

ANDHRA PRADESH HIGH COURT

Panyam Cements

Vs

Addl. Commissioner of Income-Tax on

(A.S Rao, CJ. Amareswari, J.)

15.04.1977

JUDGMENT

Amareswari, J.

1. In this case, the following three questions of law have been referred by the Income-tax Appellate Tribunal under Section 256(1) of the I.T. Act to the High Court for its opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the amount of Rs. 1,54,561 and Rs. 51,821 received from the Government of Andhra Pradesh as power subsidy in the assessment years 1966-67 and 1967-68, respectively, are taxable under the Income-tax Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in deleting Rs. 66,684 from the total income of the assessee for the assessment year 1966-67 ?

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in directing the Income-tax Officer to grant depreciation allowance on the roads and bridges ?"

2. The first question was referred at the instance of the assessee and the other two questions were referred at the instance of the revenue.

3. In order to decide these three questions of law we may briefly refer to the facts of the case.

4. By G.O. Ms. No. 678 dated April 27, 1961, the Industries Department of the Government of Andhra Pradesh passed an order after considering the large number of representations received by the Government on the adverse effects of existing power rates upon the competitive capacity of the local manufacturers and the growth and expansion of industry in the State of Andhra Pradesh. Such representations were made to the Government impressing on it the necessity for the grant of suitable concessions in power rates applicable to the industry. A departmental

committee consisting of the officials of the industrial department and the electricity department was constituted to consider the problem of supply of power to industry to make necessary recommendations in regard to the requirement of reduction in rates. The committee felt that reduced power rates were necessary and, therefore, steps should be taken by the Government to work out a scheme of concessional rates for attracting new industries to the State. However, in view of the inability of the Andhra Pradesh Electricity Board to meet the cost involved, the committee considered that a specified amount should be granted to the industries department by the Government to defray the loss of revenue likely to be incurred by the Andhra Pradesh Electricity Board. The Director of Industries and Commerce recommended the grant of concessional rates of power supply to selected categories of medium and large industries on certain basis enumerated in that order. It was further recommended that the applications should be screened and sanctioned by a committee consisting of certain officials of the Government and the Chief Engineer, Electricity Board and projects. After consideration of these recommendations, the Government accepted them and accordingly directed that power may be supplied to new industrial units established and falling under the categories of industries listed in the Appendix to the G.O. at concessional rates for a period of 5 years from the date of commencement of production in each case and the reduction in rates will range between 25% and 50% of the existing rates, each case being decided on its own merits. The Government also accepted the recommendation of the Director of Industries and Commerce to constitute a committee for screening and making the recommendations on applications received for the grant of concessional power rates. By G.O. Ms. No. 188--Industries Department, dated February 25, 1965, which was subsequent to G.O. Ms. No. 678--Industries, the Government approved the recommendations of the Screening Committee and directed that power concessions should be given to some industries including the assessee herein, namely, M/s. Panyam Cements and Mineral Industries Ltd., at 20% concession on the existing tariff rates up to March 31, 1966. By a letter dated February 26, 1965, the assessee was informed that the Government of Andhra Pradesh had issued orders sanctioning 20% concession on the existing tariff rates to the assessee-company for the second plant. In accordance with the above, the assessee received an amount of Rs. 1,54,561 for the first assessment year and a sum of Rs. 51,821 for the second assessment year. It was contended before the ITO by the assessed that these sums were not taxable on the ground that the receipt was in the nature of a windfall and was casual. This contention was rejected by the ITO, who held that it was in the nature of a rebate from the Government towards power tariff and the same was assessable as revenue receipt and that the receipt had none of the characteristics of a windfall or a casual income. The ITO, accordingly, taxed the aforesaid amounts. On appeal, the AAC considered the contentions of the parties and held that the "subsidy" was given in pursuance of a definite policy of the Government and that the same was in the nature of a concession in the rates of electricity to certain industries. He further held that the income cannot be considered as a casual income or as a windfall and that the same was given by way of a concession to the general power tariff, otherwise payable by it. In effect, the AAC confirmed the order of the ITO and treated the above mentioned sums as the income of the appellant in both the assessment years.

5. There was a further appeal before the Tribunal and the same contention was reiterated on behalf of the assessee. The Tribunal on a consideration of the facts of the case and the respective submissions of the parties upheld the order of the AAC. It is, in these circumstances, the first question cited above was referred to the High Court for its opinion.

