Scientific Engineering House (P) Ltd vs Commissioner Of Income Tax, Andhra ... on 1 November, 1985

Equivalent citations: 1986 AIR 338, 1985 SCR SUPL. (3) 701, AIR 1986 SUPREME COURT 338, 1986 (1) SCC 11, 1986 TAX. L. R. 234, 1986 43 ITJ 25, 1986 SCC (TAX) 143, 1986 ALL TAX J 129, 1986 RECENT LAWS 172, 1986 UPTC 345, (1986) IJR 239 (SC), 1985 (19) TAX LAW REV 501, (1985) 23 TAXMAN 66, 1986 UJ (SC) 557, 1985 TAXATION 79 (3) 336, (1985) 49 CURTAXREP 386, (1986) 157 ITR 86, (1986) 1 SUPREME 692

Author: V.D. Tulzapurkar

Bench: V.D. Tulzapurkar, Sabyasachi Mukharji

PETITIONER:
SCIENTIFIC ENGINEERING HOUSE (P) LTD.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, ANDHRA PRADESH

DATE OF JUDGMENT01/11/1985

BENCH:
TULZAPURKAR, V.D.
BENCH:
TULZAPURKAR, V.D.
MUKHARJI, SABYASACHI (J)

CITATION:
1986 AIR 338 1985 SCR Supl. (3) 701
1986 SCC (1) 11 1985 SCALE (2)908

ACT:
Income Tax Act, 1961 sections 32,34 and 43 (3) - Definitions of "Book", "Plant" - Whether the technical know-how in the shape of drawings and designs, charts, plants, processing literature etc. comprised in "documentation service" falls within the definition of "Book", "Plant" - Whether the said "documentation service" not only "a capital asset" but also "a depreciable asset".

HEADNOTE:
The appellant-assessee manufactures scientific

instruments and apparatus like Dumpy levellers, levelling staves prismatic compass, etc. It entered into two separate collaboration agreements, one dated 15th March, 1961 and the other dated 31st March 1961 with M/s. Metrimpex Hungarian Trading Company, Budapest for undertaking the manufacture of microscopes and theodolites, under which the said collaborator, in consideration of payment of Rs.80,000 each (Rs. 1,60,000 under both the agreements together), agreed to supply to the assessee all the technical know-how required for the manufacture of these instruments. To enable the assessee to manufacture these instruments in India, the foreign collaborator inter alia agreed to render documentation service" by supplying to the assessee an uptodate and correct complete set each of the five types of documents (such as manufacturing drawings, processing documents, designs, charts, plans and other literature more specifically detailed in clause 3 of the agreements) and to render training and imparting of knowledge of the know-how technique of manufacturing these instruments. Pursuant to the agreements the appellant-assessee made full Payment of Rs. 1,60,000 to the foreign collaborator and the latter rendered "documentation service" by supplying complete sets of all the documents including designs, drawings charts, plans and other literature as per clause 3. The sum of Rs. 1,60,000 was debited by the assessee under the head "Library".

For the assessment year 1966-67 for which relevant accounting year ended on 30th September, 1965 the assessee claimed a sum of RS. 12,000 by way of deprecation on "Library". The Income Tax

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Officer held that the sum of Rs. 1,60,000 did not represent the value of books purchased by the assessee represented the price paid for acquiring the technical know-how which amounted to capital expenditure but since no tangible or depreciable asset was brought into existence no depreciation allowance could be claimed. On appeal preferred by the assessee, however, the Appellate Assistant Commissioner held that what the assessee had done was to make an outright purchase of certain specimen drawings, charts, plans, etc. On special papers, that these documents when collected together constituted a book on which depreciation as in the case of plant and machinery, would, be at the appropriate rate be allowable and he directed the Income Tax Officer to allow the depreciation claimed. In the further appeal preferred by the department the Tribunal took the view that clauses 2,3,4,5 and 10 of the agreements did not lend support to the stand taken by the assessee that payments (Rs. 80,000 each) had been made mainly for the supply of designs, drawings, charts, etc., that the services to be rendered by the foreign collaborator covered a wide field and that the supply of designs, drawings, charts, etc. was incidental and only in furtherance of other services which

