

## **C.I.T., Bombay vs Gwalior Rayon Silk Manufacturing Co. ... on 29 April, 1992**

**Equivalent citations: 1992 AIR 1782, 1992 SCR (2)1017, AIR 1992 SUPREME COURT 1782, 1992 (3) SCC 326, 1992 AIR SCW 1995, 1992 TAX. L. R. 865, 1992 (2) UPTC 769, (1992) 2 SCR 1017 (SC), 1992 (2) SCR 1017, 1992 UPTC 2 769, (1992) 62 TAXMAN 471, (1992) 3 JT 158 (SC), (1992) 108 TAXATION 360, (1992) 104 CURTAXREP 243, (1993) 1 BOM CR 425**

**Author: K. Ramaswamy**

**Bench: K. Ramaswamy, N.M. Kasliwal**

PETITIONER:

C.I.T., BOMBAY

Vs.

RESPONDENT:

GWALIOR RAYON SILK MANUFACTURING CO. LTD.

DATE OF JUDGMENT29/04/1992

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

KASLIWAL, N.M. (J)

CITATION:

1992 AIR 1782	1992 SCR (2)1017
1992 SCC (3) 326	JT 1992 (3) 158
1992 SCALE (1)1000	

ACT:

Income Tax Act 1961 : Section 32.

Income Tax (Fourth Amendment) Rules 1983.

Depreciation allowance-Nature and object of.

Roads and drains-Land within factory premises-Necessary adjuncts to factory buildings-Treated as 'building' for purposes of depreciation.

Statutory Interpretation :

Taxing statutes-Provision for deduction, exemption or relief-to be construed reasonable and in favour of assessee.

Administrative Law :

Subordinate legislation-Rules validly made have same

force as sections of Act.

Practice and Procedure

Interpretation consistently given over years-Accepted and acted upon by department-Normally not to be upset-Even though different view of law reasonably possible unless perceptions and circumstances warrant fresh look.

Words and Phrases-Meaning of 'building'-Section 32 Income-tax Act 1961.

HEADNOTE:

The assessee-respondent in the appeal Civil Appeal No. 2916(NT) of 1980 claimed depreciation on the written down value of roads constructed by it as forming part of the cost of the factory building and also claimed development rebate on industrial transport used for transporting raw materials and finished goods within the factory premises

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The Income-tax Officer having disallowed the aforesaid claims, the assessee appealed to the Appellate Assistant Commissioner who dismissed the appeals.

On further appeal the Tribunal allowed the claims and depreciation on the roads as well as development rebate in regard to the transport viz., tractor, trailer etc.

The Revenue filed an application under Section 256(1) of the Income-tax Act, 1961 but the same having been dismissed by the Tribunal, filed an application under Section 256(2) in the High Court, which accepted the application in regard to the question of development rebate, but rejected it with regard to the depreciation on roads.

The Revenue filed Special Leave Petition against the orders of the High Court in this Court, contending that the word 'building' in its connotation is referable to something that has been constructed as a structure or super-structure on land with walls and roof, and since the Income-tax Act did not give a definition of its own, the dictionary meaning of the word 'building' has to be adopted, and that this was made manifest by the subsequent amendment to Appendix I under the Income-tax, 4th Amendment Rules, 1983 which came into force with effect from 2nd April, 1983 which includes roads.

The assessee contested the appeal. It was contended that the purpose of allowing depreciation was to compute the net taxable income; that unless roads are laid it is not possible for the convenient carrying on of the business activity, that the assessee laid roads and incurred expenditure thereon, and therefore the roads form part of the building as capital asset which is admissible for depreciation under Section 32 of the Act. It was further contended that the Rules only regulate the rate of depreciation at which the assessee is entitled to and that proceeding the Fourth Amendment Rules with effect from 2nd

April, 1983, the rates were variable and the assessee were entitled to claim either as plant or building etc. To set at rest that part of the controversy the Rules were amended and came into force with effect from April 2, 1983.

