

# **BOMBAY HIGH COURT**

Commissioner of Income Tax

Vs

Minerva Maritime Corporation

(Bharucha, C.J. Desai, J.)

20.09.1984

## **JUDGMENT**

**Desai, J.**

1. A very short question has been posed for consideration of this High Court in this reference. The said question reads as under :

"Whether the interpretation placed by the Tribunal on rule 5(2) of the Income-tax Rules, 1962, is correct ?"

2. The assessee is a non-resident shipping company which is assessed to tax on "Voyage basis" in respect of its earnings at the Indian ports. We are concerned with the assessment year 1970-71. During the previous year relevant to this assessment year, one of its ships "S.S. Dimitrios" touched the Port of Mangalore and for the cargo which it carried from that port, it had received freight earnings. In computing its income assessable to Indian income-tax for that year, the assessee claimed proportionate depreciation of pound 17,143. This claim was negated by the ITO and in his order, the said ITO made the following observation :The ship 'S. S. Dimitrios' was built in 1944 and purchased by the assessee in 1962. At the time of purchase, as per I.T. Rules, anticipated life of the ship comes to 7 years. Therefore, depreciation could be allowed on it only in 7 assessments, from assessment year 1963-64 to 1969-70. In this account year, its expectancy of life as worked out as per I.T. Rules is over. Therefore, no depreciation can be allowed on this ship this year."

3. The assessee carried the matter in appeal, and the AAC upholding the assessee's submissions allowed the same. In his order, the AAC observed that a new ship is allowed depreciation at the rate of 5% uniformly for all the years with reference to its cost. However, in case of second-hand ships, the grant of depreciation allowance was regulated by rule 5(2). According to the AAC, rule 5(2) merely determined the rate of depreciation and could not be construed so as to confine the allowance necessarily to the consecutive years from the year of purchase. The ACC accordingly

held that the assessee was entitled to depreciation on the said ship so long as the depreciation actually allowed did not exceed its actual cost. Accordingly, the ITO was directed to allow the depreciation as claimed by the assessee.

4. On a further appeal by the Department, the Tribunal agreed with the view taken by the AAC. The Tribunal its mind to the relevant provisions having a bearing on the question, namely, s. 32(1)(i) and s. 34(2) of the I.T. Act, 1961, read with rule 5(2) of the I.T. Rules, 1962. The Department's case, which the Tribunal found itself unable to accept, was that as the expectancy of life in the case of the said ship as on the date of its purchase by the assessee was only 7 years, no depreciation allowance would be admissible after the expiry of the said period of seven years calculated from the date of purchase. The Tribunal opined that the language of the said rule did not lead to such a construction. According to the Tribunal :

"What the rule says, in effect, is that in the case of second-hand ships, the depreciation allowance shall first be computed in the same manner as in the case of new ships and it shall then be multiplied by the fraction  $\frac{20}{L}$ , L being the expectation of life of the ship as at the date of its purchase as given in the appropriate table. We do not think that there is any scope for contending that rule 5(2), in its present form, restricts the grant of depreciation allowance to a period not exceeding the expectancy of life of the second-hand ships. Indeed, if this interpretation is to be put on the said rule, it would result in shipping companies, whose ships do not touch regularly at Indian ports, being denied the benefit of depreciation allowance to the extent of the actual cost as provided for in section 34(2). Apart from the fact that the language of rule 5(2) does not permit of such an interpretation, it is to be remembered that the rules cannot curtail or go counter to the main provisions of the relevant section or sections of the Act."

5. Accordingly, the Tribunal upheld the decision of the AAC on this point.

6. Counsel appearing for the respective parties have drawn our attention to two decisions of the Calcutta High Court. The first of those is CIT v. Swedish East Asia Co. Ltd. . This was not a case involving purchase of a second-hand ship and hence construction of rule 5(2) was not involved. However, for the three assessment years under consideration by the Calcutta High Court, the assessee had claimed depreciation on certain ships which had been on its fleet for more than twenty years. However, during the war years, that is, April, 1940 to December, 1945, the ships had not touched at Indian ports. The view of the Tribunal that the assessee could claim depreciation allowance was upheld by the Calcutta High Court, although the ships had remained on company's fleet for more than twenty years.

7. Observations more directly in point are to be found in CIT v. East Asiatic Co. Ltd. , although

here also we have a case of new ships and not of second-hand ships purchased by the assessee. Question No. 1 submitted for consideration of the Calcutta High Court by the Income-tax Appellate Tribunal was whether the assessee was entitled to depreciation allowance under rule 5 of the I.T. Rules, 1962, even in respect of ships which had formed part of the assessee's fleet for more than twenty years. The Tribunal held in favour of the assessee and the Tribunal's view was upheld by the High Court.

8. In our opinion, in the matter before us, the Tribunal was entirely right in holding that rule 5(2), which only contains a formula for computing the depreciation allowance, does not lead any further to any construction of the sort sought to be put on it by the Department. If that be so, the view of the Tribunal is required to be upheld. We are almost in total agreement with the passage extracted from the Tribunal's Judgment which has been reproduced earlier by us.

9. In the result, the question referred to us is answered in the affirmative and in favour of the assessee. Parties, however, will bear their own costs of the reference.