the foreign collaborator was expected to render. And that since the supply of designs, drawings, charts, etc. was only incidental and the payment of Rs. 1,60,000 could not entirely be held to represent the purchase price of those documents it was unnecessary for them to go into the question whether the said documents fell within the meaning of the expression 'books' and whether depreciation was, therefore, admissible thereon. The Tribunal however, held that the agreements showed that some of the services which the foreign collaborator was required to render to the assessee were on revenue account (as for example, the provision which required the foreign collaborator to depute their experts to correct any flaws or irregularities that might be encountered in the course of the production) and that therefore the payment of Rs. 1,60,000 was partly on capital account and partly on revenue account and that even if it were to hold that the part of the payment was allowable as revenue expenditure the allowance could not exceed Rs. 12,000, being the deduction allowed by the Appellate Assistant Commissioner. Thus, the Tribunal confirmed the deduction of Rs. 12,000 not as depreciation allowance but as revenue expenditure and in this manner it confirmed the order of the Appellate Assistant Commissioner. Both the assessee and the revenue sought a reference to the High Court. On a consideration h of the terms and conditions of the two collaboration agreements the High Court took the view that the payment of Rs.1,60,000 did

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not mainly represent the purchase price of the design , drawings, charts, etc. that the rendering of "documentation service" was incidental, that no part of the expenditure was on revenue account but the whole of lt was of a capital nature bringing into existence an asset of enduring benefit to the assessee, but what was brought into existence was a non-depreciable asset and, therefore, the assessee was not entitled to any relief in the case. Following the aforesaid decision rendered by the High Court in relation to the assessment year 1966-67 the assessee denied similar relief claimed by it in the two subsequent assessment years, 1968-69 and 1969-70. Hence the appeals by special leave of the Court.

Allowing the appeal, the Court,

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HELD : 1.1 The expenditure incurred by the appellant as and by way of purchase price of drawings, designs, charts, plans, processing data and other literature etc. comprised in "documentation service" specified in clause 3 of the Agreements, was of a capital nature as a result whereof a capital asset of technical know-how was acquired by the assessee. [713 B-C]

1.2 From the relevant terms of the two agreements, it is clear, that the "documentation service" undertaken to be rendered by the foreign collaborator to the assessee was not

incidental and that the payment of Rs. 1,60,000 could only be regarded as being mainly for and by way of purchase price of the drawings, designs, charts, plans and all the documents comprised in "documentation service" specified in clause 3 of the agreement-.
[710 B-C]

1.3 Reading Clauses 3 and 6(a) of the agreements together, it is clear, that the rendition of documentation services specified in Clause 3 was really the main service to be rendered by the foreign collaborator to the assessee and the Clause 6 (a) categorically states that the lumpsum payment of Rs. 80,000 (Rs. 1,60,000 under the two agreements) was for rendition of such service. Clause 5(c) makes the position clear where it has been stated that the purchaser is to pay the value of the full documentation in question, namely Rs. 80,000 according to the stipulation of the present agreement." In fact the other service mentioned in Clauses 4 and 5 appear to be incidental as some of these were undertaken to be rendered as and when desired by the assessee and for which the assessee had agreed to bear and pay the expenses separately. But the tenor of the agreements clearly shows that the various documents such as drawings, designs.
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charts, plans, processing data and other literature included in documentation service, the supply whereof was undertaken by the foreign collaborator, more or less formed the tools by using which the business of manufacturing the instruments was to be done by the assessee and for acquiring such technical know-how through these documents lumpsum payment was made. [712 F-H; 713 A-C]

2.1 Plant would include any article or object fixed or movable, live or dead, used by businessman for carrying on his business and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in
mechanical or industrial business. In order to qualify as plant the article must have some degree or durability. [714 B-C]

Yarmouth v. France, [1887] 19 Q.B.D. 647; Hinton v. Maden & Ireland Ltd., 39 I.T.R. 357; Jarrold v. John Good and Sons Limited, 1962, 40 T.C. 681 C.A.; Inland Revenue Commissioners v. Barclay, Curle & Co. Ltd., 76 I.T.R. 62 quoted with approval.