In this and the connected appeals the common question of law arose: whether 'building' under section 32 of the Income-tax Act, 1961 would include roads and drains.

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Dismissing the Appeals, this Court,

HELD : 1. The roads laid within the factory premises as links or providing approach to the buildings are necessary adjuncts to the factory building to carry on the business activity of the assessee would be building within the meaning of section 32 of the Act. The capital expenditure incurred thereon is admissible to depreciation of written down value. It has to be worked out for the purpose of depreciation as per the provisions of the Act read with the Rules in Appendix. Equally the drains also would be an integral part of building for the convenient enjoyment of the factory. The expenditure incurred in laying the drains or written down value of the cost of its construction would equally be entitled to depreciation. It is to be worked out in terms of section 32 of the Act read with the Rules in the Appendix. [1030 C-E]

2.(a). The expressions used in a taxing statute would ordinarily be understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative animation. [1026 G]

2(b). The Income-tax Act has to be read and understood according to its language. If the plain reading of the language compels the court to adopt an approach different from that dictated by any rule of logic the court may have to adopt it. [1027 A]

Raja Jagadambika Pratap Narain Singh v. C.B.D.T., [1975] 100 ITR 698 and Azam Jah Bahadur (H.H. Prince) v. E.T.O., [1983] 72 ITR 92, referred to.

3. Logic alone will not be determinative of a controversy arising from taxing statute. Equally, common sense is stranger and incompatible partner to the income-tax Act. It is not concerned itself with the principles of morality or ethics. It is concerned with the very limited question as to whether the amount brought to tax constitutes the income of the assessee.

[1027 B]

4. If the language is plain and unambiguous one can only look fairly at the language used and interpret it to give effect to the legislative animation. Nevertheless tax laws have to be interpreted reasonably had in consonance with justice adopting purposive approach. The contextual meaning has to be ascertained and given effect to. [1027 C]

5. A provision for deduction, exemption or relief should be construed

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reasonably and in favour of the assessee. The object being that in computation of the net income, the statute provides deductions, exemptions or depreciation of the value of the capital assets from taxable income. [1027 D]

6. Building which have not been specifically defined to include road in the Act must taken in the legal sense. [1027 D]

7. Section 32 provides depreciation of capital assets in respect of buildings, machinery, plant or furniture. [1027 E]

C.I.T. v. Taj Mahal Hotel, [1971] 82 ITR 44; Municipal Corporation of Greater Bombay & Ors. v. Indian Oil Corporation Ltd., JT (1990) 4 SC 533 and C.I.T. v. Ram Gopal Mills Ltd., 4 ITR 280, referred to.

8. Depreciation allowance is in respect of assets used in the business and has to be calculated on the written down value. The allowance towards depreciation is for the continuation of the use of the assets wholly or in part during the accounting year and its contribution to the earning of the income. The object is to determine net income liable to tax. [1027 G]

C.I.T. v. Alps Theatre, [1967] 65 ITR 377, explained.

9. Dictionary meaning of the 'building' cannot be confined to a structure or superstructure having walls and roof over it. The roads and roadways are adjuncts of the buildings lying within the factory area linking them together and are being used for carrying on its business by the assessee. Therefore, they must be regarded as forming part of the factory building. The expenditure incurred, therefore, will have to be regarded as expenditure on buildings and the depreciation must be allowed. [1028 E-F]

10. While amending the Income-tax 4th Amendment Rules 1983, the rule making authority accepted the interpretation consistently laid down by various High Court that building includes roads and also elongated bridges, Culverts, wells and tubewells as building but prescribed fixed rates of depreciation setting at rest the variable rates claimed by the assessee. Rules validly made have the same force as the sections in the Act. [1029 C]

11. The inclusive definition of 'building' to include roads etc. enlarges the scope of Section 32 and does not whittle down its effect. [1029 D]

