

(1978) 02 CAL CK 0033

Calcutta High Court

Case No: Income-tax Reference No. 193 of 1971

Commissioner of Income Tax,
Central

APPELLANT

Vs

Indo-Burma Petroleum Co. Ltd.

RESPONDENT

Date of Decision: Feb. 1, 1978**Acts Referred:**

- Income Tax Act, 1961 - Section 32, 41(2)

Citation: (1978) 112 ITR 755**Hon'ble Judges:** Sudhindra Mohan Guha, J; Sabyasachi Mukharji, J**Bench:** Division Bench**Advocate:** Balai Pal and Ajit Sen Gupta, for the Appellant; K. Roy and R.N. Dutt, for the Respondent

Judgement

Sabyasachi Mukharji, J.

The assessee is a private limited company and carries on business in petroleum. This reference u/s 256(2) of the Income Tax Act, 1961, arises in respect of the assessment year 1964-65, for which the relevant accounting year is the calendar year 1963. During the accounting year relevant to the assessment year, the assessee had incurred an expenditure of Rs. 11,200 on the driveways and the compound walls and had treated the same as building or plant and had claimed depreciation thereon. The Income Tax Officer disallowed the claim on the ground that these, viz., driveways and the compound walls, could neither be treated as building nor plant nor machinery. The assessee preferred an appeal before the Appellate Assistant Commissioner against the said decision of the Income Tax Officer. The Appellate Assistant Commissioner, however, negatived the assessee's claim and upheld the order of the Income Tax Officer. Being aggrieved by the order of the Appellate Assistant Commissioner, the assessee went up in appeal before the Tribunal and reiterated its claim for depreciation on the expenses incurred in connection with the driveways and the compound walls. The Tribunal in its order observed that they

were of the opinion that the driveways and the compound walls should be classified as building on which depreciation was allowable. In order to enable the assessee to receive motor vehicles for the purpose of supplying petrol, the Tribunal observed, the assessee had necessarily to have roads and having particular regard to the business carried on by the assessee it was also necessary to enclose the area by a compound wall. These findings of fact have not been challenged. The driveways and the compound walls, in these circumstances, were, in the opinion of the Tribunal, building eligible for depreciation.

2. In those circumstances u/s 256(1) of the Income Tax Act, 1961, the following question has been referred to this court;

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the driveways and the compound walls are eligible for depreciation allowance?"

3. Depreciation is allowable in respect of building, machinery, plant or furniture owned by the assessee and used for the purpose of the business or profession in terms of Section 32 of the Income Tax Act, 1961. On behalf of the revenue, it was urged that the expression "building" should be construed in the light of Sub-section (2) of Section 41 of the Income Tax Act, 1961. In other words, it was urged that it was only those buildings, machinery, plant or furniture which were capable of being discarded, sold, demolished or destroyed, that should be considered to be "building". This argument, however, does not further the point. Even if it be considered that the building in respect of which depreciation is allowed u/s 32 of the Act must be the same type of the assets contemplated by Sub-section (2) of Section 41, it cannot be said that driveway or compound wall could not be either sold, discarded, demolished or destroyed in the contingencies contemplated by Sub-section (2) of Section 41. The word "building" has not been defined in the Income Tax Act, 1961, and must, therefore, be construed in its ordinary sense having regard to the purpose for which depreciation is allowed. In this connection reliance was placed on certain observations in the case of [Ghansham Das Vs. Devi Prasad and Another](#), . That was a case u/s 9 of the U.P. Zamindari Abolition and Land Reforms Act and in that context the Supreme Court observed that a brick-kiln with no walls and no roof but a mere pit dug in the ground with bricks by its side was not a "building" within the meaning of Section 9 of the U. P. Zamindari Abolition & Land Reforms Act, 1951. The Supreme Court observed that the expression "building" must be understood in the context in which it was used and, in the absence of any definition in any particular Act, in the light of ordinary grammatical meaning. In the instant case, we are concerned with depreciation in respect of the assets used by an assessee for its business. The assessee in this case is one who is carrying on business in petroleum. For this purpose he has petrol pumps. These petrol pumps are situated in a place which has been considered to be building on which depreciation was allowed. The building is unusable for the business purpose, that is,

for the purpose of petrol pumps unless there are driveways. It has been so found by the Tribunal which further held that the pump cannot be used without fencing by the walls. If this is so then these are parts of the building in which the assessee carries on the business.

4. In the aforesaid view of the matter, in our opinion, the Tribunal was right in holding that driveways and compound walls are eligible for depreciation allowance.

5. The question referred is, therefore, answered in the affirmative and in favour of the assessee. The assessee will get the costs of the reference from the revenue.

Sudhindra Mohan Guha, J.

6. I agree.