ANDHRA PRADESH HIGH COURT

Taj Mahal Hotel

Vs

Commissioner of Income-Tax

(Venkatesam J.)

01.08.1967

JUDGMENT

Venkatesam J.

1. The question referred to us for decision under section 66(1) of the Indian Income-tax Act, 1922, is as follows :

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

The facts as mentioned in the statement of the case are as follows : The assessee, the Taj Mahal Hotel, Secunderabad, is a registered firm running a hotel a Secunderabad, with branches in Hyderabad. The assessment year under reference is 1960-61 for which the previous year is the year ending September 30, 1959. In the previous year, the assessee incurred an expenditure of Rs. 57,154 for installing sanitary fittings, and a further sum of Rs. 1,370 for pipeline fittings. On both these items, the assessee claimed development rebate before the Income-tax Officer under section 10(2) (vib) of the Indian Income-tax Act, 1922 (hereinafter referred to as the Act). The Income-tax Officer held that they did not come within the definition of "plant" and "machinery" and disallowed the same. The Appellate Assistant Commissioner, in appeal, affirmed that order. On second appeal, the Appellate Tribunal took the view that the sanitary fittings and pipeline fittings did not constitute "machinery" and the only point to be decided was, whether they would come under the heading "plant". The assessee claimed depreciation allowance on those items under section 10(2) (vi) as "furniture and fittings" at the rate of 9 per cent. instead of 7 per cent. which would be allowed in the case of plant. Holding that the word "plant" must receive the same meaning in both the cases and also having regard to the dictionary meaning, the Tribunal held that the assets in question did not constitute "plant", and upheld the disallowance of the claim by

the Tribunal (sic).

The only question that is argued before us, and which arises for consideration is, what is the meaning of the word "plant" in section 10(2) (vib) of the Act.Section 10 of the Act provides that tax shall be payable on profits and gains of an assessee under the head "Profits and gains of business, profession or vacation". In the computation of taxable profits, sub-section (2) permits certain allowances. The first paragraph of clause (vi) recognises the right to normal depreciation or initial allowance of a percentage on the prescribed value of buildings, machinery, plant or furniture, which are the property of the assessee, and the second part deals with the allowance on buildings newly erected or machinery or plant, not being machinery or plant entitled to development rebate under clause (vib). Clause (vib), which was added in 1955, omitting unnecessary words, reads as follows :

"(2) Such profits or gains shall be computed after making the following allowances, namely :- .....(vib) in respect of machinery or plant being new, which has been installed after the 31st day of March, 1954, and 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 installation equivalent to twenty-five per cent. of the actual cost of such machinery or plant to the assessee :Provided that no allowance under this clause shall be made unless the particulars prescribed for the purpose of clause (vi) have been furnished by the assessee in respect of such machinery or plant";

Section 10(5) is in the following terms :

> "In sub-section (2), ... plant includes vehicle, books scientific apparatus and surgical equipment purchased for the purposes of the business, profession or vocation;....."

This section grants development rebate in respect of machinery or plant provided : (1) the machinery or plant is new and had been installed after the 31st day of March, 1954, (2) it is used wholly for the purpose of assessees business, and (3) the particulars prescribed fir the purpose of clause (vi) (depreciation allowance) have been furnished. The development rebate that is allowed is 25 per cent. of the actual cost of the machinery or plant, and it is allowed in respect of the year of installation. It is not a part of the depreciation allowance, and is granted over and above the full recoupment of the total cost by way of depreciation allowance under clauses (vi) and (via) and balancing allowance under clause (vii). In the instant case it is not disputed that all other conditions have been satisfied, and the only question for consideration is whether the sanitary fittings and pipeline fittings answer the definition of "plant" in section 10(2) (vib).

The definition of plant extracted above does not throw any light on the meaning of that word, but it only shows that it is of wide import, intended to include even vehicles, books, scientific apparatus and surgical equipment purchased for the purpose of business, occupation or vocation.

As observed by Lord Watson in Dilworth v. Commissioner of Stamps, "include is very generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statutes." 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 susceptible of another construction which may become imperative if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. When it is mentioned that a particular definition "includes" certain things, it should be taken that the legislature intended to settle a difference of opinion on the point or wanted to bring in other matters that would not properly come within the ordinary connotation of the word or expression or phrase in question (vide Madras Central Urban Bank Ltd. v. Corporation of Madras). The legislature uses the words "means" where it wants to exhaust the significance of the term defined and the word "includes" where it intends that while the term defined should retain its ordinary meaning, its scope should be widened by specific enumeration of certain matters which its ordinary meaning may or may not comprise so as to make the definition enumerative but not exhaustive (vide Province of Bengal v. Hingal Kumari).The dominant purpose on construing a statute is to ascertain the intention of the legislature as so expressed. This intention, and therefore, the meaning of the statute, is primarily to be sought in the words used in the statute itself which must, if they are plain and unambiguous, be applied as they stand, however strongly it may be suspected that the result does not represent the real intention of Parliament (vide Halsburus Laws of England, third edition, paragraph 578, page 387-88). If there is nothing to modify, nothing to alter, nothing to qualify the language which a statute contains, the words and sentences must be construed in their ordinary and natural meaning (ibid. paragraph 585, page 391). It is, therefore, permissible in ascertaining the ordinary sense of particular words to refer to dictionaries and the works of standard authors which show what that sense was when the statute was passed (ibid. paragraph 590, page 393). The rule that the literal construction of a statute must be adhered to, unless the context renders it plain that such a construction cannot be put on the words, is especially important in case of statutes which imposed taxation (ibid. paragraph 633, page 417).

