Supreme Court of India
M/S South India Viscose Ltd vs Commissioner Of Income Tax on 9 July, 1997
Bench: S.C. Agrawal, D.P. Wadhwa

PETITIONER:
M/S SOUTH INDIA VISCOSE LTD.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX

DATE OF JUDGMENT: 09/07/1997

BENCH:
S.C. AGRAWAL, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.C.AARWAL. O.

These appeals by the assessee are directed against the judgment of the Madras High Court dated September 23, 1981 in T.C. Nos. 437 to 439 of 1977 (reported in 135 ITR 206). They involve the question regarding computation of depreciation by way of Extra Shift Allowance under Rule 5 of the Income Tax Rules. 1962 (hereinafter referred to a 'the Rules') read with Appendix I to the Rules. The appeals relate to assessment year 1971-72. Four questins were referred by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') to the High Court for opinion. Questions Nos. 1, 2 and 3 were aswered in favour of the appellant-assessee but question No. 4 was answered against the assessee. The appeals are confined to question No. 4 which was as under :

> "Whether, on the facts and in the circumstances of the case, the assessee is entitled to extra shift allowance in respect of the machinery and spares which w e re added during the relevant previous year, on the basis of double and triple shifts worked by the entire concern?"

The assessee is a public limited company carrying on business in manufacture and sale of rayon yarn and wood pulp. The assessee claimed multiple shift allowance during the relevant asseessment year on the basis of the number ofdays on which the concern as a whole worked extra shift and not with

reference to the number of days on which each machine had worked. The Income Tax Officer retricted the allowance to the number of days on which each machinery had worked. On appeal, the Appeallate Assistant Commissioner accepted the claim of the assessee and allowed extra shift allowance on the basis of the number of days for which the concern as a whole worked double and triple shifts. The Tribunal agreed with the said view of the Appellate Assistant Commissioner. By the impugned judgment the High Court has, however, held that in view of the provisions contained in Rule 5 of the Rules read with Appendix I to the Rules the Income Tax Officer is required to apply his mind to examine which machinery owned by the assessee has been used by him in extra shift and that so long as the particular machinery has worked in extra shifts, in the relevant years, for the specified period, it would be eligible for te extra shift allowance on the basis of the number of days provided the letters N.E.S.A. (No Extra Shift Allowance) do not apply to it. In taking he said view the High Court has placed reliance on the decisions of the Calcutta High Court in Ganesh Sugar Mills Ltd. vs. Commissioner of Income Tax, [1969] 76 395 (Cal), and Anantpur Textiles Ltd. vs. Commissioner of Income Tax, [1979] 116 ITR 851 (Cal), as well as the decisions of the Allahabad High Court in Raza Sugar Co. vs. Commissioner of Income Tax, [1970] 76 ITR 541 (All) and Kundan Sugar Mills vs. Commissioner of Income Tax. [1977] 106 ITR 704 (All).

Shri Sunil Dogra, the learned counsel appearing for the assessee, has assailed the interpretation placed by the High Court on Rule 5 and the provisions contained in Appendix I to the Rules relating to the extra shift allowance and has urged that the Tribunal had rightly construed the said provisions to mean that the extra shift allowance has to be allowed in respect of the entire plant and machinery if the concern has worked double shift or triple shift. Shri Dogra hs also relied upon the circulars/instructions issued by the Central Board of Direct Taxes (hereinafter referred to as 'the Board') directing that when a concern has worked double shift or triple shift the extra shift allowance will be allowed in respect of the entire plant and machinery used by the concern without making any attempt to determine the number of days on which each machinery our plant actually worked double or triple shift during the relevant previous year. The submission is that the said circulars/instructions were binding and that the High Court was in error in not taking into consideration the same.

