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Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 37 of 1989

Commissioner of Income Tax	APPELLANT
Vs	
Rajdoot Hotel Enterprises Corporation Pvt. Ltd.	RESPONDENT

Date of Decision: March 15, 1996

Acts Referred:

- Income Tax Act, 1961 - Section 32

Citation: (2000) 158 CTR 588 : (2000) 241 ITR 277

Hon'ble Judges: A.K. Mathur, C.J; S.K. Kulshreshtha, J

Bench: Division Bench

Advocate: V.K. Thanka, for the Appellant; None, for the Respondent

Judgement

1. This is a reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the Revenue and the following question of law has been referred by the Tribunal for answer by this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the premises used as a hotel can be treated as a plant for the purposes of depreciation at higher rate ?"

2. The brief facts giving rise to this reference are these : The assessee derives income from hotel business by providing lodging, boarding, restaurant and bar facilities. It claimed depreciation on building claiming it to be a plant, at 15 per cent, as per the schedule provided under the Income Tax Rules. The Income Tax Officer allowed depreciation at 2.5 per cent, on building treating it as a first class building. On appeal, the Commissioner of Income Tax (Appeals) directed depreciation on hotel building at the rate admissible for plant and machinery at the rate of 15 per cent. Aggrieved by the decision of the Commissioner of Income Tax (Appeals), an

appeal was preferred by the Department before the Tribunal which affirmed the order of the Commissioner of Income Tax (Appeals) relying on the decisions of the other Benches of the Tribunal. Hence, the Revenue moved the Tribunal for making a reference to this court and the aforesaid reference has been made by the Tribunal.

3. We have heard Shri Tankha, learned counsel for the applicant, and perused the record. The Tribunal, in a detailed order, has discussed all the relevant case law on the subject and held that hotel was in the definition of a plant and, therefore, the assessee is entitled to depreciation allowance to the maximum extent. Suffice it to say that in the case of Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, , a somewhat similar question came up for consideration before their Lordships of the Supreme Court with regard to Taj Mahal Hotel and the question was whether the installation of sanitary and pipeline fittings in one of the branches can be granted depreciation allowance under the head "Furniture and fittings." Their Lordships, after considering the matter, held that (headnote) "the sanitary and pipeline fittings fell within the definition of ''plant'' in Section 10(5) and the respondent was entitled to development rebate in respect thereof u/s 10(2)(vi). The fact that the respondent claimed depreciation on the basis that the sanitary and pipeline fittings fell under ''furniture and fittings'' in Rule 8(2) of the Income Tax Rules, 1922, did not detract from this position. The intention of the Legislature was to give the word ''plant'' a wide meaning."

4. Hence, in view of the decision of the Supreme Court, the Tribunal has rightly come to the conclusion that hotel is a plant and accordingly decided the matter in favour of the assessee. We are of the opinion that the view taken by the Tribunal appears to be justified and needs no interference.

5. We answer the question in favour of the assessee and against the Revenue.