Commissioner of Income Tax, Andhra Pradesh v. Taj Mahal Hotel, 82 I.T.R. 44 referred to.

2.2 An Article to be treated as a "Plant" within the meaning of section 43(3) of the Act must answer in the affirmative the functional test, namely does article fulfil the function of a plant in the assessee's trading activity? Ant is it a tool of his trade with which he carries on his business? [714 G-H; 715 A]

2.3 Applying the functional test to the drawings,

designs, charts, plans, processing data and other literature comprised in the "documentation service" as specified in clause 3 of the Agreement, these documents as constituting a book would fall within the definition of "Plant". These documents regarded collectively will have to be treated also as a "book". The purpose of rendering such documentation service by supplying these documents to the assessee was to enable it to undertake its trading activity of manufacturing the theodolites and microscopes therefore, these documents had a vital function to perform in the Manufacture of these instruments. In fact it is with the aid of these complete and upto-date sets of documents that the assessee was able to commence its manufacturing activity and these documents really formed the basis of the business of manufacturing the instruments in question. It is true, by themselves these documents did not perform any mechanical operations or processes but that cannot militate against their
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being a plant since they were in a sense the basic tools of the assessee's trade having a fairly enduring utility, though owing to technological advances they might or would in course of time become obsolete. Therefore, the capital asset acquired by the assessee falls within the definition of "Plant" and therefore a depreciable asset. [715 B-G]

Commissioner of Income Tax, Gujarat v. Elecon Engineering Co. Ltd., 96 I.T.R. 672 (Gujarat) approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 262 (NT) of 1974 etc. From the Judgment and Order dated 17.1.1973 of the Andhra Pradesh High Court in Case Referred No. 21 of 1971.

G.C. Sharma and A. Subba Rao for the Appellant. C.M. Lodha and Miss A. Subhashini for the Respondent. The Judgment of the Court was delivered by TULZAPURKAR, J. These three appeals relating to assessment years 1966-67, 1968-69 and 1969-70 respectively (the accounting period in respect whereof ended on 30.9.1965, 30.9.1967 and 30.9.1968 respectively) raise a common question of law for our determination namely:

> Whether on the facts and in the circumstances of the case and on a true interpretation of the collaboration agreements between the assessee and M/s Metrimpex Hungarian Trading Company, Budapest the payment of RS... 1,60,000 by the assessee to the foreign collaborator was attributable partly or wholly towards the acquisition of a depreciable asset?

Briefly stated the facts giving rise to the question are these. M/s Scientific Engineering House (P) Ltd. (hereinafter called the assessee) manufactures scientific instruments and apparatus like Dumpy levellers, levelling staves, prismatic compass,