C.I.T. v. Coromandel Fertilisers Ltd., [1985] 156 ITR 283, (A.R.) over-

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ruled; C.I.T. v. Sanavik Asia Ltd., [1983] 144 ITR 585 (BOM.); C.I.T. v. Clour Chem Ltd., [1977] 106 ITR 323; C.I.T. v. Lucas-TVS Ltd., [1977] 110 ITR 346 (Mad.); Panyem Cement and Chemical Industries Ltd. v. Addl C.I.T., [1979] 117 ITR 770 (A.P.); C.I.T. v. Kalyani Spinning Mills Ltd., [1981] 128 ITR 279 (Cal.); C.I.T. v. Mec. Gaw Laboratories India (Ltd.), [1981] 132 ITR 401 (Guj.); C.I.T. v. Bangalore Turf Club Ltd., (150 ITR 23,) approved.

12. An interpretation consistently given over the years and accepted and acted upon by the department may not normally be upset even though a different view of law may reasonably be possible unless the perceptions and circumstances warrant fresh look. [1030 A]

Saharanpur Electric Supply Co. Ltd. v. C.I.T., [1992] 194 ITR 294, referred to.

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2916 (NT) of 1980.

From the Judgment and Order dated 9.3.1979 of the Bombay High Court in I.T.A. No. 43 to 1979 WITH C.A. Nos. 1194/77, 2978/89, 5535/90 & 1404 of 1991. S.C. Manchanda, S. Rajappa, Ms. A. Subhashini and K.P. Bhatnagar for the Appellant.

Harish N. Salve, S. Kukumaran, Mukul Mudgal, T. Ray, Krishna Kumar, Mrs. P. Madan, N. Talwar, A.D.N. Rao and A.S. Rao for the Respondent.

The Judgment of the Court was delivered by K. RAMASWAMY, J. The assessee claimed depreciation on the written down value of roads constructed by it as forming part of the cost of the factory building and also claimed development rebate on industrial transport use for transporting raw materials and finished goods within the factory premises. The I.T.O. disallowed the claims. The assessee went in appeal. The A.A.C. dismissed the appeal. On a further appeal the Tribunal following its earlier order for assessment year 1962-63 in the case of the assessee, allowed the aforesaid two claims with regard to depreciation on the roads as well as rebate on the Tractors, Trailors etc. The revenue filed an application under Section 256(1). The said application was dismissed by the Tribunal. The revenue then filed application under Section 256(2) in the High Court. The High Court accepted the application with regard two questions only and rejected it so far as the question regarding depreciation on roads is concerned. The revenue filed SLP against the order of the High Court. This Court by order dated 5.12.1980 granted special leave confined to question No. 1 only which reads as under:-

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that depreciation is admissible on the W.D.V. of the cost of construction of roads in the factory premises on the footing that they constitute building?"

C.I.T., Bombay  
v.

...Appellant

M/s Electro Metallurgical Works Pvt. Ltd. ...Respondent The Appellate Assistant Commissioner directed the I.T.O. to allow depreciation on roads inside the factory compound at appropriate rates. It was claimed before the A.A.C. that roads within the

factory compound constituted plant and the I.T.O. should be allowed depreciation as admissible for buildings. It was not clear from the order of the A.A.c. whether depreciation was to be granted on roads at the rates applicable to plant and machinery or at the rates applicable to building. The Tribunal while deciding the appeal filed by the revenue observed that it was not concerned with the above aspect regarding the rates. The Department's claim was that no depreciation at all should be given on roads. The Tribunal held that different benches of the Tribunal at Bombay had taken the view that depreciation on roads inside the factory compound connecting different factory buildings and connecting the factory to the outer road should be allowed either on the footing that such roads are a part of the buildings or alternatively that they constituted plant. The Tribunal thus held that A.A.C. was justified in directing the I.T.O. to grant the necessary depreciation. The appeal of the revenue was dismissed. The revenue filed a petition under Section 256(1). The question number one related to calculating the reliefs under Section 80-I without taking into consideration the development rebate. The second question related to allowing of depreciation on roads inside the factory at appropriate rates. The Tribunal with regard to second question held that the Bombay High Court itself in the case of Colour Chem Ltd. had taken the view that depreciation should be granted on the roads. The Tribunal in these circumstances did not consider it worthwhile to refer the second question. As regards the first question also with which we are not concerned the Tribunal did not consider it worthwhile for referring the same to the High Court. The revenue then filed a petition under Section 256 (2) in the High Court. In this petition paragraph 7 it has been stated as under:-

