section (2) of Section 10. That clause is in these words :

> "In respect of depreciation of such building, machinery, plant, or furniture being the property of the assessee, a sum equivalent, (where the assets are ships other than ships ordinarily plying on inland waters) to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed and in any other case, to such percentage on the written down value thereof as may in any case or class of cases be prescribed."

This clause deals with normal depreciation allowance, which has to be computed in terms of rule 8 which has been framed by the Government of India in exercise of the powers conferred on them by Section 59 of the Act.

10. Paragraph 2 of clause (vi) reads :

> "and where the buildings have been newly erected, or the machinery or plant being new, not being machinery or plant entitled to the development rebate under clause (vi-b), has been installed, after the 31st day of March 1945, and before the 1st day of April, 1956, a further sum which shall however not be deductible in determining the written down value, for the purposes of this clause in respect of the year of erection or installation.
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> (c) in the case of machinery or plant, to twenty per cent, of the cost thereof to the assessee : We are unconcerned with the other clauses of that paragraph.

We next turn to clause (vi-a) which is in these words :

> "In respect of depreciation of buildings newly erected or of machinery or plant being new which has been installed, after the 31st day of March, 1948, a further sum (which shall be deductible in determining the written down value) equal to the amount admissible under clause (vi) exclusive of the extra allowance for double or multiple shift working of the machinery or plant and

[1](1960) 38 ITR 413 : (AIR 1960 Mad 476)

> the initial depreciation allowance admissible under that clause for the first year of erection of the building or the installation of the machinery or plant) in not more than five successive assessments for the financial years next following the previous year in which such buildings are erected and such machinery and plant installed and falling within the period commencing on the 1st day of April, 1949 and ending on the 31st March, 1959."

It is these two clauses that afford relief in regard to the construction of a building or installation of the plant or the machinery between the dates indicated therein in the shape of initial and additional depreciation allowances.

11. We are here called upon to decide as to whether the language of these two clauses warrants the grant or depreciation allowances in regard to diesel engines fitted into motor Vehicles or in regard to parts of a plant or machinery, however substantial they may be. On this question, as we have already stated, there is conflict of judicial opinion between two of the High Courts in India, the Madras taking the view the word 'machinery' includes a diesel engine replacing a petrol engine found to be worn out, while the Bombay High Court expressed a contrary opinion.

12. We have to consider as to which of the two views is correct. We are impelled to the opinion that the Bombay decision is in accord with the object underlying the relevant clauses. In examining the scope of these two rules, it is useful also to determine the definition of plant contained in Section 10(5).

13. 'Plant', under that definition, "includes vehicles, books, scientific apparatus and surgical equipment purchased for the purposes of the business, profession or vocation." This definition indicates that for purposes of clauses (vi) and (vi-a), 'plant' including a vehicle, should be viewed as a unit and the component parts thereof are excluded from its purview. We fail to see why 'machinery' also should not be considered in the same light. We think that the same signification should attach to the expression 'machinery' which does not contain any statutory definition.

14. In (1960) 38 ITR 413 at p. 419 : (AIR 1960 Madras 476 at p. 477), the Madras High Court observed :

> "If the diesel engine was machinery for the normal depreciation for which the first paragraph of Section 10(2)(vi) provided, it should continue to be machinery also for the additional allowances for depreciation under the second paragraph of Section 10(2)(vi) and Section 10(2)(vi-a)."

15. We are not aware of anything in the first paragraph of clause (vi) which lends colour to that assumption. We are not persuaded that in respect of parts of a plant or machinery, however important they may be, depreciation allowance is admissible even under the first paragraph of that clause. The depreciation has to be judged with reference to the plant or machinery taken as a unit and not with reference to its component parts.
It is the written down value of the whole vehicle, plant or machinery that would be the basis for

computation of the depreciation allowance. There could be no written down value in respect of each of the parts of a plant including vehicle, or a machinery. We are inclined to the view that the expression 'machinery' denotes 'machinery as a unit." We, therefore, feel that a diesel engine fitted into a Motor Vehicle is not comprehended within the scope of 'Machinery' in clause (vi) and, as such, the normal depreciation allowance is admissible only in regard to plant or machinery taken as a unit. If we accept the intepretation sought to be put upon it by the assessee, it will lead to this result, namely, depreciation allowance could be claimed not only in respect of the vehicle as falling within the contemplation of 'plant' but also in regard to each part of it coming within the acceptation of the word 'machinery'. We do not think that we will be justified in attributing such an intention to the legislature.

16. The learned Judges of the Madras High Court referred to the following observations or their Lordships of the Privy Council in *Corporation of Calcutta v. Chairman Cossipure and Chitpore Municipality*[2] as giving support to this decision.

> "Their Lordships concur with Lord Davy in thinking that there is a great danger in attempting to give a definition of the word "machinery' which will be applicable in all cases. It may be impossible to succeed in such an attempt. If their lordships were obliged to run the hazard of the attempt they would be inclined to say that the word 'machinery' when used in ordinary language prima facie means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and inter independent operation of their respective parts generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result."
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> "There can be no dispute that the ordinary meaning of 'machinery' includes the working parts of a machinery which are utilised or the component parts of a machinery or plant. But that is not decisive of the matter, since we have to construe the word with reference to the language of the clauses and the scheme of the section. Nor do the remarks of the Court of Appeal in *Madan and Ireland Ltd. v. Hinton*[3], assist us very much in this enquiry. The question that posed itself in that case was whether the expenditure incurred for purchasing knives and lasts, which were inserted into a machinery, would constitute capital expenditure.

17. The considerations pointed out in the context of first paragraph page (v) are pertinent in regard to all the three kinds of depreciation allowances, namely (i) normal (ii) initial, and (iii) additional, depreciation allowances. With regard to the last two, there are also certain significant features which support the opinion that these two types of allowances are not permissible in regard to parts of a machinery. There are indications to that effect in the language used in the second paragraph of clause (vi) and in clause (vi-a). In both of them, stress is laid on the machinery or the plant being new. Moreover, the initial depreciation allowance is permissible only in respect of the

[2] ILR 49 Cal 190 : (AIR 1922 PC 27)

[3] (1953) 37 ATC 317 referred to in (1960) 38 ITR 413

year of erection or installation. If we were to accept the theory propounded on behalf of the assessee, the assesses could put forward a claim every time a worn out part is substituted in

a plant or machinery, so long as the chassis remains in shape. We do not think that such a result is contemplated by either of these two clauses, having regard to the specific terms of the section which lay stress on the plant or the machinery being new and the allowance being confined to the year of installation. In our opinion, the allowance could be only for one year. In this situation we feel that in order to sustain a claim for the initial and additional depreciation allowance, the machinery must be regarded as a unit, spare parts, however, costly they may be, could not be regarded as objects of claim in that behalf.

18. We are of opinion that the principle enunciated by the Bombay High Court in *Maneklal Vallabhadas v. Commissioner of Income Tax*[4] is sound if we may say so with respect We do not think we can share the view of the Madras High Court in (1960) 38 I.T.R. 413 . Hence the conclusion of the Tribunal affirming that of the Department cannot be successfully impeached.

19. In the result, we answer the reference against the assessee and in favour of the Department. The assessee will pay the costs of the Department. Advocate's fee is fixed at Rs. 100/-.

Answer against assessee.

[4](1959) 37 ITR 142