etc. It entered into two separate collaboration agreements, one dated 15th March 1961 and the other dated 31st March 1961 with M/s Metrimpex Hungarian Trading Company, Budapest for undertaking the manufacture of microscopes and theodolites, under which the said foreign collaborator, in consideration of payment of Rs. 80,000 each (Rs. 1,60,000 under both the agreements together), agreed to supply to the assessee all the technical know-how required for the manufacture of these instruments. The object of both the agreements was to enable the assessee to manufacture the said instruments of certain specifications and the assessee thereunder acquired the right to manufacture in India under its own trade mark and name but under the licence MOM Hungary - of the foreign supplier the said instruments and the right to sell the same in India. To enable the assessee to manufacture these instruments in India in the manner just indicated the foreign collaborator, inter alia, agreed to render 'documentation service' by supplying to the assessee an uptodate and correct complete set each of the five types of documents (such as manufacturing drawings, processing documents, designs, charts, plans and other literature more specifically detailed in clause 3 of the agreements). There was also a provision enjoining the foreign collaborator to render training and imparting of knowledge of the know-how technique of manufacturing these instruments. Pursuant to the agreements the assessee made full payment of Rs. 1,60,000 (Rs. 80,000 under each of the agreements) to the foreign collaborator and the latter rendered 'documentation service' by supplying complete sets of all the documents including designs, drawings, charts, plans and other literature as per clause 3. The sum of Rs. 1,60,000 was debited by the assessee under the head 'Library'.

For the assessment year 1966-67 for which relevant accounting year ended on 30th September 1965 the assessee claimed a sum of Rs. 12,000 by way of depreciation on 'Library'. Such depreciation was claimed on the ground that the payment of Rs. 1,60,000 had been made really for the outright purchase of designs drawings, charts and o her literature which were voluminous occupying almirah-full of storage space and these collectively constituted the pages of a book and the assessee had claimed depreciation at the appropriate rate. The Income-Tax Officer held that the sum of Rs. 1,60,000 did not represent the value of books purchased by the assessee but represented the price paid for acquiring the technical know-how which amounted to capital expenditure but since no tangible or depreciable asset was brought into existence no depreciation allowance could be claimed- On appeal preferred by the assessee, however, the Appellate Assistant Commissioner held that what the assessee has done was to make an outright purchase of certain specimen drawings, charts, plans, etc. On special papers, that these documents when collected together constituted a book on which depreciation, as in the case of plant and machinery, would, at the appropriate rate be allowable and he directed the Income Tax Officer to allow the depreciation claimed. In the further appeal preferred by the Department the Tribunal took the view that clauses 2,3,4,5 and 10 of the agreements did not lend support to the stand taken by the assessee that payments (Rs. 80,000 each) had been made mainly for the supply of designs, drawings, charts, etc., that the services to be

rendered by the foreign collaborator covered a wide field and that the supply of designs drawings, charts, etc. was incidental and only in furtherance of other services which the foreign collaborator was expected to render. It further took the view that since the supply of designs, drawings, charts, etc. was only incidental and the payment of Rs. 1,60,000 could not entirely be held to represent the purchase price of those documents it was unnecessary for them to go into the question whether the said documents fell within the meaning of the expression 'books' and whether depreciation was, therefore, admissible thereon. The Tribunal, however, held that the agreements showed that some of the services which the foreign collaborator was required to render to the assessee were on revenue account (as, for example, the provision which required the foreign collaborator to depute their experts to correct any flaws or irregularities that might be encountered in the course of production) and that therefore the payment of Rs. 1,60,000 was partly on capital account and partly on revenue account. As the appeal was by the Department and not by' the assessee and the Department could not be in a worse position then what it was when it came up in appeal, the Tribunal held that even if it were to hold that the part of the payment was allowable as revenue expenditure the allowance could not exceed Rs. 12,000 being the deduction allowed by the Appellate Assistant Commissioner. In other words the Tribunal confirmed the deduction of Rs. 12,000 not as depreciation allowance but as revenue expenditure and in this manner it confirmed the order of the Appellate Assistant Commissioner. G Both the assessee and the revenue sought a reference to the High Court. In the reference applications preferred by each before the Tribunal the assessee urged a two-fold contentions : (a) that the assessee was entitled to claim depreciation at the rate applicable to library (books) on the entire sum of Rs. 1,60,000 paid to the foreign collaborator; and (b) that the Tribunal ought to have given a specific finding as to what would be the amount representing the capital expenditure which was entitled to depreciation, and the assessee sought to raise appropriate questions covering these contentions. On the other hand the revenue urged two contentions: (1) that having come to the conclusion that the payment of Rs. 1,60,000 did not bring into existence any depreciable asset the Tribunal ought to have allowed its appeals fully and no relief could be granted to the assessee; and (ll) that the Tribunal was not justified in allowing the sum of Rs. 12,000 as revenue expenditure while disposing of its appeal particularly when no point was urged before lt that the same was an item of revenue expenditure and sought to raise proper questions covering these contentions. The Tribunal, however, referred the following question as appropriately arising from its order to the High Court:

"Whether on the facts and in the circumstances of the case and on true interpretation of the collaboration agreements between the assessee and M/s Metrimpex Hungarian Trading Company, Budapest, the payment of Rs. 1,60,000 was attributable partly to the acquisition of depreciable asset and partly to revenue expenditure or wholly towards the acquisition of a depreciable asset?"

On a consideration of the terms and conditions of the two collaboration agreements the High Court took the view that the payment of Rs. 1,60,000 did not mainly represent the purchase price of the designs, drawings, charts, etc. a- contended by the assessee, that the rendering of 'documentation service' was incidental, that no part of the expenditure was on revenue account but the whole of it was of a capital nature bringing into existence an asset of enduring benefit to the assessee, but what was brought into existence was a non-depreciable asset and, therefore, the assessee was not entitled to any relief in the case. In other words by its judgement dated 7th January 1973 the High Court held that the assessee was not entitled to any relief either by way of depreciation allowance or on account of revenue expenditure.

Following the aforesaid decision rendered by the High Court in relation to the assessment year 1966-67 the assessee was denied similar relief claimed by it in the two subsequent assessment years, 1968-69 and 1969-70. Instant appeals are preferred by the assessee challenging the High Courts view.

In support of the appeals counsel for the assessee accepted the High Court's view that no part of the expenditure (Rs. 80,000 under each of the two agreements) was on revenue account and the whole of it was of a capital nature but contended that both the Tribunal and the High Court had, on a misreading of the terms of the two agreements, held that rendering of the documentation service was incidental and that the payment of Rs. 1,60,000 did not mainly represent the purchase price of drawings, designs, charts, plans and other literature, etc. According to counsel on a fair reading of the relevant clauses in the two agreements it was clear that the 'documentation service' was the principal or the main service to be rendered by the foreign collaborator to the assessee for which mainly the payment of Rs. 1,60,000 was made as a result whereof the assessee acquired all the technical know-how requisite for the purpose of manufacturing the instruments in question and in this behalf reliance was placed on clause 6 of both the arguments. Counsel further urged that the High Court erroneously concluded that what was brought into existence was a non-depreciable asset, inasmuch as the acquisition of a capital asset like the technical know-how in the shape of drawings, designs, charts, plans. Processing data and other literature should have been regarded as constituting a book falling within the inclusive definition of 'plant' given in Sec. 43 (3) of the Income Tax Act, 1961. In this behalf counsel relied on Commissioner of Income Tax, Andhra Pradesh v. Taj Mahal Hotel, 82 I.T.R. 44 and Commissioner of Income Tax, Gujarat v. Elecon Engineering Company Ltd., 96 I.T.R.

672. On the other hand, counsel for the revenue pressed for our acceptance the view taken by the High Court that though the entire expenditure was of a capital nature it had brought into existence a non-depreciable asset .

Having regard to the rival contentions that were urged before us it is clear that two questions really arise for determination in the case. The first is whether the 'documentation service' (supply of 5 complete sets of documents) agreed to be and actually rendered by the foreign collaborator to the assessee under the two agreements was incidental to the other services contemplated therein or whether it was the principal service for which mainly the payment of Rs. 1,60,000 was made by the assessee as a result whereof the assessee acquired all the technical know-how requisite for the

purpose of manufacturing the instruments in question? And secondly whether the said expenditure, which was entirely of a capital nature, brought into existence a depreciable asset? The answer to the former question depends upon the proper interpretation of the terms and conditions of the two agreements while the answer to the latter depends upon whether a capital asset like the technical know-how acquired in the shape of drawings, designs, charts, plans, processing data and other literature which formed the basis for the business of manufacturing the instruments in question would fall within the wide and inclusive definition of 'plant' given in s. 43(3) of the Income Tax Act, 1961.