"so far as question No. 2 is concerned, the department has since decided not to pursue the matter further. In the prayer clause also the direction to the Tribunal to state the case and refer the question of law was made in respect of question No. 1 only."

The High Court by order dated June 17, 1979 issued notice as regards question No. 1 only and dismissed the application so far as question No. 2 is concerned. The revenue in the above circumstances filed SLP against the order dated June 17, 1979 and leave was granted.

C.I.T.  
v.

...Appellant

M/s. Hindustan Aeronautics Ltd ...Respondent I.T.O. disallowed the claim for depreciation on roads and drains for the assessment year 1977-78. The Commissioner Income-tax (Appeals) allowed the depreciation following the decision of the Bombay High Court in C.I.T. v. Colour Chem Ltd., (106 ITR 323) and Madras High Court decision in C.I.T. v. Loockers TVs Ltd., (110 ITR 346). The Tribunal dismissed the appeal filed by the revenue. The Tribunal rejected the reference application filed under Section 256 (1). On a reference application filed by the revenue under Section 256(2), the High Court directed the Tribunal to state the case and refer the question of law for its opinion. The High Court followed its earlier decision in C.I.T. v. Bangalore Turf Club case, (150 ITR 23) and answered the question against the revenue. The question of law raised was whether on the facts and

in the circumstances of the case, the Appellate Tribunal is right in law in holding that the assessee is entitled to depreciation on the written down value of roads and drains at the rates applicable to buildings.

C.I.T., Bangalore	...Appellant
v.	
M/s. Hindustan Aeronautics Ltd.	...Respondent

I.T.O. allowed depreciation on roads and drains in the original assessment for the assessment year 1973-74 C.I.T. set aside order of the I.T.O. under Section 263. Reassessment by the I.T.O. disallowing the assessee's claim for depreciation on roads and drains to the extent of Rs. 15,50,526. On appeal the C.I.T. (Appeals) allowed the assessee's claim for depreciation. The Tribunal dismissed the appeal of the revenue. At the instance of the revenue on a reference under Section 256(1) the High Court answered the question against the revenue. The High Court by order dated October 25, 1983 answered the question in favour of the assessee relying on its earlier decision reported in C.I.T. v. Bangalore Turf Club Ltd., (150 I.T.R. 23) The Commissioner of Income Tax ....Appellant .

I.D.L. Chemicals Ltd. ....Respondent I.T.O. rejected the claim for depreciation on roads. A.A.C. allowed depreciation on roads treating the same as buildings. The Tribunal relying on its earlier order held that depreciation on roads should be allowed by treating them as plant. On reference applications, the Tribunal referred two questions to the High Court for its opinion (1) whether the assessee was entitled to depreciation on roads as part of the plant, (2) whether the assessee was entitled to depreciation for the assessment year 1972-73 on the written down value of the sum of Rs. 3,41,595 referred in question No. 1 and also on the questions to plant and machinery of Rs. 1,52,767 made during the previous year relevant for the assessment year 1971-72. The High Court by order dated 12.10.1984 held that the same covered by a consolidated order passed on June 15, 1983 in favour of the assessee. The question was, therefore answered against the revenue and in favour of the assessee. As regards the second question, High Court held that it was covered as a result of an amendment to the Act which has been noted in R.C. No. 80/78 dated April 18, 1983. The answer was therefore recorded against the assessee and in favour of the revenue. In the SLP, it is stated that both the questions referred to were answered in favour of the assessee which is not correct.