6. Sri M.J. Swamy, the learned counsel for the assessee, had raised two contentions, (1) the amounts received by the assessee-company for the assessment years 1966-67 and 1967-68 as power subsidy did not form part of the assessee's income and that the Government of Andhra Pradesh has granted only a subsidy to the assessee on the basis of 20% on the existing tariff rates of electricity. (2) Even if it is to be considered as an income, the receipt is only of a casual and non-recurring nature and hence not taxable. He relied upon a decision of the Bombay High Court in *Mehboob Productions Private Ltd. v. CIT*¹

7. On behalf of revenue, Sri Polavarapu Rama Rao, counsel for the income-tax department, has contended that the amounts granted by the Government to the assessee actually reduced the price of the electricity which the assessee has to pay and that in this case the assessee had debited in the profit and loss account the full amounts of electricity and consumption charges and had claimed them as expenses in the assessment. The amount received by the assessee is only a rebate which falls under Section 41(1) of the I.T. Act, 1961, and the same shall be deemed as profits and gains, of business and is chargeable to income-tax.

8. In our considered opinion there is no substance in the contentions raised on behalf of the assessee. From a reading of the several G.Os. mentioned above, we find that there is no basis for these submissions. The subsidy or remission in regard to the power was granted by the Government in pursuance of a well defined policy. We may extract relevant portions of G.O. Ms. No. 678 dated April 27, 1961, in this context:

"This committee examined, in all its aspects, the question of making available the supply of power to new industries at concessional rates as a method of stepping up the pace and range of industrial development in Andhra Pradesh. The Committee came to the conclusion that reductions in existing power rates were necessary and, therefore, steps should be taken by the Government to work out a scheme of concessional rates for attracting new industries to the State. As regards the method of financing to be adopted for the grant of concessional rates, in view of the inability of the Andhra Pradesh Electricity Board to meet the cost involved the Committee considered that a subsidy should be granted to the Industries Department by the Government to defray the loss of revenue likely to be incurred by the Andhra Pradesh Electricity Board. The Director of Industries and Commerce has reported (in his second letter read above) that the present rates of power supply in Andhra Pradesh (as compared to those obtaining for the same loads in neighbouring States like Madras, Mysore and Bombay) have been a contributory cause of

the unsatisfactory pace of industrial growth in Andhra Pradesh. He has, therefore, urged the grant of concessional rates of power supply to selected categories of medium and large industries on the following basis :

- (i) Power tariff rates in Andhra Pradesh should be brought on a level with those ruling in Mysore, Madras and Maharashtra for comparable loads.
- (ii) Concessional power rates should be offered to the following categories of new industries;
 - (a) industries for which power is an important cost factor ;
 - (b) industries which require bulk loads; and
 - (c) essential or catalyst industries--the establishment of which will attract other industries to this State.
- (iii) Concessional power rates to be offered to new industries falling within the above-mentioned categories for a period of five years in the first instance.
- (iv) The cost of the difference between existing negotiated power rates and proposed concessional rates (estimated at Rs. 20 to 25 lakhs over the period of next five years) to be given as a grant to the Industries Department by the Government; and
- (v) The applications for these concessions should be screened and sanctioned by a small committee consisting of the Secretary, Industries Department (Chairman) and Secretary, Finance, the Secretary, Public Works Department, the Director of Industries and Commerce, and the Chief Engineer, Electricity Board & Projects with powers to add new items/ industries to the approved lists under the three categories of industries mentioned above."

9. From this, it is clear that the Director of Industries had urged that concessional rates of power supply be granted to selected categories of medium and large industries and that the applications for the grant of such concessional power rates should be screened and sanctioned by a Screening Committee. Subsequently, by a letter dated February 26, 1965, the assessee was informed that the Government has issued orders sanctioning 20% concession on the existing tariff rates to the assessee-company for the second plant. In these circumstances, it cannot be held that the amounts granted by the Government was in the nature of a windfall to the assessee and that they are wholly unconnected with the business carried on by it. The assessee has to use electricity in the manufacture of cement and the subsidy given by the Government has only the effect of supplying electricity at reduced rates. The assessee was entitled to the concessional rates because it had been approved by the Screening Committee appointed by the Government as per G.O. Ms. No. 678. If the assessee was not carrying on the business it would not have been eligible for the said concession. The receipt of the amounts mentioned above is not of a casual and non-recurring nature. The assessee was granted the subsidy as a result of G.O. Ms. No. 678. It is not a casual payment. Though there was no contractual obligation on the part of the Government, the assessee could reasonably expect the grant of the amount for a period for which the Government passed the orders. We are unable to see that how it could be called a windfall or a casual receipt. We do not see how the decision in *Mehboob Productions Private Ltd. v. CIT*² supports the case of the assessee. In the said decision, it is no doubt observed thus :

"All receipts by an assessee would not necessarily be deemed to be income of the assessee for the purpose of income-tax and the question whether any particular receipt is income or not, will depend on the nature of the receipt and the true scope and effect of the relevant taxing provision."

