

(1996) 08 AP CK 0058

Andhra Pradesh High Court

Case No: Case Referred No. 25 of 1988

Commissioner of Income Tax

APPELLANT

Vs

Shiva Shanker Bore Wells

RESPONDENT

Date of Decision: Aug. 29, 1996

Acts Referred:

- Income Tax Act, 1961 - Section 28

Citation: (1997) 142 CTR 560 : (1997) 225 ITR 1029 : (1997) 94 TAXMAN 386

Hon'ble Judges: S.S. Mohammed Quadri, J; R. Bayapu Reddy, J

Bench: Division Bench

Advocate: S.R. Ashok, for the Appellant; None, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.

In this reference, u/s 256(1) of the Income Tax Act, 1961, the following question is referred to this court for opinion :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that depreciation was allowable at 30 per cent. on the rigs engaged in drilling of borewells ?"

2. The assessee is a firm carrying on the business of digging borewells. It claimed depreciation allowance at 30 per cent. on the rigs used for digging borewells. The Income Tax Officer allowed depreciation at 10 per cent. but, on appeal, the Appellate Assistant Commissioner upheld the claim of the assessee. The Income Tax Appellate Tribunal, on appeal by the Revenue, following its own decision in an earlier case (viz., order dated August 29, 1983, in the case of Super Drillers, Hyderabad, in I.T.A. No. 1475/Hyd of 1982), upheld the order of the Appellate Assistant Commissioner. It is from that order of the Tribunal that the above said question has arisen.

3. In [Commissioner of Income Tax Vs. Super Drillers](#), , the Division Bench of this court held that the description given in the Depreciation Schedule in item No. III-D(4) of Appendix I, Part I, to the Income Tax Rules, 1962, was not exhaustive but merely illustrative and upheld the order of the Tribunal in that case in granting 30 per cent. depreciation in respect of the drilling equipment.

4. Learned standing counsel for the Income Tax Department, however, relied upon the judgment of the Madras High Court in [Commissioner of Income Tax Vs. Tamil Nadu Agro Industries Corporation](#), , and contended that the drilling machine used for digging borewells could not be treated as "earthmoving machinery" and so the petitioner was not entitled to 30 per cent. depreciation.

5. It will be useful to read here item No. III-D(4) of Appendix I, Part I, to the Income Tax Rules, 1962, which is in the following terms :

"D. (4) Earthmoving machinery employed in heavy construction works, such as dams, tunnels, canals, etc. (N.E.S.A.) 30"

6. An identical question was considered by the Division Bench of this court in [Commissioner of Income Tax Vs. Super Drillers](#), . There the assessee contended that it was entitled to 30 per cent. allowance under item No. III-D(7) whereas the Revenue, being of the view that the depreciation could be allowed at the general rate as applicable to "plant and machinery" at 10 per cent., resisted the claim. The Income Tax Tribunal, on exhaustive consideration of the scientific literature and other relevant matters, recorded the finding that the drilling equipment fell under item No. III-D(4) and that was upheld by the Division Bench of this court on reference. The Bench expressed the opinion that item No. III-D(4) was not exhaustive but merely illustrative and that view is supported by the expression "such as" and "etc."

7. In [Commissioner of Income Tax Vs. Tamil Nadu Agro Industries Corporation](#), , the Madras High Court was considering the question whether the Appellate Tribunal was right in allowing depreciation at 30 per cent. in respect of drills and rigs used by the assessee as against 10 per cent. allowed by the Income Tax Officer under item No. III "Machinery and plant". The Division Bench of the Madras High Court which dealt with that question, held that though any machinery employed for removing earth from a place, be it on the surface of the earth or by burrowing a hole into the bowels of the earth would fall within the expression "earth moving machinery", yet as it was not used or employed in the excavation of earth in large quantity and in massive scale as is necessary in the case of construction work like dams, canals, etc., drilling machinery or rigs would not come within the ambit of item No. III-D(4). We have already noted that that item was construed by the Division Bench of our High Court as not being exhaustive but merely illustrative. We are in respectful agreement with the reasoning given by the Division Bench of our High Court and we are unable to persuade ourselves to accept the view expressed by the Madras High

Court.

8. For the above reasons, we are unable to uphold the contention of the Revenue that the rigs fall under general item No. III of Part I of Schedule I, which deals with depreciation of machinery and plant into being a ship). In this view of the matter, following the judgment of our High Court in [Commissioner of Income Tax Vs. Super Drillers](#), we answer the question in the affirmative, that is, in favour of the assessee and against the Revenue.

9. The reference is accordingly answered.