

KERALA HIGH COURT

Commissioner of Income-Tax

Vs

Cochin Electric Company Ltd

(M. S. Menon C.J.)

06.08.1964

JUDGMENT

M. S. Menon C.J.

1. This is a reference by the Income-tax Appellate Tribunal, Madras Bench, under section 66(1) of the Indian Income-tax Act, 1922. The question referred is :

"Whether the assessee-company is entitled to the allowance of depreciation and development rebate in respect of that portion of the service line towards the construction of which the consumer has contributed amounts in cash ?"

The assessee is the Cochin Electric Company (Private) Limited, Cochin. It is common ground that the cost of the service lines has been met in accordance with the provisions of rule 6 of annexure VI to the Indian Electricity Rules, 1956. The rule says :

"The licensee shall lay free of charge 30.48 meters (100 feet) of service line from his nearest distribution main outside the limits of the property in respect of which the requisition is made. Any length in excess of 30.48 meters (100 feet) as defined above and the whole of the service line within the limits of the property in respect of which the application is made shall be paid for by the applicant. The cost mentioned above, however, shall be exclusive of the proportionate cost of the first pole and fittings beyond 30.48 meters (100 feet) aforesaid. The proportionate cost of such poles and fittings shall be in the same ratio as 30.48 meters (100 feet) is to the length of the line beyond 30.48 meters (100 feet) from the point of tap-off of the service and the second support of the service line. The main cut-outs or fuses shall be inserted and sealed by the licensee free of cost to the consumer."

The Tribunal has found that the service lines in their entirety belong to the assessee and that the consumers have no proprietary right in any portion thereof. The contention of the department is that in spite of that finding the Tribunal should not have allowed any allowance under section 10(2)(vi) - read with section 10(5) - of the Indian Income-tax Act, 1922, in respect of that portion of the service lines which has been paid for by the consumers concerned. The allowance is

calculated on the "actual cost to the assessee" and the contention of the department is that there is no "actual cost to the assessee" in cases where the expenditure was met from the contributions collected from the consumers. The decision of the High Court of Bombay in Commissioner of Income-tax v. Poona Electric Supply Co. Ltd. and the decision of the High Court of Patna in Commissioner of Income-tax v. Ranchi Electric Supply Co. Ltd. are both against this contention. Both the decisions follow the decision in Corporation of Birmingham v. Barnes In that case Lord Atkin said :

"The word actual itself gives me no assistance. It serves, as Mr. Latter suggested, to give emphasis to the word following. It is to be cost, the whole cost, and nothing but the cost. It removes any question of estimate, and in cases where the plant has been purchased for a lump sum together with factory premises it may give rise to a difficult question of fact. The word actual is used in the same emphatic sense in rules 2 and 3 of the rules applicable to Cases I and II of Schedule D in respect of actual wages, actual expenditure and actual loss. I do not read actual cost to mean anything more than cost accurately ascertained;"

and "But it is said that the words to the person in the phrase actual cost to the person plainly indicate that the section is intending to confine the relief to an aggregate equal to the sum of money which the person has defrayed out of his own resources, the cost of the burden which has ultimately fallen upon him. Mr Lords, I confess I do not think that this is the natural meaning of the words. What a man pays for construction or for the purchase of the work seems to me to be the cost to him; and that whether someone has given him the money to construct or purchase for himself; or before the event has promised to give him the money which recoups him what he has spent." See also the decision of the Supreme Court in Hoshiarpur Electric Supply Co. v. Commissioner of Income-tax We are in entire agreement with the decisions of the Bombay and Patna High Courts cited above, and must answer the question referred in the affirmative, that is, in favour of the assessee and against the department. We do so, but without any order as to costs. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Appellate Tribunal as required by sub-section (5) of section 66 of the Indian Income-tax Act, 1922.

Question answered in the affirmative.