

(2010) 09 P&H CK 0384

High Court Of Punjab And Haryana At Chandigarh

Case No: Income Tax R. No. 9 of 2000

The Commissioner of Income
Tax, (Central)

APPELLANT

Vs

Raja Motels and Hotels (India)
Pvt. Ltd.

RESPONDENT

Date of Decision: Sept. 10, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 256(2), 32

Hon'ble Judges: Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench: Division Bench

Judgement

Adarsh Kumar Goel, J.

Following question of law has been referred for opinion of this Court u/s 256(2) of the Income Tax Act, 1961 (in short "the Act") by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") arising out of its order dated 15.7.1993 in ITA No. 620/ASR/87 in respect of assessment year 1981-82:

Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the Hotel Building was a "Plant" for the purpose of grant of depreciation?

2. The assessee is running a hotel and claimed depreciation on the building @ 2.5% applicable to depreciation on plants. It was claimed that the building itself was a plant of the hotel. This was not allowed by the Assessing Officer. The CIT (A) upheld the plea of the assessee relying upon the judgment of the Hon'ble Supreme Court in [Scientific Engineering House \(P\) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh](#), which has been affirmed by the Tribunal.

The observations of the Tribunal are as under:

We have considered the rival submissions. The point in dispute is covered in favour of the assessee and against the Revenue as per the decision of Hon"ble Madras Bench, Calcutta Bench as well as Delhi Bench of the Tribunal as reported in 5 ITD 541, 30 ITD 388 and 25 TTJ 456 (supra). The decision relied on by the Ld. DR in the case of R.C. Chemicals Inds. v. CIT (supra) is not applicable to the facts and circumstances of the case and has been rightly distinguished by the Ld. CIT (A). The decision of Tribunal referred by Sh. Mehra holding the Hotel Building to be a plant is in accordance with the principle laid down by the Hon"ble Supreme Court in the case of [Scientific Engineering House \(P\) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh](#), wherein the Hon"ble Supreme Court has even held drawings, designs, processing data also as plant.

3. We have heard learned Counsel for the revenue. None appears for the assessee.

4. Learned Counsel for the revenue submits that the view taken by the Tribunal is erroneous and the judgment of the Hon"ble Supreme Court in Scientific Engineering House (P) Ltd's case relates to drawings, designs and processing data which are different from building. In respect of building, the Hon"ble Supreme Court has held in [Commissioner of Income Tax, Trivandrum Vs. M/s. Anand Theatres](#), that it was not plant for the purpose of depreciation u/s 32 of the Act. We find this to be so. The matter is covered in favour of the revenue. Following the judgment of the Hon"ble Supreme Court, the question referred is answered in favour of the revenue.

5. The reference is disposed of.