Turning to the first question, having regard to the relevant terms of the two agreements we find it very difficult to accept the view concurrently expressed by the Tribunal and the High Court that the 'documentation service' undertaken to be rendered by the foreign collaborator to the assessee was incidental or that the payment of Rs. 1,60,000 could not be regarded as being mainly for and by way of purchase price of the drawings, designs, charts, plans and all the documents comprised in 'documentation service' specified in clause 3 of the agreements. Such a view as will be shown presently runs counter to the express language contained in clauses 3 and 6 of the agreements. The agreement dated 15.3.1961 relates to theodolites while the other dated 31.3.1961 relates to microscopes and it was not disputed before us that the terms and conditions of both are almost identical. Clauses l and 2 thereof clearly set out the object and intendment of the two agreements; the object was to enable the purchaser (assessee) to manufacture the instruments of certain specifications and in that behalf under clause 2 the foreign collaborator was to grand to the assessee and the assessee was to acquire from the foreign collaborator the right to manufacture in India under the purchaser's (assessee's) trade mark and name, yet with indication of the Hungarian collaboration name S.E.H. under licence MOM Hungary the instruments of certain specifications and design and subsequent changes and modifications to this design introduced during the validity of the agreement and the right to sell these in India. Under Clause 3 the foreign collaborator had to render to the assessee 'documentation service' by supplying complete set of documents specified therein. Clause 4 enjoined the foreign collaborator to train and impart the knowledge of the know-how technique of the manufacturing of the instruments and for that purpose to accept two employees of the assessee at any one time for such period as may be desired by the assessee at the MOM Works at Budapest and give them full instructions concerning the manufacturing processes of the instruments covered by the agreements, the expenses in respect whereof were to be borne by the assessee, as also to depute to the assessee's works suitable expert technicians not exceeding two in number for such period as may be desired by the assessee up to half a year, the expenses in respect whereof (inclusive their travelling cost, salaries, lodging, boarding, etc.) were to be borne by the assessee. Clause 5 provided for imparting technical assistance to the assessee relating to all matters falling within the scope of the agreement and in sub-clause (c) thereof it was provided that if the assessee designed any new model or type of the instrument to suit the circumstances in India the assessee was entitled to have the supply of components being manufactured in Hungary and suiting the purpose on such terms and conditions as may be mutually agreed upon. Clause 6 dealt with payment to be made by the assessee and the manner thereof to which we will refer in detail later. Clause 10 indicated a five year's period commencing from a certain date during which the agreements were to remain in force. The rest of the Clauses dealing with assignability and other topics are not material. On the issue under consideration Clauses 3 and 6(a) are very material and

they run thus :

"3. Supplies :

Vendor shall supply to Purchaser in accordance with the terms laid down in Clause 6 hereunder :

(a) One complete set of up-to-date, correct and legibly reproducible manufacturing drawings and full processing documents of all components of the instrument and lists of parts in metric system in English language, this full documentation will comprise of; - one complete list of up-to-date, correct and legibly- reproducible drawings in metric system and English language of all jigs, fixtures, special tools, special guage and special machine used and built by MOM for manufacture, assembly inspection and testing of the component parts of the theodolites.

(b) One complete and up-to-date list, including complete specifications of raw material, required for the component parts of the theodolites covered by this agreement.

(c) One complete set of up-to-date layouts of all manufacturing operations and inspection performed by MOM works in Budapest during the manufacture and assembly of all components parts of the above Theodolite and containing all operational timings, details and know-how for the economic production of the components.