Since this bunch of appeals raised common questions of law for decision, they are disposed of by a common judgment. The facts in Civil Appeal No. 2916/80 are sufficient for decision. Hence they are extracted. For the assessment year 1963-64 for the previous year ending 31st March, 1963, the respondent assessee, a company incorporated under the Company's Act claimed depreciation on the roads constructed by it as forming part of cost of the factory building. The Income-tax Officer and on an appeal the Asstt. Appellate Commissioner rejected the claim. On further appeal, following the decision of the Bombay High Court for previous year, the Tribunal allowed the appeal and held that the assessee is entitled to depreciation. Then the revenue sought for reference on the question:

"Whether on the facts and in the circumstances of the case the Appellate Tribunal was justified in law in holding that the depreciation was applicable on the written down value of the cost of construction of roads in the factory premises on the footing that they constitute building?"

The High Court by its impugned order under s. 256(2) of the Income-tax Act, 1961 for short 'the Act' declined to call for a reference.

The contention of Sri Manchanda, learned counsel for the Revenue, is that the word "building" in its connotation is referable to something that is constructed as a structure or super-structure on land with walls and roof. According to the counsel since the Act did not give a definition of its own, the dictionary meaning of the "building" which means "a house or anything which built a structure" is to be adopted which was made manifest by subsequent amendment to appendix I under Income-tax, 4th Amendment Rules, 1983 for short 'the Rules' having come into force with effect from 2nd April, 1983 which includes roads. Therefore, till 2nd April, 1983 the roads did not form part of the building. It is also further contended that the Rules made manifest that they would be applicable only prospectively from 2nd April, 1983. By necessary implication till that cut off date the legislature excluded roads from the connotation of the building. The capital expenditure incurred by an assessee on construction of road even within factory premises is not entitled to depreciation as a deduction in the computation of profits and gains of assessee's income of the previous year. Sri Harish Salve, the learned senior counsel and other counsel appearing for the assessee resisted the contention. Sri Salve contended that the purpose of allowing depreciation is to compute the net taxable income; unless roads are laid it is not possible for the convenient carrying on of the business activity, the assessee laid roads and incurred expenditure thereon. Therefore, the roads form part of building as capital asset which is admissible for depreciation under s. 32 of the Act. The Rules only regulate the rate of depreciation at which the assessee is entitled to. Preceding the 4th Amendment Rules with effect from 2nd April, 1983, the rates were variable and the assessee was entitled to claim either as plant or building etc. To set at rest that part of the controversy the rules were amended and came into force with effect from 2nd April, 1983. The subordinate legislature gave effect to the interpretation given by various High Courts to the word building which included roads as well. Sri Manchanda further contended that taxing statute should be strictly construed; common sense approach, equity, logic, ethics and morality have no role to play. The words in the taxing statute should be given literal interpretation. Nothing is to be read in, nothing is to be implied; one can only look fairly at the language used and nothing more and nothing less.

It is settled law that the expressions used in a taxing statute would ordinarily be understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative animation. In *Raja Jagadambika Pratap Narain Singh v. C.B.D.T.*, [1975] 100 ITR 698, this Court held that "equity and income-tax have been described as strangers". The Act from the very nature of things cannot absolutely cast upon logic.