10. Having regard to the facts of the present case, we are clearly of the opinion that the receipt in the instant case can be included in the total income as it is not a casual or a non-recurring receipt. Even assuming it is considered as a casual and non-recurring receipt, under Section 10(3) of the I.T. Act if such a receipt arises from business then it could be included in the total 'income of the assessee. As stated earlier, the assessee would not have been entitled to this subsidy but for its carrying on the business. Therefore, it follows that the subsidy received by the assessee arose from the business carried on by the assessee. In this connection, we are fortified by the decision of the Supreme Court in *Meenakshi Achi v. CIT*³. We are of the further opinion that the amounts received by the assessee towards power subsidy shall be deemed to be profits and gains of business under Section 41(1) of the I.T. Act, 1961. Section 41(1) of the I.T. Act is as follows:

"41. (1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee, and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit accruing to him, shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not."

11. In the present case, the assessee had paid the electricity charges at the original rate in full and claimed an allowance in respect of the said expenditure. In pursuance of the policy of the Government to supply electricity at a concessional rate of 20% less, the above amounts were paid to the assessee towards the expenditure incurred by him in regard to electricity charges and hence they should be deemed to be profits and gains of the business. All the requirements of Section 41(1) of the I. T. Act have been fulfilled. Hence, we are unable to agree with the learned counsel for the assessee that the amounts received by them towards concessional rates of electricity charges are not subject to income-tax. Hence, we answer this question in the affirmative and against the assessee.

12. We shall now take up the second question referred to us at the instance of the department. During the accounting year, relevant to the assessment year 1966-67, the assessee-company deposited a sum of Rs. 66,684 with the Railways for constructing an overbridge at the unmanned level crossing. It was contended by the assessee before the ITO that the said sum should be

allowed as staff welfare expenses. This plea was rejected by the ITO on the ground that the said sum represented only a donation or contribution made to the Railways and not an expenditure incurred by the assessee. It is also observed by the ITO that this amount was paid for constructing a bridge which is not the assessee's property, but that of the Railways and, therefore, it cannot be said to be for business purposes. It was further held that it resulted in bringing into existence an asset of an enduring nature and as such it represented capital expenditure, but, however, no depreciation can be granted since the bridge was not the property of the assessee. In this view, he added the sum of Rs. 66,684 to the income returned by the assessee. The appeal preferred by the assessee to the AAC was also dismissed. On a further appeal before the Tribunal, it was contended on behalf of the assessee that the expenditure was exclusively incurred for the purpose of business. The attention of the Tribunal was drawn to the speech delivered on November 26, 1964, on behalf of the assessee-company, on the occasion of the opening of the road overbridge by the Railway authorities in which the circumstances leading to the construction of the bridge were elaborately set out. It was pointed out that the unmanned level crossing was a perpetual danger to the residents of the colony, that the Railway authorities pressed the assessee for the execution of a rail-road overbridge at the assessee's expense and that the assessee-company consented to the construction and deposited the aforesaid sum of Rs. 66,684 because of the safety ensured to its employees and to its vehicles as a result of such an overbridge. It was further contended that the said expenditure did not bring into existence any asset, but the same was made for running the business of the company efficiently and conveniently. The Tribunal has accepted the submissions made on behalf of the assessee and held that this amount could not be added to the income of the assessee.