(d) One complete set of up-to-date, correct and legibly reproducible assembly drawings with one set of the assembly instruction of the theodolites giving all tolerance for the final adjustment during assembly.

(e) One complete set of up-to-date, correct and legibly reproducible castings drawings for all cast component parts for the theodolites covered by this agreement.

(f) Delivery term of the above documentation will be six months after the payment of Rs. 10,000 according to clause 6/a has been effected in favour of vendor."

6. Payment :

In consideration of the grand of these manufacturing and sales rights and the training and imparting of thorough and up-to-date total know-how techniques of manufacturing theodolites type 17-S purchaser shall make the following payments to vendor.

(a) Lumpsum of Rs. 80,000 (Rupees eighty thousand only) for giving services defined as documentation listed as per clause 3 In the following manner.

(Emphasis supplied).

(Here follow sub-clauses indicating various instalments and the manner of their payment, etc.) Reading clauses 3 and 6(a) together lt will appear clear that the rendition of documentation services specified in Clause 3 was really the main service to be rendered by the foreign collaborator to the assessee and the Clause 6(a) categorically states that the lumpsum payment of Rs. 80,000 (Rs. 1,60,000 under the two agreements) was for rendition of such service. There is also a reference to this aspect of the matter at the end of Clause 5(c) where it has been stated that the purchaser is to pay the value of the full documentation in question namely Rs. 80,000 according to the stipulation of the present agreement.' In fact the other services mentioned in clauses 4 and 5 appear to be incidental as some of these were undertaken to be rendered as and when desired by the assessee and for which the assessee had agreed to bear and pay the expenses separately. The tenor of the agreements clearly shows that the various documents such as drawings, designs, charts, plans, processing data and other literature included in documentation service, the supply whereof was undertaken by the foreign collaborator, more or less formed the tools by using which the business of manufacturing the instruments was to be done by the assessee and for acquiring such technical know-how through these documents lump sum payment was made. In other words, the payment of Rs. 80,000 under each of the agreements was principally for rendition of 'documentation service'. It is, therefore, clear that this expenditure was incurred by the assessee as and by way of purchase price of the drawings, designs, charts, plans, processing data and other literature, etc. comprised in 'documentation service' specified in Clause 3. The expenditure, therefore, was undoubtedly of a capital nature as a result whereof a capital asset of technical know-how in the shape of drawings, designs, charts, plans, processing data and other literature, etc. was acquired by the assessee.

The next question is whether the acquisition of such a capital asset is depreciable asset or not? Under section 32 depreciation allowance is, subject to the provisions of section 34, permissible only in respect of certain assets specified therein, namely, buildings, machinery, plant and furniture owned by the assessee and used for the purpose of business while section 43(3) defines 'plant' in very wide terms saying "plant includes ships, vehicles, books, scientific apparatus and surgical equipments used for the purpose of the business". The question is whether technical know-how in the shape of drawings, designs, charts, plans, processing data and other literature falls within the definition of 'plant'.

Counsel for the assessee urged that the expression 'plant' should be given a very wide meaning and reference was made to a number of decisions for the purpose of showing how quite a variety of articles, objects or things have been held to be 'plant'. But it is unnecessary to deal with all those cases and a reference to three or four decisions, in our view, would suffice. The classic definition of 'plant' was given by Lindley, L.J. in Yarmouth v. France, [1887] 19 Q.B.D. 647, a case in which it was decided that a cart-horse was plant within the meaning of section 1(1) of Employers' Liability Act, 1880. The relevant passage occurring at page 658 of the Report runs thus :-

> "There is no definition of plant in the Act: but, in Hits ordinary sense, it includes whatever apparatus is used by a business man for carrying on his business".

not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business .

