

SUPREME COURT OF INDIA

Assistant Commissioner of Income-tax vs. Victory Aqua Farm Ltd.

A.K. SIKRI AND ROHINTON FALI NARIMAN, JJ.

CIVIL APPEAL NOS. 4429 AND 4430 OF 2006 & 5099-5100 OF 2009

September 4, 2015

Gurukrishna, Sr. Adv., Anita Sohani, S.A. Haseeb, C.N. Sree Kumar, Amit Sharma and B.V. Balaram Das, Advs. for the Appearing Parties.

ORDER

1. The question of law that falls for our consideration is as to whether 'natural pond' which as per the assessee is specially designed for rearing prawns would be treated as 'plant' within Section 32 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the purposes of allowing depreciation thereon.
2. We may mention at the outset that one Division Bench of the High Court of Kerala in the case of the same assessee had on earlier occasion decided the aforesaid question in the negative holding that it is not a 'plant'. However, another Division Bench by the impugned judgment dated 14.10.2014, even after noticing the earlier judgment, has not agreed with the earlier opinion and has rendered contrary decision. We are, therefore, at this stage constrained to remark that the Division Bench which has given the impugned judgment dated 14.10.2004 should have referred the matter to a larger Bench as otherwise it was bound by the earlier judgment of the coordinate Bench. However, since appeals are filed against both the judgments and the validity of the judgment rendered in the first case is also questioned by the assessee, we have to necessarily decide these appeals on merits, rather than remanding the case back to the High Court to be considered by a larger Bench.
3. Facts in brief are that the assessee is a company doing business of 'Aqua Culture'. It grows prawns in specially designed ponds. In the income tax returns filed by the assessee, the assessee had claimed depreciation in respect of these ponds by raising a plea that these prawn ponds are tools to the business of the assessee and, therefore, they constitute 'plant' within the meaning of Section 32 of the Act. The Assessing Officer disallowed the claim of the assessee. The two Benches of the High Court, as mentioned above, have taken a contrary view.
4. It is not in dispute that if these ponds are 'plants', then they are eligible for depreciation at the rates applicable to plant and machinery and case would be covered by the provisions of Section 32 of the Act. It is not even necessary to deal with this aspect in detail with reference to the various judgments, inasmuch as judgment of this Court in Commissioner of Income Tax, Karnataka v. Karnataka Power Corporation [2002(9) SCC

571] clinches the issue. Therein the Court has taken into consideration the earlier judgments on which some reliance was placed by the learned counsel for the Revenue and are suitably dealt with. The relevant portion of the said judgment reads as under:

*“5. It was the case of the assessee that it was entitled to investment allowance as applicable to a plant in respect of its power generating station building. In a note filed before the Commissioner (Appeals) it stated that it had included for the purpose the value of its Potential Transformer Foundation, Cable Duct System, Outdoor Yard Structures and Tail Race Channel. It explained that the process of generation started from letting in water from the reservoir into the pen-stocks and ducts which were the water conductor system into the turbines. Once electricity had been produced by generation, it had to be conducted, as it was not possible to store the same, and the process of generation continued until the electricity was led to the transmission tower. The water that was used for rotation of the turbines had to be removed and this was done through the Tail Race Channel. For stepping up the electricity, transformers were used in the outdoor yard. The conduction of the electricity was through conductors held in ducts, called the Cable Duct System, which were specifically designed for the purpose. The case of the assessee, therefore, was that all these were part of the special engineering works that were an essential part of a generating plant and, therefore, it was entitled to have the same treated as a plant for the purposes of investment allowance. The Commissioner accepted the correctness of the assessee’s case. He held that it was clear that the generating station buildings had to be treated as a plant for the purposes of investment allowance. These buildings could not be separated from the machinery and the machinery could not be worked without such special construction. He, therefore, allowed investment, allowance on the generating station, building, as claimed. The Tribunal affirmed this finding, as, indeed did the High Court.*

*6. We, therefore, have before us a finding of fact recorded by the fact finding authority that the generating station building is an integral part of the assessee’s generating system.*

*7. Our attention has been drawn by learned Counsel for the Revenue to the judgment of this Court in Commissioner of Income Tax v. Anand Theatres 224 I.T.R. 192. He submits that, in that judgment, this Court has held that, except in exceptional cases, the building in which the plant is situated must be distinguished from the plant and that, therefore, the assessee’s generating station building was not to be treated as a plant for the purposes of investment allowance.*

*8. It is difficult to read the judgment in the case of Anand Theatres so broadly. The question before the court was whether a building that was used as a hotel or a cinema theatre could be given depreciation on the basis that it was a “plant” and it was in relation to that question that the court considered a host of authorities of this country and England and came to the conclusion that a building which was used as a hotel or cinema theatre could not be given*

*depreciation on the basis that it was a plant. We must add that the Court said, "To differentiate a building for grant of additional depreciation by holding it to be a plant in one case where a building is specially designed and constructed with some special features to attract the customers and the building not so constructed but used for the same purpose, namely, as a hotel or theatre would be unreasonable." This observation is, in our view, limited to buildings that are used for the purposes of hotels or cinema theatres and will not always apply otherwise. The question, basically, is a question of fact, and where it is found as a fact that a building has been so planned and constructed as to serve an assessee's special technical requirements, it will qualify to be treated as a plant for the purposes of investment allowance.*

*9. In the instant case, there is a finding by the fact finding authority that the assessee's generating station building is so constructed as to be an integral part of its generating system. It must, therefore, be held that it is a "plant" and entitled to investment allowance accordingly. The third question is answered in the affirmative and in favour of the assessee."*

5. An attempt was made by the learned counsel for the Revenue to the effect that the pond in question was natural and not constructed/specially designed by the assessee. We do not find it be so. In the judgment dated 14.10.2004 of the High Court, which is decided in favour of the assessee, the High Court has specifically mentioned that the prawns are grown in specially designed ponds. Further this very contention that these are natural ponds has been specifically rejected as not correct. Moreover, from the order passed by the Assessing Officer we find that this was not the reason given by the Assessing Officer to reject the claim. Therefore, finding of fact on this aspect cannot be gone into at this stage.

6. We find that the judgment dated 14.10.2004 rightly rests this case on 'functional test' and since the ponds were specially designed for rearing/breeding of the prawns, they have to be treated as tools of the business of the assessee and the depreciation was admissible on these ponds. We, thus, decide the question in favour of the assessee and as a consequence, appeals of the Revenue are dismissed and that of the assessee are allowed.

#### ORDER

7. The appeals of the Revenue are dismissed and the appeals of the assessee are allowed in terms of the signed order.

8. Interlocutory application(s) pending, if any, are also disposed of.