

CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs

Kalyani Spinning Mills Ltd

(Sabyasachi Mukharji and S M Guha, J.J.)

25.11.1980

JUDGMENT

Sabyasachi Mukharji, J.

1. The assessee is a limited company. This reference relates to the assessment years 1965-66 and 1966-67. For these assessment years the ITO did not allow depreciation on roads within the factory compound and the compound of the residential quarters of the factory employees. Against the orders of the ITO the assessee went up in appeal before the AAC. The AAC, following the order of the Appellate Tribunal for the assessment year 1963-64, held that depreciation should be allowed on these roads at the rate applicable to first class buildings. The revenue felt aggrieved by this order. It went up in appeal before the Tribunal. The Tribunal, following its previous decision, upheld the assessee's contention and dismissed the appeal and held that these roads were entitled to depreciation at the rate applicable to first class building materials. On the aforesaid facts the following question has been referred to this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that depreciation was allowable in respect of the roads within the factory compound and the compound of the residential quarters of the factory employees and that such depreciation should be computed at the same rate as applicable to first class buildings ?"

2. We are here concerned with the question of allowability of depreciation in respect of, (1) roads within the factory compound and (2) the compound of the residential quarters of the factory employees. The next aspect of the matter is whether such depreciation should be allowed at the same rate as applicable to first class buildings.

3. Now, so far as the last aspect of the question is concerned, it is not disputed that for the construction of this road first class building materials were utilised. If that is so, then such depreciation allowance must automatically be computed at the same rate as applicable to first

class buildings if otherwise allowable. As a matter of fact, roads, if they are entitled to depreciation, depreciate more quickly. It has been held in several decisions of this court and other High Courts, to which we shall presently refer, that roads may, in certain circumstances, become part of the buildings which are used for the purpose of business and as such entitled to depreciation under Section 32 of the I.T. Act, 1961. In this connection learned advocate for the revenue drew our attention to the expression used in Section 32, where it has been stated : "in respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purpose of the business or profession", and then certain deductions are mentioned. Therefore, learned advocate for the revenue emphasised that in order to be entitled to depreciation the building or the plant or the machinery must not only be owned by the assessee but should also be used for the purpose of business. In this contention he is undoubtedly right. He also drew our attention to Section 37 which provides for the allowance of expenditure laid out wholly and exclusively for the purposes of business. His point was that in some cases expenditure for the roads might be laid out for the purpose of business but that did not automatically or necessarily mean that such building, plant or machinery is used in the business. He also drew our attention to Section 38 of the Act which stipulates that if an expenditure is incurred, which is partly in respect of building, machinery, plant or furniture, but which is not exclusively used for the purpose of business, then there should be apportionment. This point, as we have mentioned before, has been discussed in several decisions. In this connection we may refer to the decision of the Bombay High Court in the case of *CIT v. Colour-Chem Ltd*¹. where it was held that roads or roadways laid out by the assessee-company for the purposes of linking several factory buildings within the factory premises and which had been used for the purpose of carrying raw materials and finished products and workers must be regarded as buildings within the meaning of Sub-clause (vi) of Section 10(2) of the Indian I.T. Act, 1922. In these circumstances, it was held that such roads were entitled to depreciation as building. Our attention was also drawn to the observations of this court in the case of *Oil India Ltd. v. CIT*² as well as the observations of the Gujarat High Court in the case of *CIT v. Vac Met Corporation P. Ltd*³. In the case of *Indian Aluminium Co. Ltd. v. CIT*⁴ this court reviewed certain previous decisions and held that the assessee which was carrying on business as manufacturer of aluminium at various places and was producing aluminium in different forms was entitled to depreciation on fencing, culverts and drainage within the factory compound at the rate applicable to first class buildings.

4. In that view of the matter, in our opinion, there cannot be any doubt that the roads within the factory compound form part of the building which is used for the purpose of business and as such are entitled to depreciation. So far as the compound of the residential quarters of the factory employees, it appears, in the present context, it is very often obligatory for the management of the factory to provide residential quarters for the employees of the factory and such residential quarters of the factory employees being for the residence of the employees these are also used for the purpose of the business. It is true that these are not directly used for the purpose of the business but there is no warrant to restrict the meaning of the expression "used for the purpose of business". If anything is necessary for the purpose of any building--necessary for the purpose of

carrying on the business--then it is for the purpose of the business. It is true that in contradistinction to Section 37 of the Act, Section 32 of the I.T. Act, 1961, enjoins that in order to be entitled to depreciation the objects must be used for the purpose of business but in the present climate of industrial relation it is very often obligatory for the management of factories to provide for residential quarters to factory employees and such residential quarters are used for business in the sense that they are used for the carrying on of the business and such user is incidental to the carrying on of the business. Section 38 of the Act, in our opinion, does not have any application in this case. In that view of the matter, it is not necessary for us to adjudicate whether such roads are buildings or whether such roads can be considered to be part of the structure.

5. Our attention was drawn to certain observations of the Chancery Division in the High Court of England in the case of *Dixon (H.M. Inspector of Taxes) v. Fitch's Garage Ltd*⁵. There, the assessee-company had re-developed the forecourt of its garage premises by providing new self-service pumps and storage tanks, and an office with a computer console, and by erecting a new canopy over the whole service area to provide adequate lighting and protection from the weather for the pumps, employees and customers. The canopy, which was designed and built to the assessee's requirements, was sectionalised and further sections could be added. It consisted of an aluminium roof with fascia and cladding supported on four steel columns. The steel columns were bolted to sunken concrete bases which were embedded in concrete islands. The tops of the pillars were fitted to steel frames by nuts and bolts. The only equipment mounted on the canopy was for lighting. The Inspector of Taxes refused capital allowances on the cost of the canopy. On appeal, the assessee-company contended that the canopy formed an integral part of the petrol pump complex and was, therefore, plant employed in the business. On behalf of the Crown, it was contended that the canopy was the setting, or part of the setting, in which the business was carried on rather than the apparatus with which it was carried on. The General Commissioner of Income-tax accepted the assessee's contention and allowed the appeal. On appeal to the High Court, it was held that the canopy did not have a functional purpose to enable the company to perform the activity of supplying petrol to motor vehicles; it was merely a part of the setting where petrol was supplied. It merely provided shelter and played no part in "the commercial process" in the context of Clause 68 of Section 48 of the Finance Act, 1971. There the decision really rested on whether the canopy could be considered to be a part of the plant which was used by the assessee.

6. As we have said, in view of the decisions of this court, it is indisputable that the factory compound could form part of the building which is used for the purpose of the business and if the residential quarters for the factory employees is an obligation of the employer being the assessee, then, in our opinion, roads of such residential quarters should also be allowed depreciation computed at the same rate as applicable to first class buildings.

7. In that view of the matter, the question referred to us is answered in the affirmative and in

favor of the assessee.

8. Parties will pay and bear their own costs.

Sudhindra Mohan Guha, J.

9. I agree.

Cases Referred.

1[1977] 106 ITR 323

2[1978] 114 ITR 323

3[1978] 115 ITR 550

4[1980] 122 ITR 660

5[1976] 50 TC 509 (Ch D)