

CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs

Swedish East Asia Co Ltd

(Sabyasachi Mukharji, J.)

28.04.1980

JUDGEMENT

Sabyasachi Mukharji, J.

(1.) IN this judgment, we propose to deal with these two references, because these relate to a common question relating to the same assessee for different assessment years. We shall, however, have to refer to a slight difference in the findings of the AAC in respect of one year, viz., the order passed by the AAC in INcome-tax Reference No. 670A of 1972, which would be relevant and to which we shall refer at the relevant time.

(2.) THE assessee is a non-resident shipping company registered in Sweden. So far as the first reference in concerned, the assessment year under consideration is 1963-64, the corresponding accounting year being the year ending December 31, 1962. THE ITO had not allowed depreciation on the two ships, viz., Bali and Mindore, which were acquired in the year 1941 on the ground that these two ships were acquired more than twenty years ago. THE ITO computed the total income at Rs. 1,63,572. It will be relevant for the present purpose to refer to certain portions of the order of the ITO. Dealing with the depreciation on these two vessels, the ITO observed, inter alia, as follows : "Deduct : Depreciation on vessels for reasons discussed in the assessment order for 1962-63, depreciation is not allowable on two vessels, viz., Bali and Mindore, which were acquired in 1941 and have, therefore, completed twenty years in the assessment year 1961-62. Depreciation is allowed as under : He, thereafter computed the total income as under: With the other items, we are not concerned. There was an appeal before the AAC. Before the AAC, it was contended on behalf of the assessee that these two ships were purchased in 1941 and normally the depreciation should have been up to and including assessment year 1961-62 only, since the claim could be made only for 20 years. However, it was stated that during the war years, these two ships did not touch any Indian port between April, 1940, and December, 1945. Hence, it was urged that the depreciation on these ships should be allowed up to and including the assessment year 1966-67. On this question for the preceding year, the AAC noted that the contention of the assessee had been accepted. Therefore, he held

that depreciation on the two ships in question was to be allowed for the year under appeal. The AAC, however, directed that the assessee should produce before the ITO evidence to show that no depreciation had been claimed or allowed during the war years on these two ships. He disposed of the contention before him in the manner indicated before. Thereafter, there was an appeal before the Tribunal. The Tribunal found that in I.T. Appeal No. 11628 of 1960-61 which was the appeal relating to the assessment year 1958-59, this point had been disposed of by the Tribunal in favour of the assessee. It is necessary to refer in detail to that order later because of the contention that was urged before us regarding the effect of the decision of the Calcutta High Court, which we shall refer to presently. Before we do so, in disposing of the instant appeal before the Tribunal, the Tribunal referred to a portion of the previous order as under : "In the case of a foreign shipping company like that of the appellant-company there may be ships which are borne more than 20 years on the total world fleet and many of the ships might not have been used at all in the Indian waters but there is no prohibition under the Indian Income-tax Act, against allowing depreciation on such ships simply on the ground that the ship had formed a part of the company's fleet for more than 20 years. We, therefore, hold in favour of the appellant-company, viz., that depreciation allowance as provided in Rule 8 should be allowed on all ships employed in connection with the company's Indian trade subject only to the limitation imposed under proviso (c) to Section 10(2)(vi). Accordingly, in our opinion, the assessee-company is entitled to depreciation allowance on the aforesaid two ships as prescribed in Appendix I in terms of Rule 5 of the Income-tax Rules, 1962, and subject only to the limitation prescribed by Section 34(2)(i) of the I.T. Act, 1961."

(3.) IN the premises, the Tribunal in Reference No. 506 of 1972 has referred the following question for our consideration : "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was entitled to depreciation allowance under Rule 5 of the INcome-tax Rules, 1962, even in respect of the ships, Bali and Mindore, for the assessment year 1963-64 ?" ;