

(1999) 07 BOM CK 0130

Bombay High Court

Case No: Income Tax Ref. No. 637 of 1987

Commissioner of Income Tax,
Bombay

APPELLANT

Vs

M/s. Ruia Stud and Agricultural
Farms P. Ltd.

RESPONDENT

Date of Decision: July 20, 1999

Acts Referred:

- Income Tax Act, 1961 - Section 256(1), 32, 43(3)

Citation: (2000) 2 BomCR 428 : (1999) 240 ITR 312 : (1999) 3 MhLj 848

Hon'ble Judges: Ranjana Desai, J; B.P. Saraf, J

Bench: Division Bench

Advocate: R.V. Desai and P.S. Jetly, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

Dr. B.P. Saraf, J.

By this reference u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law to this Court for opinion ;

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that horses used for stock-breeding constitute "plant" so as to be eligible for depreciation u/s 32 of the Income Tax Act, 1961?"

2. This reference pertains to assessment year 1978-79. The controversy is whether the horses used for stock-breeding constitute "Plant" for the purpose of depreciation u/s 32 of the Income Tax Act, 1961 ("Act"). The material facts are in a narrow compass. The assessee is engaged in the business of live stock breeding. For that purpose, it purchases and imports horses. These horses are not sold. The assessee claimed that the horses having been used for the purposes of its business constituted "plant" and, therefore, depreciation was allowable on the cost thereof

u/s 32 of the Act. The Income Tax Officer rejected the claim of the assessee on the ground that the horses were held by the assessee as stock-in-trade. The assessee appealed to the Commissioner of Income Tax (Appeals). It was contended by the assessee before the Commissioner (Appeals) that the horses were held by it not as stock-in-trade but as fixed assets. The Commissioner (Appeals) rejected the appeal of the assessee. He held that horses did not constitute "plant". On further appeal, the claim of the assessee was accepted by the income tax Appellate Tribunal ("Tribunal"). The Tribunal accepted the contention of the assessee that horses were not its stock-in-trade but fixed assets. The Tribunal also held that horses could be treated as plant and that the assessee was entitled to claim depreciation thereon. Hence this reference at the instance of the revenue.

3. We have heard Mr. R.V. Desai, learned Counsel for the revenue. None appears for the assessee. Though at the material time there was a controversy whether live stock would constitute plant within the meaning of Clause (3) of section 43 of the Act, that controversy has now been set at rest by the amendment of section 43(3) by the Parliament by the Finance Act, 1995 with retrospective effect from the inception of the Act i.e. 1st April, 1962 to exclude tea bushes and live stock from the ambit of "plant". It is now made clear in the definition of "plant" in section 43(3) of the Act that it does not include live stock.

4. In view of the above, horses used for stock breeding cannot be regarded as "plant" within the meaning of section 43(3) of the Act and no depreciation would be allowable thereon u/s 32 of the Act.

5. The question referred to us is, therefore, answered in the negative, that is, in favour of the revenue and against the assessee. The reference is disposed of accordingly with no order as to costs.

6. Reference answered in favour of the Revenue.