Supreme Court of India
Commissioner Of Income-Tax, ... vs M/S. Alps Theatre, Patiala on 15 March, 1967
Equivalent citations: 1967 AIR 1437, 1967 SCR (3) 181
Author: S Sikri
Bench: Sikri, S.M.

PETITIONER:
COMMISSIONER OF INCOME-TAX, PUNJAB JAMMU & KASHMIR &

Vs.

RESPONDENT:
M/S. ALPS THEATRE, PATIALA

DATE OF JUDGMENT:
15/03/1967

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
SHAH, J.C.
RAMASWAMI, V.

CITATION:
1967 AIR 1437 1967 SCR (3) 181
CITATOR INFO :
D 1992 SC1782 (10)

ACT:
Indian Income-tax Act, 1922 (11 of 1922), s. 10(2)(4)-Depreciation--If land included.

HEADNOTE:
The Revenue authorities did not allow depreciation on the cost of land alongwith the cost of building standing thereon. The Appellate Tribunal accepted the assessee's appeal and the High Court answered the question in favour of the assessee. In appeal to this Court by the Revenue:
HELD: The appeal must be allowed.
Building under s. 10(2), does not include the site because there cannot be any question of destruction of the site. [183 E]
The word used in s. 10(2)(vi) is "depreciation" and "depreciation" means "a decrease in value of property through wear, deter oration, or obsolescence, and allowance made for this in book-keeping, accountings etc." In that sense land cannot depreciate. [183 H]
By r. 8 of the Indian Income-tax Rules the rate of depreciation is fixed on the nature of the structure. It

would be difficult to appreciate why the depreciation of land would be dependant on the class of structures. [184 D-E]
The whole object of s. 10 is to arrive at the assessable income of a building after allowing necessary expenditure and deductions. If depreciation on land was allowed it would give a wrong picture of the true income. [184 F-G]
Corporation of the City of Victoria and Bishop of Vancover [1921] 2 A.C 384, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 26 of 1966. Appeal from the judgment and order dated October 28, 1964 of the Punjab High Court in I. T. Reference No. 28 of 1962. S. K. Mitra, Gopal Singh, S. P. Nayyar and R. N. Sachthey,. for the appellant.

Veda Vyasa and B. N. Kirpal, for the respondent. The Judgment of the Court was delivered by Sikri, J. At the instance of the Commissioner of Income Tax,, the Appellate Tribunal, Delhi Bench "C", referred the following question "Whether the cost of land is entitled to depreciation under the schedule to the Income- tax Act alongwith the cost of the building standing thereon.?"

This question arose out of the following facts : The respon- dent, M/s Alps Theatre, hereinafter referred to as the assessee, carries on business as exhibitor of films. The Income Tax Officer initiated proceedings under s. 34(1)(b) of the Indian Income Tax Act, 1922, on the ground that in the original assessment depreciation was allowed on the entire cost of Rs. 85,091/-, shown as cost ,of the building which included Rs. 12,000/- as cost of land. The Income Tax Officer, by his order dated February 22, 1959, recomputed the depreciation, excluding cost of land. The assessee ap- pealed to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner upheld the order of the Income Tax Officer. The assessee then appealed to the Appellate Tribunal which accepted the appeal. In accepting the appeal it observed as follows :

> "You cannot conceive of a building without the land beneath it. It is not possible to conceive of a building without a bottom. What Section (10) (2) (vi) of the Act says is that depreciation will be allowed on the building. The word "building" itself connotes the land upon which something has been constructed. It was, therefore, wrong on the part of the authorities below to exclude the value of the land upon which some construction was made. The true meaning of the word 'building' means the land upon which some construction has been made. The two must necessarily go together."

The High Court answered the question referred to it against the Department. Mahajan, J., observed that in Section 10(2)(vi) of the Income Tax Act, a building is placed at par with machinery and furniture and is treated as a unit, and, therefore, for the purposes of depreciation a building cannot be split up into building material and land. He further observed that if the Legislature wanted to exclude land from the building for purposes of depreciation it could have said so. He then added :

> "Moreover, depreciation is allowed on the capital. The capital here is a unit building. If later on it is sold and it fetches more than its written down value the surplus is liable to tax [see in this connection Section 10(2) (vii) proviso.]"