It is to be read and understood according to its language. If the plain reading of the language compels the court to adopt an approach different from that dictated by any rule of logic the court has to adopt it, vide *Azam Jah Bahadur (H.H. Prince) v. E.T.O.*, [1983] 72 ITR 92. Logic alone will not be determinative of a controversy arising from a taxing statute. Equally, common sense is stranger and incompatible partner to the Income-tax Act. It is not concerned itself with the principles of morality or ethics. It is concerned with the very limited question as to whether the amount brought to tax constitutes the income of the assessee. It is equally settled law that if the language is plain and unambiguous one can only look fairly at the language used and interpret it to



give effect to the legislative animation. Nevertheless tax laws have to be interpreted reasonably and in consonance with justice adopting purposive approach. The contextual meaning has to be ascertained and given effect to. A provision for deduction, exemption or relief should be construed reasonably and in favour of the assessee. The object being that in computation of the net income, the statute provides deductions, exemptions or depreciation of the value of the capital assets from taxable income. Therefore, building which have not been specifically defined to include road in the Act must be taken in the legal sense.

The question emerges, therefore, whether roads and drains include building under s. 32 of the Act. Section 32 provides depreciation of capital assets in respect of buildings, machinery, plant or furniture. This Court in *C.I.T. v. Ram Gopal Mills Ltd.* (41 I.T.R. 280), held that "the basic and normal scheme of depreciation under the Act is that it decreases every year being a percentage of the written down value which in the first year is the actual cost and in succeeding years the actual cost less all depreciations actually allowed under the act or any act repealed thereby". The depreciation allowance, therefore, is in respect of such assets as are used in the business and each to be calculated on the written down value. The allowance towards depreciation is for the continuation of the use of the assets wholly or in part during the accounting year and its contribution to the earning of the income. The object is to determine net income liable to tax. In *C.I.T. v. Alps Theatre*, [1967] 65 ITR 377, heavily relied on by the revenue this Court considering s. 10(2) of the Income-tax Act, 1922 held that s. 10(2) provides that such profits or gains shall be computed after making certain allowances. The object of giving these allowances is to determine the assessable income. Therein the question was whether the land on which the theatre was constructed is a building within the meaning of s. 10(2) of the Income-tax Act, 1922. This court held that land is not a building and, therefore, depreciation allowance for land separately is not admissible. The ratio therein has no application but the principle laid would be considered in the light of the purpose of the Act. In *C.I.T. v. Taj Mahal Hotel*, [1971] 82 ITR 44, this court adopting purposive approach held that sanitary and pipeline fittings fell within the definition of plant. 1922 Act intended to give wide meaning to the word "plant". The rules are meant only to carry out the provisions of the Act and cannot take away what is conferred by the Act or whittle down its effect. In *Municipal Corporation of Greater Bombay & Ors. v. Indian Oil Corporation Ltd.*, JT (1990) 4 SC 533, the oil tanks for storage of petrol were held to be buildings exigible to property tax.

The question whether the roads would include within the meaning of the word buildings was considered by various High Courts. The leading decision is of the Bombay High Court in *C.I.T. v. Colour Chem Ltd.*, [1977] 106 ITR 323. While negating the contention that roads are part of the plant, the Bombay High Court held that the roads within the factory premises are used for the purpose of carrying raw materials, finished products and workers. Therefore, it must be regarded as building or buildings within the meaning of sub- clause (iv) of s.10(2) of 1992 Act. It was also held that dictionary meaning of the word "building" cannot be confined to a structure or superstructure having walls and roof over it. The roads and roadways are adjuncts of the buildings lying within the factory area linking them together and are being used for carrying on its business by the assessee. Therefore, they must be regarded as forming part of the factory building. The expenditure incurred, therefore, will have to be regarded as expenditure on buildings and the depreciation must be allowed. The appeal filed against the judgment in *Colour Chem Ltd.* case the leave was refused on

the grounds of delay. More or less though for different reasons on "common sense principle" same is the ratio in C.I.T. v. Locas-TVS Ltd., [1977] 110 ITR 346 (Mad.). When the appeal was filed, this court dismissed the Special Leave Petition on the ground of delay. Same is the view in Panyem Cement and Chemical Industries Ltd. v. Addl. C.I.T., [1979] 117 ITR 770 (A.P.); C.I.T. v. Kalyani Spinning Mills Ltd., [1981] 128 ITR 279 (Cal.); C.I.T. v. Mec. Gaw Laboratories India (Ltd.), [1981] 132 ITR 401 (Guj.). In C.I.T v. Bangalore Turf Club Ltd., 150 ITR 23, when the appeal was filed this court dismissed the same in Special Leave petition Nos. 5198-99/85 dated December 16, 1987.