Dr. Gauri Shankar, the learned senior counsel appearing for the Revenue, has, on the other hand, submitted that extra shift allowance is in the nature of additional depreciation that is granted in view of the greater intensity of use of the plant and machinery and that the grant of the said allowance is governed by Section 32 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and Rule 5 of the Rules which lay down that the depreciation is permissible only in respect of the individual item of the machinery and not for the industrial concern as such. The learned counsel has also placed reliance on the decisions of the High Court referred to in the impugned judgment and has submitted that the circulars of the Board are only clarificatory in nature and are not binding on the High Court or on this Court and that the matter has to be examined on the basis of the relevant statutory provisions.

Section 32 of the Act makes provision for deductions that can be allowed in respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession. In clause

(ii) of sub-section (1) of Section 32, as it stood at the relevant time, it was provided that in the case of buildings, machinery, plant or furniture depreciation was allowable at such percentage on the written down value thereof as may in case of class of cases be prescribed. The mode of computation of the depreciation that is allowable is prescribed in the Rules. Rule 5(1) of the Rules, as it stood at the relevant time, provided as under :

> "Depreciation, - (1) Subject to the provisions of sub-rules (2) and (3), the allowance under clause (i) or clause (ii) of sub-section (1) of Section 32 in respect of depreciation of buildings, machinery, plant or furniture or the allowance under clause (i) of sub-section (1A) of Section 32 in respect of depreciation of structure or work referred to in that sub-section shall be calculated at the percentages specified in the second column of the Table in Part I of Appendix to these rules on the actual cost or, as the case may be the written down value of such of the assets aforesaid as are used for the purposes of the business of profession of the assessee at any time during the previous year : Provided that in a case where the assessee has been allowed to vary the meaning of the expression "previous year" in respect of any business or profession under sub- section (4) of section 3 and, thereby, his income from such the business or profession for a period of thirteen months or more is included in his total income of any previous year, the allowance referred to in this sub-rule, calculated in the manner stated hereinabove, shall be increased by multiplying it by a fraction ofwhich the numerator in the number of complete months in such previous year and the denominator is twelve."

Part I of Appendix I to the Rules contained the table of rates at which depreciation was admissible on various classes of assets including machinery and plant. Many items of machinery and plant had the abbreviation 'N.E.S.A.' inscribed against them. In respect of extra shift depreciation allowance the following provision was contained in Part I of Appendix I to the Rules :

"Extra shift depreciation allowance:

An extra allowance up to a maximum of an amount equal to one-half of the normal allowance shall be allowed where a concern claims such allowance on account of double shift working and establishes that it has worked double shift. An extra allowanc up to a maximum of an amount equal the normal allowance, instead of one-half of the normal allowance, shall be allowed where a concern claims such allowance on account of triple shift working and establishes that it has worked triple shift.

The calculations of the extra allowance for double shift working and for triple shift working shall be made separately in the proportion which the number of days for which the concern worked double shift or triple shift, as the case may be, bears to the normal number of working days during the previous year. For this purpose, the normal number of working days the previous year shall be deemed to be -

(a) in the case of a seasonal factory or concern the number of days on which the factory or concern actually worked during the previus year or 180 days, whichever is greater;

(b) in any other case, the number of days on which the factory or concern actually worked during the previous year or 240 days, whichever is greater.

Illustration For example, where a non-seasonal concern worked 270 days during the previous year out of which it worked triple shift on 135 days and double shift on another 90 days, the extra depreciation allowance for triple shift working will be 135/270, i.e., on-half, of the normal allowance, and that for double shift working 90/270, i.e., one-third, of one-half, of the normal allowance.

The extra shift allowance shall not be allowed in respect of any item of machinery of plant which has been specifically excepted by inscription of the letters "N.E.S.A." (meaning "No extra shift allowance") against it in sub-item

(ii) above and also in respect of the following items of machinery and plant to which the general rate of depreciation of 10 per cent applies -

(Omitted)"

The value of capital assets employed in production, namely, plant and machinery, office equipment and buildings gradually depreciate through wear and tear and obsolescence. The depreciation allowance allowable under Section 32(1) of the Act is intended to enable the assessee to recover the cost of a capital asset used in business over the period of its useful life under normal conditions. When a concern or factory works double shift or triple shift there is greater wear and tear of the machinery and plant. Additional depreciation allowance by way of extra shift depreciation allowance is intended to compensate for the extra wear and tear on account of the working of the concern or factor in double shift or triple shift. This extra shift depreciation allowance does not differ in nature from the normal depreciation allowance.