He felt that "the crux of the matter is that the building is treated as a unit for purposes of depreciation or repair, and there is no warrant in the Act which would permit us to split the unit for the purposes of section IO." He further felt that at any rate two equally plausible interpretations are possible and the one in favour of the assessee should be adopted.

Dua, J., in a concurring judgment, felt that the question was not free from difficulty, but he answered the question in favour of the assessee on the ground that much could be said for both points of view and the view in support of the assessee's submission had found favour with the Tribunal which had not been shown to be clearly erroneous. The answer to the question depends upon the true interpreta- tion of S. 10(2)(vi), and in particular whether the word "building" occurring in it includes land. Section 10 deals with the profits and gains derived from any business, profession or vocation. Section 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. The first three allowances consist of allowance for rent paid for the business premises, allowance for capital repairs and allowance for interest in respect of capital borrowed. Sub-clauses (iv),

(v), (vi), (vi-a) and (vii) of S. 10(2) deal with allowances in respect of buildings, machinery, plant or furniture. The word "building" must have the same meaning in all these clauses. Sub-clause (iv) runs as under :

> "in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture,stocks or stores, used for the purpose of the business,profession or vocation, the amount of any premium paid."

"Building" here clearly, it seems to us, does not include the site because there cannot be any question of destruction of the site. Clause (v) reads :

> " in respect of current repairs to such buildings, machinery, plant or furniture, the amount paid on account thereof."

This again cannot include the site. Then we come to sub-cl.

(vi), the relevant portion of which reads as under :

> "in respect of depreciation of such buildings, machinery, plant or furniture being the property of the assessee, a sum equivalent .... as may in any case or class of cases be prescribed."

It would be noticed that the word used is "depreciation" and "depreciation" means :

> a decrease in value of property through wear, deterioration, or obsolescence the allowance made for this in book-keeping, accounting, etc." (Webster's New World Dictionary').

In that sense land cannot depreciate. The other words to notice are "such buildings". We have noticed that in sub- cls. (iv) and

(v), "building" clearly means structures and does not include site. That this is the proper meaning is also borne out by r. 8 of the Indian Income Tax Rules, 1922. Rule 8 has a schedule, and as far as buildings are concerned, it reads as under :

Class of asset Rate per- Remarks centage

1.Buildings -

(1) First class substantial buildings of materials.. 2.5 Double these numbers (2)Scond class building will be taken for factory of less substantial con- 5 buildings excluding struction.... offices,godowns,officer's (3)Third class building 7.5 and employees quarters. of construction infeior to that of second class building,but not inclu-

ding purely temporory erection.

(4) Purely temporary No rate is prescribed:

erection such as wooden structure.	renewals will be allowed as revenue expenditure.

The rate of depreciation is fixed on the nature of the structure. If it is a first class substantial building, the rate is less. In other words, first class building would depreciate at a much less rate than a second class building. It would be noticed that for purely temporary erections, such as wooden structures, no rate of depreciation is prescribed and instead renewals are allowed as revenue ex- penditure. But if the contention of the respondent is right, some rate for depreciation should have been prescribed for land under the temporary structures. Further it would be difficult to appreciate why the land under a third class building should depreciate three times quicker than land under a first class building. One other consideration is important. The whole object of s. 10 is lo arrive at the assessable income of a business after allowing necessary expenditure and deductions. Depreciation is allowable as a deduction both according to accountancy principles and according to the Indian Income Tax Act. Why'? Because otherwise one would not have a true picture of the real income of the business. But land does not depreciate, and if depreciation was allowed it would give a wrong picture of the true income. The High Court relied on Corporation of the City of Victoria and Bishop of Vancouver Island(), but in our view this case is distinguishable and gives no assistance in determining the meaning of the 'word 'buildings' in the context of S. 10(2)(vi). In this case the Privy Council had to construe S. 197(1) of the Municipal Act, British Columbia, which exempted from municipal rates and taxes (1) [1912] 1 2 A.C. 384.

"every building set apart and in use for the public worship of God." The Privy Council held that the above exemption applied to the land upon which a building of the description mentioned above was erected as well as to the fabric. The Privy Council was not concerned with the question of depreciation but with the question of exemption from Municipal rates.

In the result the appeal succeeds, the judgment of the High Court set aside and the question referred is answered in the negative and against the assessee. In the circumstances there will be Y.P Appeal allowed.

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