In Permanent Words and Phrases, Vol. 5A 'building' was defined that every thing that is necessary to perfect a manufacturing establishment and fit for use designed as a part of it is a building. The roads would serve as necessary links between the raw material and finished products in the business activity. The roads are liable to wear and tear and need constant repairs or relaying the road afresh.

While amending Income-tax 4th Amendment Rules 1983, the rule making authority accepted this interpretation consistently laid by various High Courts that building includes roads and also alongated bridges, culverts, wells and tubewells as building but prescribed fixed rates of depreciation setting at rest the variable rates claimed by the assessee. Rules validly made have the same force as the sections in the Act. The contention of the respondents that unless the Act itself is amended, the rules would not cut down the meaning of the word 'building' is without substance. The inclusive definition of the building to include roads etc. enlarges the scope of s. 32 and does not whittle down its effect. It is true that in C.I.T. v. Coromandel Fertilisers Ltd., [1985] 156 ITR 283, (A.P.), the High Court of Andhra Pradesh interpreted that roads fell within the meaning of "Plant" and granted depreciation at the rates admissible to plant. In C.I.T. v. Sanavik Asia Ltd., [1983] 144 ITR 585 (Bom.), took opposite view and held to be building. In view of the consistent view of the other High Courts and in our view which is the correct one, the view of the High Court of A.P. is not correct in law.

It is true, as contended for the Revenue that the Income-tax 4th Amendment Rules 1983 were given effect from 2nd April, 1983 thereby manifested that the rates enumerated in the rules would be applicable prospectively from the later assessment years. It by no means be construed that the legislature expressed its intention that for the earlier period building does not include roads. If it were to be so it was open to the Parliament to expressly brought out an amendment to the Act to that effect. On the other hand we are of the view that the subordinate legislature accepted the interpretation given by the High Courts and included roads as integral part of the building. In Bangalore Turf Club Ltd. case 150 ITR 23, the Karnataka High Court held that the amendment was by way of clarification in conformity with the law laid by the High Courts. It is also equally settled law that an interpretation consistently given over years and accepted and acted upon by the department may not normally be upset even though a different view of law may reasonably be possible unless the new perceptions and circumstances warrant fresh look. The ratio in Saharanpur Electric Supply Co. Ltd. v. C.I.T., [1992] 194 ITR 294, is not in conflict with the above view. It is also settled law that, unless it is expressly stated or by necessary implication arises, a statute should always be read as prospective. The ratio therein is also in consonance with the view we are taking.

Accordingly we have no hesitation to hold that the roads laid within the factory premises as links or provided approach to the buildings are necessary adjuncts to the factory buildings to carry on the business activity of the assessee would be building within the meaning of s. 32 of the Act. The capital expenditure incurred thereon is admissible to depreciation of written down value. It has to be worked out for the purpose of depreciation as per the provision of the Act read with the Rules in appendix. Equally the drains also would be an integral part of building for the convenient enjoyment of the factory. The expenditure incurred in laying the drains or written down value of the cost of its construction would equally be entitled to depreciation. It is to be worked out in terms of s. 32 of the Act read with the rules in the Appendix. In view of the settled position the reference sought for in CA No. 2916/80 and CA No. 1194/77 is unnecessary. The appeals are accordingly dismissed. No costs.

The appeal is partly allowed. The I.T.O. would compute roads as building and depreciation should be given accordingly. In view of the circumstances the parties are directed to bear their own costs.

Civil Appeal Nos. 2978/89 & 5535/90 The Civil Appeals are dismissed. No. costs.

N.V.K.

Appeals dismissed.