Cochin Company vs Commissioner Of Income-Tax, Kerala on 14 March, 1967

Equivalent citations: [1968]67ITR199(SC), AIRONLINE 1967 SC 57

Bench: J.C. Shah, S.M. Sikri

JUDGMENT

Ramaswami, J.

1. This appeal is brought, by special leave, from the judgment of the High Court of Kerala dated March 26, 1962, in Income- tax Referred Case No. 16 of 1960.

2. For the assessment year 1955-56 the appellant, a firm carrying on the business of exporting frozen prawns, made a claim for initial and additional depreciation under sections 10(2)(vi) and 10(2)(via) of the Income-tax Act, 1922, in respect of a one-ton Flake Ice Machine and two reconditioned "Jackstone Junior Frosters Mark II", each of the latter purchased at Pounds 1,338-15-0 from Messrs. Jackstone Frosters Ltd., London, and imported into India and used for its business. In regard to the flake Ice Machine the Income-tax Officer allowed the depreciation. In regard to the reconditioned "Jackstone Junior Frosters Mark II", the suppliers, viz., Messrs. Jackstone Frosters Ltd. of England wrote to the appellant on March 20, 1958, as follows :

> "We confirm that the two Jackstone Junior Mark II Frosters which you purchased from us in June, 1954, were completely stripped and reassembled to incorporate the latest modifications and were covered by our twelve months guarantee as in the case of new Frosters."

3. In reply to a further letter from the Income-tax Officer the suppliers wrote on May 19, 1958, thus :

> "The two Jackstone Junior Frosters purchased by the above from us in June, 1954, were completely stripped, worn parts renewed and the latest modifications incorporated before being shipped to our customers.
>
> It is confirmed that from the time of reassembly to the date of their arrival in Cochin neither Frosters was in use.
>
> We would also add that both Frosters were issued with our twelve months' guarantee which normally applies only to new machines."

4. The Income-tax Officer thereupon enquired from the suppliers on June 3, 1958, to the following effect :

> "In paragraph 3 of your letter you have stated that from the time of reassembly to the date of arrival in Cochin neither Froster was in use. What I want to know exactly is whether before reassembly the said machinery had been put to use by anyone."

5. In reply the suppliers wrote on July 2, 1958, as below :

> "The machines to which you refer had been in use subsequent to first leaving our works, but you will appreciate that after they had been returned to our works, completely stripped and rebuilt, including the replacement of worn parts and the incorporation of the up-to-date modifications, they were virtually as new when supplied to the Cochin Company.
>
> It was only because in our opinion the machines were in new condition that they were sold by us with our 12 months' guarantee as in the case of new machines."

6. The income-tax Officer held, on the basis of these letters, that the two Frosters were not "new" and that initial and additional depreciation was not allowable under section 10(2)(vi) and 10 (2) (via) of the Income-tax Act. The appellant preferred an appeal to the Appellate Assistant Commissioner of Income-tax, who, by his order dated December 31, 1958, confirmed the decision of the Income-tax Officer. The appellant took the matter in second appeal to the Income- tax Appellate Tribunal, Madras "B" Bench. By its order dated July 1, 1959, the Appellate Tribunal held that the word "new" was used in sections 10 (2) (vi) and 10 (2) (via) in a sense which was opposed to "old" and that the appellant was entitled to the depreciation claimed under those sub-sections. The Appellate Tribunal therefore allowed the appeal. At the instance of the respondent the Appellate Tribunal stated a case to the Kerala High Court under section 66(1) of the Income-tax Act and referred the following question of law :

> "Whether the aforesaid machines are 'new' so as to entitle the assessees (the petitioners) to initial and extra depreciations under section 10 (2) (vi) and 10 (2) (via) of the Indian Income-tax Act ?"

7. By its judgment dated March 26, 1962, the Kerala High Court answered the question in the negative and against the appellant.

8. Section 10 (2) (vi) and 10 (2) (via) read as follows at the material time :

> "10. (2) Such profits or gains shall be computed after making the following allowances, namely :..
>
> (vi) in respect of depreciation of such buildings, machinery, plant or furniture being the property of the assessee, a sum equivalent, where the assets are ships other than

> ships ordinarily plying on inland waters, to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed and in any other case, to such percentage on the written down value thereof as may in any case or class of cases be prescribed; ...
>
> (via) in respect of depreciation of buildings newly erected, or of machinery or plant being new which has been installed, after the 31st day of March, 1948, a further sum (which shall be deductible in determining the written down value) equal to the amount admissible under clause (vi) (exclusive of the extra allowance for double or multiple shift working of the machinery or plant and the first year of erection of the building or the installation of that clause for the first year of erection of the building or the installation of the machinery or plant) in not more than five successive assessments for the financial years next following the previous year in which such buildings are erected and such machinery and plant installed and falling within the period commencing on the 1st day of April, 1949, and ending on the 31st day of March, 1959."

9. The question presented for determination in this appeal is whether the two reconditioned "Jackstone Junior Frosters Mark II" purchased by the appellant are new machines within the meaning of section 10 (2) (via) of the Income-tax Act and whether the appellant is entitled to depreciation under that sub-section. The word "new" is not defined in the Income-tax Act. According to the Shorter Oxford Dictionary the word "new" means "not existing before; now made, or brought into existence, for the first time". In this context of the language of the statute, particularly in its application to a machinery, we are of the opinion that the expression "new" must be construed in this sense and in contradistinction and antithesis to the word "used". According to the statement of the suppliers there is no room for doubt that the machines were used after they were first made. Subsequently, the machines were taken into parts and were reassembled after replacing worn out parts and after incorporating the latest modifications.

10. For these reasons we set aside the judgment of the Kerala High Court dated March 26, 1962, and direct the High Court to call for a supplementary statement of the case from the Appellate Tribunal under section 66 (4) of the Income-tax Act, and, after the receipt of such supplementary statement, determine the question of law referred to it. In calling for a supplementary statement of the case, the High Court should keep in view the principle laid down by this court in Keshav Mills Co. Ltd. v. Commissioner of Income-tax, in which it was pointed out that the High Court can require the Tribunal to include in such supplementary statement only such material and evidence as may already be on the record but which has not been included in the statement of the case made initially under section 66 (1) or section 66 (2) of the Income-tax Act.

11. We, accordingly, allow this appeal and remand the case to the High Court for dealing with the case in accordance with the directions given above. The costs of this appeal would be the costs in the reference.

12. Appeal allowed.

13. Case remanded.