

Cit Vs. Navodaya

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Court : Kerala

Decided On : Nov-18-2003

Reported in : (2004)186CTR(Ker)357

Appeal No. : IT Ref. Nos. 47 & 48 of 1998 18 November 2003 A.Ys. 1985-86 & 1987-88

Appellant : Cit

Respondent : Navodaya

Advocate for Pet/Ap. : P.K.R. Menon & George K. George, *for the Revenue P. Balachandran, for the Assessee*

Judgement :

K.S. Radhakrishnan, J.

The Tribunal, Cochin Bench (hereinafter called the Tribunal), in obedience to the direction issued by this court in O.P. Nos. 17297 and 794 of 1992, has referred the following questions of the law relating to the assessment years 1985-86 and 1987-88 :

1. Whether, on the facts and in the circumstances of the case, the main floor of the studio is a plant ?

2. Whether, the Tribunal was right in law and in fact in holding that the floor can be treated as a tool with which the business of the assessee is being carried on and it satisfies the functional test ?

3. Whether, on the facts and in the circumstances of the case, the assessee is entitled to extra-shift allowance on the main floor of the studio, studio bulbs and central air-conditioning plant ?

These references arise out of the two appeals, ITA No. 362/Coch/1989 and ITA No. 116/Coch/1991 relating to the assessment years 1985-86 and 1987-88, respectively (Tribunals order as *Navodaya v. Asstt. CIT* (1991) 40 TTJ (Coch) 270.). In both the appeals assessee is the same. Assessee is a registered partnership firm engaged in the production of cinematograph films. The primary question to be considered is whether the studio belonging to the assessee is a plant, whether the assessee is entitled to high rate of depreciation and extra-shift allowance and also whether the assessee's outdoor unit along with the air-conditioning equipment and generator attached to it can be treated as plant and is entitled to similar deduction. The further question is whether the assessee is entitled to investment allowance and also higher rate of depreciation and extra-shift allowance in respect of the equipments and machinery used in producing cinematograph films. Basically these are the issues which arise in both the appeals. The Tribunal held that part of the assessee's studio should be treated as plant entitled to higher rate of depreciation and investment allowance subject to certain conditions to be satisfied. It was also held that the assessee would be entitled to investment allowance on studio equipment but not entitled to extra-shift allowance on cinematograph equipments such as camera, etc. It was also held by the Tribunal that the assessee's mobile studio is only a transport vehicle fitted with air-conditioner and generator and the same is not eligible for investment allowance. Further, it was also held that depreciation on the air-conditioner and generator attached to the post would be at the rates applicable to the transport vehicle. The Income Tax Officer treated the studio as a building and granted depreciation at the rate applicable to buildings.

2. Sri George K. George, Standing Counsel appearing for the department, contended that the outdoor shooting can be done with the aid of the building and films are at present made only by resort to outdoor shooting. Counsel submitted the mere fact that some scenes and settings have been taken in the studio, does not mean that it is a tool in the hands of the assessee. Counsel appearing for the assessee, on the other hand, contended that as the assessee is a film producer, studio and outdoor unit are plants in his hands. The building cannot be treated as mere building but is a business tool in the hands of the assessee. In the facts and circumstances of the case the main question is reframed as under:

'Whether the assessee's studio building constituted a plant in the hands of the assessee for which the assessee is entitled to higher depreciation ?'

3. We notice in order to have a correct picture of the building and the business carried on by the assessee, Members of the Tribunal visited the studio along with the Departmental Representative and the assessee's representative. It was noticed that the studio is situated in a big landscape. The building is designed in such a way with the wooden partition so that it can be removed for creating different setting or scene. Walls of the studio are made up of plywood, cardboard and asbestos so that they can easily be removed and replaced for the movement of trolley carriers in different scenes. The floor of the studio contains asbestos roofing. In the first floor itself at the time of visit they saw a cave made of bamboo mats. There are railings hanging from the roof and there are platforms also below the roof to enable the light boys to move about and choose lines so that the picture comes out with proper lighting. Serpent shrines made of clay and caves made of bamboo mats and artificial cobweb have also been designed. During the visit platforms were also artificially designed in such a manner that floor was converted into a cave shrine, etc., for a scene in a picture 'Kadathanadan Ambadi. Scenes have also been created to get the effect of a large sea and sky. Scene is about Noah. On inspection the Tribunal found the studio is designed in such a manner so as to make any type of manipulation in order to create or enact scenes or settings. Counsel for the revenue placed reliance on the decision of the Apex Court in CIT v. Anand Theatres : [2000]244ITR192(SC) wherein it was held that theatre building and hotel building specially equipped for purposes of business is