A persual of Rule 591) sows that normal depreciation allowance under sction 32 in respect of depreciation of buildings, machinery, plant or furniture has to be calculated at the percentages specified in the second column of Part I of Appendix I to the Rules on the actual cost or, as the case may be the written down value of such of the assets aforesaid as are used for the purposes of the business of profession of the assessee at any time during the previous year. Under Part I of Appendix I to the Rules extra shift depreciation allance, up to maximum of an amount equal to one-half of the normal allowance, was allowable where as concern claimed such allowance on account of double shift working and was able to establish that it as worked double shift. In cases where concern claimed such allowance on account of triple shift working and was able to establish that it had workd triple shift extra shift depreciation allowance up to a maximum of an amount equal to normal allowance was allowable. The extra allowance had to be calculated separetely in the proportion which the number of days for which the concern worked double shift of triple shift, as the case may be, was bearing to the normal number of working days during the previous year. The

normal number of working days during the previous year in the case of a seasonal factory or concern was deemed to be the number of days on which the factory or concern actually worked during the previous year or 180 days. whichever as greater and in any other case, the number of days on which the factory or concern actually worked during the previous year or 240 days, whichever was greater. The extra shift allowance was not allowable in respect of any item of machinery or plan which has been specifically excepted by inscription of the latters "N.E.S.A." against it in sub-item (ii) of the said Appendix. The said allowance was also not allowable on certain specified items of machinery and plant to which the general rate of depreciation of 10% was applicable. It would thus appear that for the purpose of calculating extra shift allowance allowable under Part I of Appendix I to the Rules what was required to be determined was the actual number of days on which the concern had worked double shift or triple shift, as the case may be. For the purpose of calculating the extra shift depreciation allowance under Part I of Appendix I to the Rules it was not necessary to determine the actual number of days on which the particular item of machinery or plant, on which such allowance was claimed, had been used in double shift or triple during the relevant previous year.

Tribunal has laid emphasis on the word "concern" in the aforementioned provisions in Part I of Appendix I to the Rules relating to extra shift depreciation allowance and has observed that "there is no warrant to interpret the expression 'the concern worked' to mean 'the machinery worked". While reversing the said view of the Tribunal, the High Court has observed that the word "concern" has been used in the said passage to show that the Income Tax Officer is obliged to allow extra shift depreciation allowance only if the assessee has made a claim therefor and that if the assessee dd not choose to make such a claim the Income Tax Officer is not obliged to give the allowance. In taking the said view the High Court has failed to take note of the words "the number of days for which the concern worked double shift or triple shift, as the case may be" in the following paragraph in Appendix I indicating the mode of calculation of the extra allowance for double shift working or triple shift working as well as the words "the number of days on which the factory or concern actually worked during the previous year" in clauses (a) and (b) in the said paragraph which clearly indicate that for the purpose of calculating the extra shift depreciation allowance allowable under Part I of Appendix I to the Rules the number of days on which the concern as a whole actually worked double shift and triple shift has to be determined and it is not necessary to see whether any particular item of machinery or plant had actually been used in double shift or triple shift on the days on which the concern had worked in double shift or triple shift. All that was excluded from extra shift It is no doubt true that under Section 32(1) of the Act depreciation is allowable on buildings, machinery, plant or furniture owned by the assessee and used for the purpose of the business or profession and in Rule 5 it was laid down that the depreciation shall becalculated on the written down value of the assets as are used for the purposes of business or profession of the assessee at any time during the previous year. That only means that depreciation allowance shall be allowable on the machinery or plant that is used for the purposes of business or profession of the assessee at any time during the relevant previous year. The said provisions in Section 31(1) and Rule 5 do not require that for the purpose of calculating the normal depreciation allowance it is necessary to determine the exact period during which a particular item of machinery or plant had been actually used during the previous year. So also for the purpose of calculating the extra shift depreciation allowance, which does not differ in nature from the normal depreciation allowance, it cannot be said that it is necessary to determine the exact period during which a particular item of

