

**BOMBAY HIGH COURT**

Rajrathna Naranbhai Mills Co

Vs.

Commissioner of Income-tax

Income-tax Reference No. 7 of 1949

(Chagla, C.J. and Tendolkar, J.)

16.09.1949

**JUDGMENT**

**Chagla, C.J.**

G.N. Joshi - for the Commissioner.

1. At the instance of the assessee the Tribunal referred the following questions to the High Court :

(1) Whether on the facts and in the circumstances of the case, and by virtue of the provisions of Section 10(5)(c) of the Indian Income-tax Act, as it stood then, read with the second proviso to that sub-section, the allowance for depreciation for the assessment years 1940-41 and 1941-42 should be calculated on the actual cost of the assets to the assessee company less only such depreciation as was actually allowed?

(2) If the answer to the first question is in the negative whether on the facts and in the circumstances of the case the provisions of the proviso (b) to Section 10(2)(vi), read with the second proviso to Section 10(5)(c), as they then stood, are applicable ?

1A. The only question that we have to consider in this reference is, what is the proper depreciation that should be allowed to the assessee in respect of machinery.

2. The assessee is the Rajrathna Naranbhai Mills Co., Ltd., and they are situated in the Baroda State. They were assessed to income-tax for the first time in the year 1940-41, Now one of the permissible allowances in respect of the business is under Section 10(2)(vi) for depreciation of buildings, machinery, plant or furniture being the property of the assessee, to the extent of a sum equivalent to such percentage on the written down value thereof as may in any case or class of

cases be prescribed. Written down value is defined in Section 10(5)(c) as in the case of assets acquired before the commencement of the Indian Income-tax (Amendment) Act, 1939, the actual cost to the assessee less for each financial year since the acquisition the amount of depreciation applicable to the assets at the rates in force for each such year since 1st April 1922, and at the rates in force on 1st April 1922, for each such year prior to that date. The contention of the assessee is that the written down value of the assessee's assets are actual cost and nothing should be deducted from the actual cost and be should be allowed depreciation on the actual cost of the assets. The Tribunal took the view that from the actual cost of the assets must be deducted the amount of depreciation applicable to the assets at the rates in force for each year since 1st April 1929, and at the rates in force on 1st April 1922, for each such year prior to that date. Mr. Kolah's contention is that as his clients were not assessed to income-tax at all prior to 1940-41, there were no rates of depreciation applicable to him and therefore it is not permissible to deduct anything at all from the actual cost of the assets. The short answer to Mr. Kolah's contention is that the expression used in Section 10(6)(c) is not depreciation allowed," the expression used is "depreciation applicable," It is immaterial whether the assessee got any benefit of depreciation prior to 1940-41. What we are concerned with is what is the written down value of the assets in 1940-41 and that written down value is to be determined not merely by the cost price of the assets to the assessee but from that cost price has to be deducted the rates of depreciation which were not allowed to him, but which were applicable to the assets, as laid down in the Act. In my opinion, the language of the section is perfectly clear and it is impossible to contend that we should read "applicable" as if it were "allowed". Mr. Kolah has made a grievance of the fact that it is extremely inequitable that whereas no depreciation was allowed to him prior to 1940-41 he should now be made to deduct from his cost price certain amounts for depreciation. It is difficult to understand what the grievance of Mr. Kolah is. He paid no income-tax prior to 1940-41 and therefore he got no deduction for depreciation. Mr. Kolah without paying any tax wants the benefit of the depreciation allowance. He cannot eat his cake and have it too. Apart from the clear language of the section, the construction that we are giving to it does not result in any inequitable assessment of the assessee. The result is that we must answer the question in the negative.

3. We frankly confess that it is difficult to understand the second question. We do hope that the Tribunal whose jurisdiction it is to raise questions and submit them to us for our opinion will raise the questions in a manner which makes them clear as to what the contention between the parties is. As neither Mr. Kolah nor Mr. Joshi is in a position to throw any light as to what is intended to be referred by the second question, we refuse to answer the question.

4. The assessee must pay the costs of the reference.  
Answer accordingly.