13. Sri Rama Rao, the learned counsel for the department, contends that the Tribunal was in error in deducting this amount from the assessee's income as it was meant for the purpose of construction of a bridge which can be said to be a benefit of an enduring nature and as such it represented capital expenditure. On the other hand, Sri M.J. Swamy, the learned counsel for the assessee, contends that the expenditure incurred by the assessee was wholly and exclusively for the purpose of business of the assessee. The question to be decided is whether the construction of this railway bridge for which an amount of Rs. 66,684 has been spent by the assessee was wholly necessary for the purpose of running the business. It is common ground that the overbridge at the unmanned railway level crossing was considered a necessity by both the Railways and the factory having regard to the location of the main factory and the colony. A reference to the speech made on behalf of the company while requesting the railway administration to open the railway overbridge would throw light on the circumstances that led to the construction of the railway overbridge. It appears that the management decided to locate the cement factory in the outer fringes of Panyam reserve forest area, very near the limestone belt but not far away from Bugganipalli R.S. There was an unmanned level crossing which was a potential danger to the residents of the colony. Hence, the factory proposed to have a manned level crossing at the place of the unmanned one and deposited some amount. As a manned level crossing would involve a recurring expenditure of Rs. 2,500 per annum, the factory considered the feasibility of having a

rail-road overbridge at this location. Estimates were prepared by the railway administration for this purpose and finally when tenders were accepted for this construction, the estimate was Rs. 66,684. Though for many years the unmanned level crossing did not involve in accidents, in 1968, one of the State Road Transport buses collided with a railway engine and this accident involved injuries to 15 persons. Immediately, the railway administration pressed the company for the execution of the rail-road overbridge at their expense and in view of the actual safety that this work would ensure to the employees of the factory, the management readily consented to the construction of the road overbridge and deposited immediately the balance of amount payable to make up the final estimate of Rs. 66,684. It is further observed in the said speech that the management was satisfied that this is an amenity for the safety and in the interest of all the employees of the company. As the company's aided school for the children is situated on the factory side and the children pass through the area, the construction was undertaken. In these circumstances, we cannot say that the amount was simply donated to the railways. In this connection, we rely upon the decision of the Calcutta High Court in the case of *CIT v. Hindusthan Motors Ltd*⁴. Though in that case the expenditure was incurred for repairing the road, the ratio laid down in that case would apply to the facts of the instant case. It cannot be denied that the expenditure was incurred to run the business of the assessee efficiently and conveniently as a result of the construction of the bridge for which the railways were not willing to incur the expenditure. At page 309 of the above referred decision, it was observed that "each case has to be decided on the facts and circumstances obtaining therein ". We extract the following passage from the judgment (p. 309):

"It was not for nothing that the Supreme Court observed in the case of Assam Bengal Cement Co. [1955] 27 ITR 34 that in the great diversity of human affairs and the complicated nature of business operations, it is difficult to lay down a test which would apply to all situations. One has, therefore, got to apply these criteria one after the other from the business point of view and come to the conclusion whether on a fair appreciation of the whole situation the expenditure incurred in a particular case is of the nature of capital expenditure or revenue expenditure. On the overall appreciation of the facts of this case, we are satisfied that the expenditure was incurred by the assessee, as a prudent business-man, to induce an otherwise unwilling Government to perform its obvious duty of keeping communication lines in reasonable state of repair and save trouble for itself, in the carriage of its own business."

14. This decision of the Calcutta High Court was approved by the Supreme Court in the case of *Lakshmiji Sugar Mills Co. P. Ltd. v. CIT*⁵ In the case decided by the Supreme Court, the company carried on the business of manufacture and sale of sugar. It paid to the Cane Development Council certain amounts by way of contribution for the construction and development of roads between the various sugarcane producing centres and the sugar factories of the assessee. The expenditure was incurred under a statutory obligation for development of roads which were originally the property of the Government and remained so even after the improvement had been done. The Supreme Court considered that the identical question about the admissibility of the

claim for expenditure as in the case before them arose in the case of *CIT v. Hindusthan Motors Ltd*⁶. before the Calcutta High Court. It was argued on behalf of the department before the Supreme Court that in the case before the Calcutta High Court, the expenditure was incurred only to meet the expenses of the repair and no asset or advantage of enduring benefit accrued to the assessee. Dealing with this contention, the Supreme Court has observed as follows (p. 379):

"This distinction does not appear to be sound because in the diverse nature of business operations it is difficult to lay down a test which would apply to all situations. The criteria has to be applied from the business point of view and on a fair appreciation of the whole situation. In the present case, apart from the element of compulsion, the roads which were constructed and developed were not the property of the assessee nor is it the case of the revenue that the entire cost of development of those roads was defrayed by the assessee.....From the business point of view and on a fair appreciation of the whole situation the assessee considered that the development of the road in question could greatly facilitate the transportation of sugarcane. This was essential for the benefit of its business, which was of manufacturing sugar in which the main raw material admittedly consisted of sugarcane. These facts would bring it within the second part of the principle mentioned before, namely, that the expenditure was incurred for running the business or working it with a view to produce the profits without the assessee getting any advantage of an enduring benefit to itself."

