

J.K. Synthetics Ltd. Vs. Commissioner of Income-tax

LegalCrystal Citation : legalcrystal.com/469088

Court : Allahabad

Decided On : Jan-25-1978

Reported in : [1979]118ITR629(All)

Judge : Satish Chandra and ;K.C. Agrawal, JJ.

Acts : Income Tax Rules, 1962 - Rule 5; [Income Tax Act, 1961](#) - Sections 32 and 33

Appeal No. : Income-tax Reference No. 169 of 1974

Appellant : J.K. Synthetics Ltd.

Respondent : Commissioner of Income-tax

Advocate for Def. : Ashok Gupta, Adv.

Advocate for Pet/Ap. : H.P. Gupta, Adv.

Judgement :

Satish Chandra, J.

1. The Tribunal has referred the following questions of law for our opinion :

'1. Whether, the Appellate Tribunal was right in its finding that the normal allowance referred to in Explanation 1 under Machinery and Plant in Appendix I-5(1) relating to Rule 5 of the I.T. Rules, 1962, refer to the normal depreciation actually allowed and not to the hypothetical figure of normal depreciation had the machinery and plant worked for a period of 180 days or more and accordingly the plant and laboratory equipments are entitled to only a proportion of the actual allowance ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was legally justified in holding that the sum of Rs. 2,85,733 formed part of the actual cost of the assets of the assessee and accordingly entitled to depreciation and development rebate on such actual cost?'

2. The second question, learned counsel for both the parties are agreed, is covered by the decision of the Supreme Court in *Challapalli Sugars Ltd. v. CIT* : [1975]98ITR167(SC) . The figure of Rs. 2,85,733 mentioned in question No. 2 represented interest paid by the company for moneys borrowed for purposes of purchasing the assets. The Supreme Court has held that under these circumstances, interest forms part of the actual cost of the assets. This question is, therefore, liable to be answered against the department.

3. In respect of question No. 1, the facts found are that the assessee company worked for 112 days and in accordance with Rule 5 of the Rules, it was entitled to 50% of the normal depreciation allowance in respect of plant and machinery. This worked out to Rs. 9,61,635. The question then arose as to the amount of extra double shift allowance to which the company was entitled. The ITO held that the company would be entitled to this amount as follows :

(a) Plant and equipment 112/300 of 50% of Rs. 9,61,635--Rs. 1,79,505.

(b) Laboratory equipment 112/300 of 50% of Rs. 583, Rs. 109.

4. The assessee-company went up in appeal. The AAC held that the ITO had committed a factual error inasmuch as he assumed that for the purpose of extra allowance for double shift working, the normal allowance has to be the actual normal allowance that is permissible to the assessee-company for the assessment year in question. He held that the normal allowance for purposes of calculating the extra allowance has to be the full depreciation allowance permissible for the plant and machinery in question. The appeal was allowed pro tanto.

5. In Original Petition No. 3, the ITO went up to the Tribunal and succeeded. The Tribunal held :

'In this case, since the plant and machinery of the assessee and also the laboratory equipment worked for a period of 112 days during the previous year, the normal depreciation allowance would be only 50% of the full depreciation allowance as per Rule 5. Therefore; the double shift allowance has to be calculated with reference to 50% of such normal allowance, i.e., 50% of the full depreciation allowance. Fifty per cent. of the full depreciation allowance comes to Rs. 9,61,635 in the case of plant and machinery and Rs. 583 in the case of laboratory equipment. The ITO was, therefore, correct in calculating the double shift allowance with reference to 50% of the above figures as per the provisions of Part I of Appendix I to the Income-tax Rules, 1962. The Appellate Assistant Commissioner has obviously misunderstood the correct import of Explanation 1 in the remarks column of Part I of Appendix I to the Rules in regard to the meaning of normal allowance.'

6. In the result, the appeal was allowed.

7. The question formulated for our opinion requires consideration of Explanation 1 appended to Part I of Appendix I of the Rules. The Explanation reads :

'Explanation 1.--For this purpose, the normal allowance means the amount of depreciation allowance (other than the extra depreciation allowance for multiple shift working) that would have been allowed under Rule 5 if the machinery or plant had been used during the previous year for a period of 180 days or more, or in the case of a seasonal factory, if that factory had been worked by the assessee during all the working seasons of the previous year.'

8. This Explanation defines normal allowance for purposes of calculating the extra allowance for, double or triple shift working. If the legislative intent had been to take the actual normal depreciation allowance admissible for any particular year to be the criteria, there would be no need for engrafting the Explanation, because the main provision begins by saying, 'an extra allowance up to a maximum of 50% of the

normal allowance shall be allowed by the ITO where a concern claims such allowance on account of double shift working..,' The normal allowance mentioned in the main part of the entry in the remarks column would have referred to the normal allowance actually allowed. The Explanation seeks to give an artificial meaning to the phrase 'normal allowance' for the purpose of calculating the extra allowance for double or triple shift working. This is clear from the opening clause of the Explanation, namely, 'for this purpose'. This view is strengthened by the phrase 'that would have been allowed under Rule 5 if the machinery or plant had been used during the previous year for a period of 180 days or more'. This points to the conclusion that for purposes of calculation of extra allowance, the normal allowance has to be the full depreciation allowance admissible on the footing that the company had worked for 180 days or more, irrespective of the number of days for which it had actually worked. We are hence unable to uphold the view of the Appellate Tribunal that the AAC misunderstood the Explanation,

9. The extra allowance for double shift working that the assessee-company was entitled to was rightly worked out by the AAC by taking the normal allowance at Rs. 19,23,272 instead of Rs. 9,61,635 taken by the ITO.

10. We, therefore, answer the first question by holding that the Tribunal was not right in its finding that the normal allowance refers to the normal depreciation actually allowed; In our opinion, the normal allowance referred to in Explanation 1 refers to the figure of normal depreciation had the machinery and plant worked for 180 days or more. In the result, both the questions are answered against the department and in favour of the assessee. The assessee will be entitled to costs which are assessed at Rs. 200.