machinery of plant had been actually used in the double/triple shift during the relevant previous year. The High Court, in our opinion, was in error in construing Rule 5 and Part I of Appendix I to the Rules to hold that the Income Tax Officer is required to apply his mind to examine which machinery, owned by the assessee, had been used in the extra shift.

For accepting the claim of the assessee the depreciation allowance were the items of machinery of plant against which the letters N.E.S.A. were inscribed in sub- item (ii) of the Table in Part I of Appendix to the Rules and certain specified items of machinery or plant to which general rate of depreciation of 10% was applicable.

The High Court has observed that if the assessee's contention was accepted, then even if a small item of machinery in a corner of a huge factory has worked extra shift, the entire factory would be eligible for the extra shift allowance in respect of all items of machinery, whether they actually worked or not. These observations fail to give effect to the provisions governing extra shift depreciation allowance. The said provisions postulate that such allowance would be allowable when the concern works double shift or triple shift. It means that the concern as a whole should have worked extra shift. It cannot be said that when a small item of machinery in a corner of a huge factory has worked extra shift, the concern as such has worked extra shift.

On a proper construction of the provisions cntained in Part I to Appendix I to the Rules relating to extra shift depreciation allowance it must be held that for the purpose of claiming the said allowance the assessee must establish that the concern had worked double shift or triple shift and, if he succeeds in establishing that the concern had actually worked double shift or triple shift on particular days in the previous year. extra shift depreciation allowance would be allowable in accordance with formula laid down in the said provision on the various items of machinery of plant except the items against which the letters N.E.S.A. are inscribed in sub-item (ii) of Table in Part I of Appendix I as well as the items of machinery and plant expressly specified to which the general rate of depreciation of 10% was applicable. Except these excluded items the extra shift depreciation allowance would be allowable on all items of machinery and plant on which normal depreciation in allowable and has been allowed.

We may now briefly refer to the decisions of the High Courts of Allahabad and Calcutta on which reliance has been placed in the impugned judgment of the High Court.

Ganesh Sugar Mills Ltd. vs Commissioner of Income Tax, [supra] was a case of a seasonal sugar factory which hadworked only during that period of the year when sugarcane was available. A claim for maximum of 50% of the normal depreciation by way of extra shift depreciation allowance was made under Rule 8 of the Income Tax Rules, 1922 irrespective of the number of days on which the plant and machinery had been worked extra shift. The said claim of the assessee was rejected by the Calcutta High Court and it was held that in respect of seasonal factories special provisions had been made in clause II of Rule 8 and extra shift allowance could only be granted in accordance with the said provision. Similarly in Raza Sugar Co, vs. Commissioner of Income Tax [supra] the Allahabad High Court was dealing with the claim for 50% over the normal depreciation as extra shift allowance in respect of a seasonal sugar factory under Rule 8 of the 1922 Rules. Rejecting the said claim it was

held that such allowance was to be restricted to the extent laid down in the said rule as regards seasonal factories. In Kundan Sugar Mills vs. Commissioner of Income Tax [supra] also the Allahabad High Court was dealing with a seasonal sugar factory and the High Court has followed its earlier decision in Raza Sugar Co. vs. Commissioner of Income Tax [supra]. These decisions relating to seasonal factories have, in our opinion, no bearing on the question falling for consideration in the present case.