15. Having regard to the said principle their Lordships held in the case before them that they were satisfied that the expenditure was incurred by the assessee for reasons of commercial expediency and, therefore, should have been allowed as admissible deduction. The ratio laid down by the Supreme Court in the case of *Lakshmiji Sugar Mills Co. P. Ltd. v. CIT* [1971] 82 ITR 376(Supra) applies to the facts of the instant case. It is further seen that the construction of the overbridge in question ensured the safety of the employees and vehicles of the assessee's factory, and that it avoided collisions at the unmanned level crossing and the expenditure on such were certainly incurred for commercial expediency and in order to facilitate the assessee's business. In this connection we may refer to the observations of the Calcutta High Court in the case of *Calcutta Landing & Shipping Company Ltd. v. CIT*⁷ at page 10 :

"It is now well-settled that the expression expenditure laid out or expended wholly and exclusively for the purpose of such business' includes expenditure voluntarily incurred for commercial expediency and in order indirectly to facilitate business. It is immaterial if a third party also benefits thereby."

16. In the case before the Calcutta High Court, the expediency was to create incentives in its employees to work efficiently by passing a resolution to give a payment of pension to the dependants of a murdered employee. It was held that if in these circumstances, it was reasonable to hold that the resolution was adopted for the purpose of either giving incentives to loyal

workers or of creating confidence in the minds of workers who need face risks to their lives in the discharge of their duties, that the employer would reward selfless loyalty, the proper legal inference would be that the expenditure was laid out for business expediency. It was further observed that to have a loyal body of employees was of great commercial expediency, and if the assessee-company made a payment to achieve such an object, the said expenditure could be said to have been incurred wholly and exclusively for the purpose of business. In the present case, the overbridge was constructed for the safety of the employees and vehicles of the assessee-company and also for the safety of the children of the company's aided school which is situate on the factory side. Such an amenity is certainly essential to earn the goodwill of the workers and hence it may be said to be incurred wholly and exclusively for the purpose of business. In the case of *M. K. Brothers P. Ltd. v. CIT*⁸ the Supreme Court has held that "payment made in the course of and for the purpose of carrying on business or trading activity would be revenue expenditure even though the payment is of a large amount and has not to be made periodically".

17. To the same effect is the principle laid down in *CIT v. T.V. Sundaram Iyengar & Sons (P.) Ltd.* .

18. In *CIT v. Belgachi Tea Company Ltd.* , it was held that if the predominant and main purpose of incurring the expenditure was carrying on of the business, the incidental advantage of that expenditure which the assessee may gain which is of some endurance, cannot affect its revenue character. The facts of the said case are that the assessee, a tea grower, claimed under "repairs account" a sum of Rs. 19,748 as cost of repairs to fencing of the tea gardens. The ITO was of the view that new fencing was fixed with new pillars and, therefore, a major portion of the expenditure was capital expenditure and disallowed the sum. On a reference, the High Court has held that the assessee's business was to carry on the business of tea growing and the business could not be carried on unless there was a proper fencing. Therefore, the incurring of the expenditure was in connection with the carrying on of the business by the assessee. If the predominant and main purpose of incurring the expenditure was the carrying on of the business, the incidental advantage of that expenditure, in that the property is secured more and thereby the assessee gains advantage which is of some endurance, cannot affect its revenue character. In that view the High Court has allowed the expenditure of Rs. 12,000 as business expenditure. Applying the above principle to the facts of the present case we are of the opinion that the expenditure incurred for the construction of the railway overbridge in the present case was absolutely necessary for the purpose of running the business smoothly and efficiently and the incidental advantage, if any, are of negligible nature and cannot affect its revenue character.

19. To the same effect is the principle laid down in a judgment of this court in R.C. No. 69 of 1969, dated November 2, 1971.