not a plant. Counsel appearing for the assessee placed reliance on the decision of the Madras High Court in CIT v. Indian Metal and Metallurgical Corpn. : [1990]182ITR460(Mad) , Scientific Engineering House (P) Ltd. v. CIT : [1986]157ITR86(SC) , CIT v. Coromandal Fertilisers Ltd. : [1985]156ITR283(AP) and CIT v. Oil India Ltd. : [1983]143ITR848(Cal) . Counsel for the assessee submitted that the studio is designed with wooden partition and can be removed for creating different setting and scenes. The floor of the building can be removed to yield to cellars. The walls are made up of plywood, cardboard so that the same can be easily removed and replaced for movement of trolley cameras. Platforms were also artificially designed in such manner that the floor could be converted into cave shrine, etc. We cannot equate studio of this nature to that of a building or a theatre. A Full Bench of this court in CIT v. Hotel Luciya : [1998]231ITR492(Ker) held that for deciding whether a building is plant or not the court must apply what is called 'functional tests' and further held that hotel building and theatre building are plant within the meaning of section 43(3) of the Act and accordingly entitled to depreciation as applicable to the plant. The Apex Court in Scientific Engineering Houses case (supra) considered the drawings, designs, charts, plants, processing data and other literature comprised in the documentation service as specified in clause 3 constituted book and fell within the definition of plant under section 43(3) of the Income Tax Act, 1961. The Apex Court held that these documents did not perform any mechanical operations or process and that they did not militate against their being a plant since they are in a sense the basic tools of the assessee's trade having a fairly enduring utility. To determine whether item will fall within the category of building or plant, the following tests would be decisive, viz., functional test is a decisive test, and item which falls within the category of building cannot be considered to be plant. Buildings with particular specification are not plants. In order to find out whether a building is a plant or not the following tests would be decisive:

(i) Functional test is a decisive test.

(ii) An item which falls within the category of building cannot be considered to be a plant. Buildings with particular specification for atmospheric control like moisture or temperature are not plants.

(iii) In order to find out as to whether a particular item is a plant or not, the meaning which is available in the popular sense, i.e., the people conversant with the subject-matter would attribute to it, has to be taken.

(iv) The term 'plant' would include any article or object, fixed or movable, live or dead, used by a businessman for carrying on his business and it is not necessarily confined to any apparatus which is used for mechanical operations or process or is employed in mechanical or industrial business. The article must have some degree of durability.

(v) The building in which the business is carried on cannot be considered to be a plant.

(vi) The item should be used as a tool of the trade with which the business is carried on. For that purpose the operations it performs have to be examined.

The building and the structure can be considered to be plant provided they fulfil the conditions mentioned above. Scheme of section 32 of the Income Tax Act is to provide different rates of depreciation for building, machinery, plant or furniture, shops, buildings used for hotels, aeroplanes and other items mentioned therein. The word plant is given an inclusive meaning under section 43(3). In this case assessee has satisfied the functional test. Floor measuring 12,000 sq. ft. with asbestos roof, railing platforms and replaceable walls can be treated as tools with which business of the assessee is being carried on. On-the spot verification made by the members of the Tribunal also revealed that the building is a plant. We are, therefore, in agreement with the Tribunal that part of the studio building would come within the term plant and in that view assessee is entitled to depreciation at the rate applicable to plant and machinery. We, therefore, answer the question in favour of the assessee holding that assessee's studio would constitute plant in the hands of the assessee and consequently entitled to depreciation at the rates applicable to plant and machinery. The reference is answered accordingly.