

**(1992) 10 BOM CK 0067**

**Bombay High Court**

**Case No:** Income-tax Reference No. 147 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Electro Metallurgical Works (P.)  
Ltd.

RESPONDENT

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**Date of Decision:** Oct. 9, 1992

**Acts Referred:**

- Income Tax Act, 1961 - Section 32, 33, 43, 43(3)

**Citation:** (1994) 207 ITR 494

**Hon'ble Judges:** Sujata V. Manohar, J; B.N. Srikrishna, J

**Bench:** Division Bench

**Advocate:** G.S. Jetly, for the Appellant; B.V. Jhaveri, for the Respondent

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### **Judgement**

Mrs. Sujata Manohar, J.

The following three questions are referred to us u/s 256(1) of the Income Tax Act, 1961 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the roads inside the factory campus are also buildings eligible for depreciation as any of the other factory buildings ?

2. Whether the Tribunal was right in law in upholding the decision of the Appellate Assistant Commissioner treating the tanks and reservoirs as "plant" eligible for development rebate ?

3. Whether the Tribunal was right in holding that the tanks and reservoirs constitute "plant" which are eligible for depreciation at the rate of ten per cent, as against five per cent, allowed by the Income Tax Officer and confirmed by the Appellate Assistant Commissioner ?"

2. The relevant assessment year is 1973-74. The assessee claimed depreciation of the roads within its factory premises, which connected the various factory buildings

in the complex and were used for transport of raw materials inside the factory and of manufactured articles out of it.

3. For the purpose of its machinery in the factory, the assessee required filtration plant for cooling the machines at work. The tanks and reservoirs, which were constructed, formed part of the filtration plant, and were essential for the functioning of the filtration plant. The Tribunal took the view that the tanks the reservoirs fell within the definition of "plant" and were eligible for development rebate at ten per cent.

4. Regarding question No. 1 the answer would be governed by a decision of this court in the case of [Commissioner of Income Tax, Bombay City-I Vs. Colour-chem Ltd.](#), and the decision of the Supreme Court in the case of [Commissioner of Income Tax, Bombay Vs. Gwalior Rayon Silk Manufacturing Co. Ltd.](#), . In view of the ratio of these decisions, the roads inside the factory premises are considered as building eligible for depreciation on that footing.

5. As regards question No. 2 our High court in the case of [Commissioner of Income Tax Vs. Mazagaon Dock Ltd.](#), has held that the term "plant" in section 43(3) should be given a wide meaning, as it is an inclusive definition. A building or structure is not to be excluded, per se, from the ambit of the expression "plant". However if a concrete construction of building is used as premises or a setting in which the business is carried on, in contradistinction to its fulfilling the function of a plant, the building or construction will not be considered a plant, and if the equipment cannot function without such a structure, the structure would form part of the plant. Applying that ratio to the present case, the tanks and reservoirs, which are concrete structures, form an integral part of the filtration plant. Hence, they have to be treated as plant, and, as such, they would be eligible for development rebate.

6. Regarding question No. 3, appendix I to the Income Tax Rules deals with the schedule of tax and depreciation admissible. Under category III, machinery and plant are entitled to depreciation as follows :

"Machinery and plant (not being a ship) -

(i) General rate applicable to Machinery 10 per cent." and plant (not being a ship) for which no special rate has been prescribed under item (ii) hereinbelow.

Item (ii) does not cover tanks and reservoirs. Hence, the rate of depreciation applicable would be ten per cent. and not five per cent.

7. The questions, therefore, are answered as follows :

Question No. 1 : In the affirmative and in favour of the assessee;

Question No. 2 : In the affirmative and in favour of the assessee;

and

Question No. 3 : In the affirmative and in favour of the assessee.

8. No order as to costs.