

CALCUTTA HIGH COURT

Commissioner of Income Tax

Vs

Riverside Bhatpara Electric Supply Co Ltd

(Sabyasachi Mukharji, J.)

12.12.1974

JUDGEMENT

Sabyasachi Mukharji, J.

(1.) THE assessee is a company carrying on business of the distribution of electricity. It has service lines through which electricity is transmitted for distribution. In the case of such service lines a portion of the cost thereof is borne by the consumer concerned. Prior to the coming into force of the Income-tax Act, 1961, the Indian Income-tax Act, 1922, then in force, provided for depreciation allowance on such service lines. At that time question arose as to whether the contribution received from the consumers of electricity in respect of the service lines would go to reduce the actual cost of the said assets for the purpose of calculation of depreciation. In the case of *Commissioner of Income-tax v. Ranchi Electric Supply Co. Ltd*¹. it was held by the Patna High Court that the "actual cost" was the actual cost incurred in installing the connections irrespective of any contribution received from any consumer. Consequently, the amount paid by the consumers of such service lines could not be taken into account in calculating the actual cost. THE assessments of the assessee-company up to the assessment year 1962-63 were made on that basis. Section 10(2)(vii) of the Indian Income-tax Act, 1922, provided that "depreciation would be allowed on the assets at such percentage of written down value thereof as may in any case or class of cases be prescribed". "Written down value" was defined in Section 10(5) of the Indian Income-tax Act, 1922, after the amendment in 1953, as under : "(5) 'written down value' means-- (a) in the case of assets acquired in the previous year, the actual cost to the assessee:..... (Provisos to this clause are omitted as they have no relevance) (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previous year the actual cost to the assessee less all depreciation actually allowed to him under this Act, or any Act repealed thereby, or under executive orders issued when the Indian Income-tax Act, 1886 (II of 1886) was in force :....." (Provisos to this clause also are omitted as being of no relevance).

(2.) THE Explanation to the said section denned "actual cost" as follows: "For the purposes of this sub-section, the expression 'actual cost' means the actual cost of the assets to the

assessee reduced by that portion of the cost thereof, if any, as has been met directly or indirectly, by Government or by any public or local authority and any allowance in respect of any depreciation carried forward under Clause (b) of the proviso to Clause (vi) of Sub-section (2) shall be deemed to be depreciation 'actually allowed'." In short, therefore, depreciation under the old Act had to be allowed on the written down value of the assets as defined in Clause (a) and Clause (b) of Section 10(5) of the Indian Income-tax Act, 1922, on the basis of "actual cost" as defined to mean the cost of the assets as reduced by the portion thereof as might have been made directly or indirectly by Government or by any public or local authority. When the Income-tax Act, 1961, came into effect definitions of "actual cost" and "written down value" were provided by Section 43(1) and Section 43(6) respectively of the Act. It may be relevant to refer to Section 43 which is as follows : "43. Definitions of certain terms relevant to income from profits and gains of business or profession.--In Sections 28 to 41 and in this section, unless the context otherwise requires-- (1) 'actual cost' means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority:..... Explanation 2.--Where an asset is acquired by the assessee by way of gift or inheritance the actual cost of the asset to the assessee shall be the written down value thereof as in the case of the previous owner for the previous year in which the asset is so acquired or the market value thereof on the date of such acquisition, whichever is the less....." "Written down value" has been defined under Section 43(6) as follows: "43. (6) 'Written down value' means-- (a) in the case of assets acquired in the previous year, the actual cost to the assessee ; (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 under the Indian Income-tax Act, 1922 (11 of 1922), or any Act repealed by that Act, or under any executive orders issued when the Indian Income-tax Act, 1886(2 of 1886), was in force.....(once again the proviso and the Explanation to the said section are omitted as being of no relevance)." The difference between Section 10(5)(a) of the Indian Income-tax Act, 1922, and Section 43(1) of the Income-tax Act, 1961, is that under the Act of 1922 in assessing the actual cost only the contribution by Government or any other public or local authority had to be excluded while under the Act of 1961 the contribution received from any person had to be excluded. When the assessment for the year 1962-63 of the assessee came to be made by the Income-tax Officer, he found that the claim for depreciation made by the assessee included depreciation on the written down value of the service lines put into use in the assessment year 1961-62 as part of its record. The assessee had received Rs. 59,207 as and by way of contribution from the Government and local authorities. In the assessment of 1961-62 there was disallowance of proportionate depreciation on the sum of Rs. 59,207, as to that extent claim of the assessee had exceeded. In making the assessment for 1962-63 he similarly reduced the figure of depreciation claimed by the assessee taking into account the contribution received from the local authorities and the Government mentioned above. The assessee appealed to the Appellate Assistant Commissioner. According to the Appellate Assistant Commissioner's view, the actual cost for the assessment year under reference, viz., 1962-63, in respect of the assets had to be taken at gross cost subject to the deduction of the contributions received from the consumers and also the depreciation actually allowed. He directed, accordingly, recomputation of