In other words, plant would include any article or object fixed or movable, live or dead, used by businessman for carrying on his business and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. In order to qualify as plant the article must have some degree of durability, as for instance, in Hinton v. Maden & Ireland Ltd., 39 I.T.R. 357, knives and lasts having an average life of three years used in manufacturing shoes were held to be plant. In C.I.T. Andhra Pradesh v. Taj Mahal Hotel, 82 I.T.R. 44, the respondent, which ran a hotel installed sanitary and pipeline fittings in one of its branches in respect whereof it claimed development rebate and the question was whether the sanitary and pipe-line fittings installed fell within the definition of plant given in sec. 10(5) of the 1922 Act which was similar to the definition given in Sec. 43(3) of the 1961 Act and this Court after approving the definition of plant given by Lindley L.J. in Yarmouth v. France as expounded in Jarrold v. John Good and sons Limited, 1962, 40 T.C. 681 C.A. , held that sanitary and pipe-line fittings fell within the definition of plant.

In Inland Revenue Commissioner v. Barly Curle & Co. Ltd., 76 I.T.R. 62, the House of Lords held that a dry dock since it fulfilled the function of a plant must be held to be a plant. Lord Reid considered the part which a dry dock played in the assessee company's operations and observed :

> It seems to me that every part of this dry dock plays an essential part....The whole of the dock is I think, the means by which, or plant with which, the operation is performed.
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> Lord Guest indicated a functional test in these words:
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> In order to decide whether a particular subject is an 'apparatus' it seems obvious that an enquiry has to be made as to what operation it performs. The functional test is, therefore, essential at any rate as a preliminary -
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> In other words the test would be: Does the article fulfil the function of a plant in the assessee's trading activity Is it a tool of his trade with which he carries on his business? If the answer is in the affirmative it will be a plant.
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> If the aforesaid test is applied to the drawings, designs, charts, plans, processing data and other literature comprised in the 'documentation service' as specified in Clause 3 of the agreement it will be difficult to resist the conclusion that these documents as constituting a book would fall within the definition of 'plant'. It cannot be disputed that these documents regarded collectively will have to be treated as a 'book', for, the dictionary meaning of that word is nothing but a a number of sheets of paper, parchment, etc. with writing or printing on them, fastened together along one edge, usually between protective covers; literary or scientific work, anthology, etc., distinguished by length and form from a magazine, tract, etc. (vide Webster's New

World Dictionary). But apart from its physical form the question is whether these documents satisfy the functional test indicated above. Obviously the purpose of rendering such documentation service by supplying these documents to the assessee was to enable it to undertake its trading activity of manufacturing the theodolites and microscopes and there can be no doubt that these documents had a vital function to perform in the manufacture of these instruments; in fact it is with the aid of these complete and upto date sets of documents that the assessee was able to commence its manufacturing activity and these documents really formed the basis of the business of manufacturing the instruments in question. True, by themselves these documents did not perform any mechanical operations or processes but that cannot militate against their being a plant since they were in a sense the basic tools of the assessee's trade having a fairly enduring utility, though owing to technological advances they might or would in course of time become obsolete. We are, therefore, clearly of the view that the capital asset acquired by the assessee, namely, the technical know-how in the shape of drawings, designs charts, plans, processing data and other literature falls within the definition of 'plant' and therefore a depreciable asset.

Counsel invited our attention to the decision in Commissioner of Income Tax, Gujarat v. Elecon Engineering Co. Ltd., 96 I.T.R. 672, where the Gujarat High Court has, after exhaustively reviewing the case law on the topic, held that drawings and patterns which constitute know-how and are fundamental to the assessee's manufacturing business are 'plant'. We agree and approve the said view.

Having regard the aforesaid discussion the question framed A at the commencement of this judgment is answered in favour of the assessee to the effect that the payment of Rs. 1,60,000 made by the assessee to the foreign collaborator was attributable wholly towards the acquisition of a depreciable asset. We allow the appeals but in the circumstances direct the parties to bear and pay their respective costs.

S.R. Appeal allowed.