20. Sri Rama Rao, the learned counsel for the department strongly relies upon the decision in *Travancore-Cochin Chemicals Ltd. v. CIT* and contends that by having the new rail-bridge

constructed for the improvement of transport facilities, the assessee acquired an enduring advantage for its business and hence it was of a capital nature and cannot be deducted from the income of the assessee. Sri M.J. Swamy, appearing for the assessee, in reply to this states that in the above-said case there was no finding that the expenditure incurred by the assessee was absolutely necessary for the purpose of running of the business. We see some force in the contention of the learned counsel for the assessee though no doubt it was held in the above judgment of the Supreme Court that by the construction of the new road for the improvement of the transport facilities the appellant therein acquired an enduring advantage for its business. It was not considered whether it was absolutely necessary for the improvement of the transport facilities which would confer an additional advantage for the running of the business. In the present case, as we have stated earlier, the construction of the bridge was an absolute necessity. In fact this proposal was started only after an accident had happened resulting in the death of many people in the premises. If the bridge was not constructed it may lead to many more accidents which ultimately may result in labour unrest as the colony is situated within the premises. Such an amenity is certainly to earn the goodwill of the workers. We are, therefore, of the opinion that the assessee is entitled to the claim of deduction for the sum of Rs. 66,684. This question is answered in the affirmative and against the revenue.

21. We now take up the third question which relates to the disallowance of the claim of depreciation on roads. The ITO disallowed the claim on the ground that they are not depreciable assets. The AAC in appeal held that a road could not be considered as a building and, therefore, the assessee was not entitled to any depreciation on value of the roads. On a further appeal, the Tribunal held that the assessee will be entitled to depreciation in respect of roads and directed the ITO to grant depreciation having regard to the nature of the roads on the basis of Rule 5 of the I.T. Rules, 1962. Sri Rama Rao, the learned counsel for the department, submits that no depreciation is admissible on roads. He contends that a building does not include land and more so in case of roads which do not come under the definition of a building. On the other hand, it is contended by Sri M.J. Swamy, the learned counsel for the assessee, that the roads in question were constructed by the assessee incurring huge expenditure. Inasmuch as construction is involved in the roads, they fall under the term "building" and hence the assessee is entitled to depreciation. He further states that the roads being within the campus of the factory are comprised within the meaning of the term "building" and the claim of the assessee is admissible. It is common ground that the roads under consideration were constructed by the assessee within the premises of the factory in which buildings are situate. The term "building" is defined in Chambers' Twentieth Century Dictionary, revised edition, with supplement as under : "The art of erecting houses, etc: Anything built : a house." In the Shorter Oxford Dictionary on Historic Principle (third edition revised with addenda) the term "building" is denned as under:

"2. That which is built, a structure edifice ME". The term 'road' is defined in the Chambers' Twentieth Century Dictionary aforesaid as under:

".....a tract suitable for wheeled traffic, especially for through communication (.....): a highway:

a roadway: a way of approachcourse ;--..... "

22. The definition in the Shorter Oxford Dictionary above mentioned of the term "road" is as under :

"4. An ordinary line of communication between different places, used by horses, travellers on foot, or vehicles.

5. Any path, way, or (material) course.

6. A way or direction taken or pursued by a person or thing; a course followed in a journey."

23. It is submitted that the assessee has spent huge sums for the construction of roads. Hence, it can be said that construction is involved in roads and roads are built on land by using the necessary material. In this connection, we may mention that in the case of buildings, though they are built with foundation commencing from some feet below the surface of the land, depreciation is admissible thereon. Hence, we see no reason why the roads which are built on the surface of the land could not be constituted as building so as to be entitled for depreciation. It is a matter of common knowledge that roads definitely depreciate. The extent of depreciation depends upon the nature of the roads, depending upon the material used for construction of roads such as concrete, black top, gravel or earth. Hence, we are of the opinion that depreciation can be allowed on roads and the direction given to the ITO to examine the nature of roads and grant depreciation in accordance with the I. T. Rules, is perfectly in order. Hence, we answer this in the affirmative and against the revenue.

24. In the result, question No. 1 is answered in the affirmative and against the assessee, question No. 2 is answered in the affirmative and against the revenue and question No. 3 is answered in the affirmative and against the revenue. In the circumstances, we direct the parties to bear their own costs.

Cases Referred.

1[1977] 106 ITR 758

2[1977] 106 ITR 758 (Bom)

3[1966] 60 ITR 253

4[1968] 68 ITR 301

5[1971] 82 ITR 376

6[1968] 68 ITR 301 (Cal)

7[1967] 65 ITR 1

8[1972] 86 ITR 38, 42