

**Cit Vs. Jodhana Real Estate Development Co. (P) Ltd.**

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**Court :** Rajasthan

**Decided On :** Aug-29-2002

**Reported in :** (2002)178CTR(Raj)39

**Appeal No. :** IT Ref. No. 37 of 1997 29 August 2002 A.Y. 1986-87

**Appellant :** Cit

**Respondent :** Jodhana Real Estate Development Co. (P) Ltd.

**Advocate for Pet/Ap. :** Sandeep Bhandawat, *for the Revenue* Rajendra Mehta, *for the Assessee*

**Judgement :**

**N.N. Mathur, J.**

The instant reference under section 256(1) of the Income Tax Act at the instance of the revenue is referred by the Tribunal Jaipur, for seeking opinion of this court on the following question :

'Whether the Tribunal was right in treating sanitary fittings as plant installed in the cinema hall on the analogy of the Supreme Court's decision in CIT v. Taj Mahal Hotel : [1971]82ITR44(SC) .

2. The reference is required to be considered in the background of specific provision granting depreciation to building, machinery and plant under section 32

of the Income Tax Act, 1961, and the decision of the Apex Court in CIT v. Taj Mahal Hotel (supra).

3. The respondent-assessee Jodhana Real Estate Development Company (P) Ltd., Jodhpur, is having source of income, as per the return filed, from dealing in the real estate business and exhibiting films at its own cinema hall namely, Darpan Cinema. For the assessment year 1986-87 the assessee claimed depreciation on sanitary fittings at the rate of 15 per cent. The assessing officer held that sanitary fittings is a part of the building and, therefore, granted depreciation only to the extent of 5 per cent allowable for building. The Commissioner (Appeals) held that the assessee was entitled to claim depreciation at the rate of 15 per cent on sanitary fittings installed under the head 'furniture & fittings'. The revenue preferred an appeal against the judgment of the Commissioner (Appeals) before the Tribunal, Jaipur. The Tribunal relying on the decision of the Apex Court in CIT v. Taj Mahal Hotel (supra) held that the sanitary fittings fitted in the hotel is a plant. In the opinion of the Tribunal cinema hall when put to functional test stands on the same footing as hotel and hence the assessee is entitled to depreciation at the rate of 15 per cent on the sanitary fittings fitted in the cinema hall owned by him.

4. It is submitted by Mr. Sandeep Bhandawat, learned counsel for the revenue, that following the decision in Taj Mahal Hotel's case (supra) the legislature amended the definition of plant in section 43(3) of the Act by Finance Act of 1995, as such the said decision has no application to the facts of the case. On the other hand, it is submitted by Mr. Rajendra Mehta, learned counsel for the respondent-assessee that even after amendment the Apex Court in CIT v. Anand Theatres : [2000]244ITR192(SC) has approved its earlier decision in Taj Mahal Hotel's case (supra). It is submitted that the controversy involved is concluded by the said decision of the Apex Court.

5. A Division Bench of this court in CIT v. Lake Palace Hotels & Motels (P) Ltd. considered the question whether the building which is used as a hotel or cinema hall can be considered to be apparatus or tool for running the business so that it can be termed as plant and depreciation can be allowed accordingly. This court after referring to the number of judgments and dictionary meaning held that hotel

and cinema premises will fall within the definition of building. The High Court summarised various principles emerging from various decisions of different courts. For the decision of the instant reference, we may refer to the principle laid down at item No. (iv) page 203 in CIT v. Anand Theatres case :

'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.'

6. In CIT v. Taj Mahal Hotel (supra) the Apex Court held that the sanitary and pipeline fittings fell within the definition of 'plant' and, therefore, the assessee was entitled to development rebate in respect thereof. The court also held that the fact that the assessee claimed depreciation on the basis that sanitary and pipeline fittings fell under 'furniture and fittings' in rule 8(2) of the Indian Income Tax Rules, 1922, did not detract from its position as the rules cannot take away what is conferred by the Act or whittle down its effect. The court observed as follows :

'It cannot be denied that the business of a hotelier is carried on by adapting a building or premises in a suitable way to be used as a residential hotel where visitors come and stay and where there is arrangement for meals and other amenities are provided for their comfort and convenience. To have sanitary fittings, etc., in a bathroom is one of the essential amenities or conveniences which are normally provided in any good hotel, in the present times. If the partitions in Jarrold's case could be treated as having been used for the purpose of the business of the trader, it is incomprehensible how sanitary fittings can be said to have no connection with business of the hotelier. He can reasonably expect to get more custom and earn larger profit by charging higher rates for the use of rooms if the bath rooms have sanitary fittings and similar amenities. We are unable to see how the sanitary fittings in the bath rooms in a hotel will not be 'plant' within section 10(2)(vib) read with section 10(2)(v) when it is quite clear that the intention of the legislature was to give it a wide meaning and that is why articles like books and surgical instruments were expressly included in the

definition of 'plant'. In decided cases, the High Courts have rightly understood the meaning of the term 'plant' in a wide sense. (See Indian Turpentine and Rosin Co. Ltd.)'

7. The decision of the Apex Court in Taj Mahal Hotel's case (supra) has been approved in Anand Theatres's case (supra). The Apex Court in Anand Theatres's case (supra) has enumerated the reasons for holding that the building used for running of a hotel or carrying on the cinema business cannot be held to be a plant. For the convenience we propose to refer only the reasons given in items No. I and II :

'(I) The scheme of section 32 as discussed above clearly envisages separate depreciation for a building, machinery and plant, furniture and fittings, etc. The word 'plant' is given inclusive meaning under section 43(3) which nowhere includes buildings. The rules prescribing the rates of depreciation specifically provide grant of depreciation on buildings, furniture and fittings machinery and plant and ships. Machinery and plant include cinematograph films and other items and the building is further given a meaning to include roads, bridges, culverts, wells and tubewells.

(II) In the case of CIT v. Taj Mahal Hotel (supra), this court has observed that the business of a hotelier is carried on by adapting building or premises in a suitable way, meaning thereby building for a hotel is not apparatus or adjunct for running of a hotel. The court did not proceed to hold that a building in which the hotel was run was itself a plant, otherwise the court would not have' gone into the question whether the sanitary fittings used in bathroom was plant.'

8. The Apex Court in Anand Theatres's case (supra) has also approved the view taken by this court in Lake Palace Hotels & Motels case (supra). The court observed that the Rajasthan High Court has rightly held that simply because some special fittings or controlling equipment is attached for the purpose of carrying on hotel business, it will not take out of the category of building and make it plant. It was specifically made clear that special fittings or equipment to control atmospheric effect would be plant, but not building which houses such equipment.

9. In view of aforesaid discussion, we are in agreement with the view expressed by the Commissioner (Appeals) and upheld by the Tribunal, Jaipur, and hold that the sanitary pipeline fittings fell in the category of plant. Thus, the assessee is entitled to depreciation at the rate of 15 per cent.

10. Accordingly, the reference is decided in favour of the assessee and against the revenue.

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