

Commissioner Of Income-Tax vs Dr. B. Venkata Rao on 24 February, 1999

Equivalent citations: [2000]243ITR81(SC), AIRONLINE 1999 SC 386, 2002 LAB IC 68, (2000) 111 TAXMAN 635, (2000) 156 TAXATION 663, (2000) 160 CURTAXREP 489, (2000) 243 ITR 81, (2000) 5 COM LJ 299, (2002) 3 LAB LJ 270, (2002) 4 ANDHLD 122, (2003) 1 SERV LR 257, (2006) 3 ANDH LT 76

Bench: S.P. Bharucha, N. Santosh Hegde

ORDER

1. The Revenue is in appeal by special leave against the judgment and order of a Division Bench of the High Court of Karnataka (see). The High Court answered in the affirmative and in favour of the assessee the following question (page 304) :

Whether, on the facts and in the circumstances of the case, the asses-see is entitled to depreciation at 10 per cent, on the nursing home building on the ground that it is a 'plant' ?

2. The assessee is a medical practitioner. He runs a nursing home. In respect of the building in which the nursing home is run, the assessee claimed, for the assessment year 1983-84, that it was a "plant". His contention was rejected by the Income-tax Officer and by the Commissioner (Appeals). The Income-tax Appellate Tribunal found to the contrary. Applying" the functional test, it held that the nursing home was a plant. The High Court affirmed that view. It said that a building used as a nursing home is not comparable with an ordinary building having regard to the number of persons using it, the manner of its use and the purpose for which it is used. The building was used not only to house patients and nurse them, but also to treat them, for which various kinds of equipment and instruments were installed.

3. The most apposite decision in this context is that delivered by the Allahabad High Court in S. K. Tulsi and Sons v. CIT . Reference was made to an earlier judgment, where also the functional test approved by this court in several decisions was applied. It was held that if it was found that the building or structure constituted an apparatus or a tool of the taxpayer by means of which business activities were carried on, it amounted to a "plant" ; but where the structure played no part in the carrying on of those activities but merely constituted a place wherein they were carried on, the building could not be regarded as a plant.

4. The Tribunal and the High Court in the instant case proceeded upon assumptions of what a nursing home should contain. This may not be altogether appropriate. What is to be determined is whether the particular nursing home building was equipped as to enable the assessee to carry on the business of a nursing home therein or whether it is just any premises utilised for that object.

5. We find from the order of the Tribunal as also the assessment order that the assessee's nursing home is equipped to enable the sterilisation of surgical instruments and bandages to be carried on. It is reasonable to assume in the circumstances, particularly having regard to the Tribunal's order which states that the sterilisation room covers about 250 sq. ft. that the nursing home is also equipped with an operation theatre. In the circumstance, we think that the finding of the High Court should be accepted.

6. We would, however, add that in a case such as this, the Tribunal should proceed upon material placed by the assessee which establishes that the building is specially equipped as a plant for the assessee's business.

7. The appeal is dismissed. No order as to costs.