Bearing these principles in mind, we shall construe the word "plant" Since the definition uses the word "includes", it is obvious that the word "plant" retains its ordinary meaning and is also used as a word of enlargement rather than of restriction.It is, therefore, necessary to ascertain its ordinary or popular sense, and for that purpose refer to the dictionaries. Before doing so, it may be noted that the word "plant" in English Finance Act did not include solicitors books which he consults for professional purposes, while the Indian Act includes them in the definition of that word in section 10(5) of the Act. The decision under the Income Tax Act or the Finance Act of England will not, therefore, be of any assistance, and the answer must be found only by adopting

the ordinary canons of interpretation.In Websters Third New International Dictionary, at page 1731, the meaning of the word "plant" is given as :

> "Land, buildings, machinery, apparatus and fixtures employed in carrying on trade or other industrial business.... A piece of equipment or a set of machine parts functioning together for the performance of a particular operation."

"Fixture" is defined at page 861 of the same dictionary thus :

> "Something that is fixed or attached as a permanent appendage or a structural part (hanging glass), a plumbing, an electric lighting device.... a chattel that has been so wrought into or annexed to realty that it may be regarded as legally a part of its use depending upon such considerations as whether it may be removed without irreparable damage, whether the parties (as landlord and tenant) regarded or are presumed by law to have regarded it as removable, whether its annexation was intended to be permanent and to further the purposes for which the structure is designed, or whether its annexation is really necessary to the contemplated use of the structure or only ornamental or convenient - called also immovable fixture..."

In Chambers Twentieth Century Dictionary, the meaning of the word "plant" is given as, "equipment, machinery, aerates for industrial activity."

> Sanitary fittings and pipeline fittings are, undoubtedly fixtures employed in carrying on hotel business of boarding and lodging. It is inconceivable that without sanitary fittings and pipeline fittings, the business of a hotelier, like the assessee, can be carried on today. Since there is nothing in the context or the grouping of the words in which the word "plant" is used in section 10(2) (vib), to convey a contrary meaning, we hold that the sanitary fittings and pipeline fittings being fixtures employed in carrying on trade or business by the assessee, come within the meaning of the word "plant".

Sir Kondaiah, the learned counsel for revenue, then contended that even granting that the sanitary fittings and the pipeline fittings can be called "plant", the development rebate can be granted only in respect of those sanitary fittings like wash-basins or flush-out tanks, which can be removed, but not the rest of the sanitary fittings. We are unable to accept this contention, because sanitary fittings which are removable as well as those that cannot be removed together enable the drainage system to function or water supply to be made, and enable the assessee to earn the income, and, hence, the totality of the fittings must be taken into account for the purpose of development rebate. We see no reason to confine the rebate only to the sanitary fittings and pipeline fittings which can be removed, but to those which have been fixed or imbedded in the building and are fixtures.The next connection is that the assessee claimed depreciation allowance

at 9 per cent. on the cost of sanitary fittings and the fittings treating them as "furniture and fitting in cinema houses and boarding houses" under rule 8(2) of the Income-tax Rules. The argument on behalf of the revenue is that though depreciation allowance on machinery and plant is provided for as item 3 under rule 8, the assessee chose to claim depreciation for sanitary fittings and pipeline fitting only as furniture and fittings, and hence cannot treat it as plant for purposes of section 10(2) (vib). The reason for the assessee claiming depreciation allowance under rule 8(2) is quite obvious, as he could thereby claim 9 per cent. depreciation, instead of 7 per cent. by treating it as plant. But that is not decisive of the question whether the sanitary fittings and pipeline fittings constitute "plant" within the meaning of section 10(2) (vib) read with section 10(5) of the Act. Further, even granting for the sake of argument that sanitary fittings and pipeline fittings also fall within the meaining of "furniture and fittings" in rule 8(2), that would not warrant the contention of the department, that they are not plant under section 10(2) (vib). The rules are made under section 59 of the Act and as rules are meant only for the purpose of carrying out of the provisions of the Act, they cannot take away what is conferred by the Act or whittle down its effect. We cannot, therefore, hold that anything done by the assessee with a view to claim higher depreciation allowance would detract from the meaning of word "plant" in the Act. In the result, this contention also cannot be accepted.We, therefore, answer the question referred in the affirmative and in favour of the assessee. Advocates fee Rs. 100.

Question answered in the affirmative.