the depreciation on the above basis and if the result turned out to be a negative figure, according to him, the assessee would not be entitled to any depreciation.

(3.) THERE was a further appeal to the Tribunal and it was contended on behalf of the assessee that the provisions of the 1961 Act were not retrospective and interpretation of Section 43 should be such as would be applicable to contributions received in the accounting years relevant for the assessment year 1962-63 and thereafter. It was further contended that if the definition of the 1961 Act was applied in respect of asset acquired in earlier years it would amount to making the Act retrospective in operation for which there is neither any express provision nor any necessary implication in the Act. It was further urged that if such retrospective effect was given certain anomalies would result with reference to the assets acquired in the earlier years. It was on the other hand contended by the revenue that the intent and purpose of the legislation was that from the relevant year the 1961 Act should be applied. The Tribunal after considering the relevant contentions came to the conclusion that the provisions of Sections 43(1) and 43(6) of the Income-tax Act, 1961, should be applied with reference to the assessment year 1962-63 and depreciation had to be calculated by taking into account the provisions of the Act of 1961 with reference to all the assets in use in that year. It, accordingly, confirmed the order of the Appellate Assistant Commissioner. In the premises, under Section 256(1) of the Income-tax Act, 1961, the following question has been referred to this court: "Whether, on the facts and in the circumstances of the case, depreciation could be computed on the basis of the definition of 'actual cost' and 'written-down value' in Sections 43(1) and 43(6) respectively of the Income-tax Act, 1961, even with reference to the assets in use in the previous year for the assessment year 1962-63 but which were acquired prior thereto ?" The question with which we are concerned in this reference is how will the actual cost be determined in respect of an asset which had been acquired by the assessee in any year prior to the previous year relevant for the assessment in question ? As mentioned hereinbefore, prior to the introduction of the 1961 Act "actual cost" had to be determined by deducting only the contribution made by the local authority and the Government, while under the present Act the contribution made by any other person including the consumer would have to be deducted in computing the actual cost. Good deal of arguments were advanced before the Tribunal as well as before us on the question whether the particular legislation was retrospective in effect and whether such retrospective effect could be given effect to in the scheme of the Income-tax Act and to the relevant section with which we are concerned. Counsel for the assessee contended that the concept of "actual cost" was inseparably connected with the time of acquisition of an asset. Therefore, an asset which had been acquired at a particular point of time and whose cost had been computed according to the tax laws relevant at that time could not, in the scheme of the Income-tax Act, be recomputed again differently in view of the changes made. According to counsel for the assessee, the effect of the new introduction of the 1961 Act was that the contributions made by consumers or other persons after the coming into operation of the then 1961 Act would have to be deducted ; but the contributions that had been made prior thereto and the cost of assets which had been computed excluding those contributions could not be recomputed again for the purpose of calculating the depreciation to

which the assessee was entitled. ;

Cases Referred.

1[1954] 26 ITR 89 (Pat)