

**CALCUTTA HIGH COURT**

Commissioner of Income-tax

Vs.

Kamala Mills Ltd

Income Tax Ref. No. 9 of 1947

(G.N. Das and R.P. Mukerjee, JJ.)

05.08.1948

**ORDER**

**G.N. Das, J.**

1. This is a reference under Section 66 (1) Income-tax Act, at the instance of the Commissioner of Income-tax, Bengal.
2. The question relates to the allowable depreciation for the charge-year 1942-43.
3. In the preceding charge-year, (1941-42), the allowable depreciation was found to be Rs. 87,244/-. The written down value was Rs. 9,08,003/-. In that year, there was resultant loss, even without taking into consideration the depreciation allowance. The depreciation allowance of Rs. 87,244/- was carried forward to the charge-year 1942-43 as unabsorbed depreciation.
4. A question arose whether the written down value of the assets for the purpose of allowing depreciation in the charge-year 1942-43, should be taken to be Rs. 9,08,003/- less Rs. 87,244/- or Rs. 9,08,003/-. The income-tax authorities contend for the former figure, the assessee for the latter.
5. It is no longer disputed that the present controversy should be determined on the terms of Section 10 (5) (b) as amended by Income-tax (Amendment) Act XXIII (23) of 1941 which is to the following effect.

10 (5) 'Written down value' means :

(b) in the case of assets acquired before the previous year the actual cost to the assessee less all depreciation 'actually' allowed to him under this Act, or any Act repealed thereby, or under executive orders issued when the Indian Income-tax Act, 1886, was in force.

6. Mr. Pal, appearing for the Income-tax authorities, contends that the expression "actually allowed" means "allowable under the law in force." Mr. Pal refers as to the provisions of Section 10 (2) (vi) Provisos (b) and (c) of Act XI (11) of 1922 and also to the corresponding provisions of Act VII (7) of 1939. Mr. Pal suggests that the amendment of 1941 has reference only to the extent of the allowance and not to the question whether, the allowance was given effect to or not.

7. In our opinion, the contentions are without substance.

8. The words "actually allowed" are unambiguous and connote the idea that the allowance was in fact given effect to.

9. The depreciation allowance may be set off against the profits or gains under Section 10 (2), Clause (vi) in calculating the assessable income and when so set off, the depreciation allowance is actually allowed.

10. In the present case, as there was loss, the depreciation allowance of Rs. 87,244/- was not set off and cannot be said to have been actually allowed.

11. In our opinion, the Tribunal was right in holding that in determining for the 1942-43 assessment, the written down value of the assets as brought forward on 1-1-1941, the allowable depreciation of Rs. 87,244/- to which effect could not be given by reason of there being no profits in the preceding year, was not depreciation "actually allowed" within the meaning of Section 10 (5) (b) of the Act as amended in 1941. The answer to the question referred is therefore in the affirmative.

12. The assessee, Kamala Mills, Ltd., Calcutta is entitled to the costs of this Reference, 20 gold mohurs.

Reference answered.