Anantpur Textiles Ltd. vs. Commissioner of Income Tax [supra] was a case governed by Rule 5 of the Rules read with Appendix I to Rules as they stood prior to amendment extra shift allowance on the ground that the factory had worked triple shift for 330 days during the previous year. The Income Tax Officer found that some of the items of the machinery had not been used for the entire period of the triple shift as those items of machinery wer installed on different dates in the year. Calculating from the dates of installaton, the Income Tax Officer arrived at the number of days each item of machinery was put to use during the year of account and allowed proportionate extra shift allowance. The said order of the Income Tacx Officer was upheld by the Income Tax appellate Tribunal which held that when normal depreciation allowance is to be granted on each item of machinery as per the number of days it had worked, the extra shift allowance should also follow the same principle. The correctness of this view was assailed by the assessee before the Calcutta High Court. It was urged that normal depreciation was governed by Rule 5 and it was allowable on the basis of the number of days the particular plant and had been used by the assessee in its business during the previous year but the said provision had no application to the case of extra shift allowance for which necessary provision was made in Appendix I in Part I and that for qualifying for extra shift allowance the assessee was only required to prove that the concern of the assessee had worked double shift or triple shift and it was not the requirement of the relevant provision that each item of machinery must have worked double shift or triple shift. The said contention of the assessee was negatived by the Calcutta High Court and in that context it was said that the extra shift depreciation allowance is allowed on each item of plant and machinery on the basis of days or working and that depreciation allowance is not allowed to any concern irrespective of and independent of the question of plant and machinery of the concern and their working. In taking the said view the High Court laid emphasis on Explanation 2 in the provision governing extra shift allowance contained in Appendix I, as it stood at that time, whereby it was declared that no extra allowance for double or triple shift working shall be allowed in a case where the machinery or plant has been used for a period of 30 days or less than 30 days during the previous year. The High Court has said:

> "Explanation 2 which provides that no extra allowance for triple shift working should be allowed in a case where the machinery or plant has been used for a period of 30 days of less during the previous year also indicates that in computing the extra allowance for triple shift working of the concern the item of machinery and the number of days which the same had worked are to be taken into consideration."

[p.860] The High Court has also emphasised that under Rule 5 in the case of computation of normal depreciation allowance the actual working of each plant and machinery was material and depreciation allowance was to be computed on the basis of the number of days each plant and

machinery worked during the previous year provided the plant or machinery was otherwise qualified to claim the depreciation allowance.

The provisions of Rule 5 relating to depreciation as well as the provisions relating to extra shift depreciation allowance contained in Appendix I of the Rules on which the said decision is based were amended and the present cae is governed by the amended provisions. Under Rule 5, as amended, normal depreciation allowance was allowable "on the actual cost or, as the case may be, the written down value of such of the assets aforesaid as are used for the purpose of business or profession of the assessee at any time during the previous year" and it was not dependent on the number of days a particular item of machinery or plant was used in the previous year. In the amended provisions governing extra shift depreciation allowance in Appendix 1 tothe Rules there was no provision similar to Explanation 2 that was contained earlier. On the other hand, in the amended provision it was prescribed that for the purpose of claculating extra shift allowance what has to be seen is the number of days on which the concern had actually worked duble shift or triple shift. In these circumstances, the decision in Anantpur Textiles Ltd. vs. Commissioner of Income Tax [supra] cannot have application to the present case.

The decisions of theHigh Courts of Calcutta and Allahabad, on which the reliance was placed in the impugned judgment of the High Cour, thus, do not lend any assistance to the interpretation placed by the High Court in the impugned judgment on the provisions governing extra shift allowance contained in Part I of Appendix I to the Rules.

We may at this stage refer to the circulars/instructions issued by the Board. By their letter dated September 28, 1970 the Board had laid down that the extra shift allownce will be allowed in respect of the entire plant machinery used by a concern which has worked extra shift without making any attempt to determine the number of days on which each machinery or plant actually worked extra shift during the relevant previous year. By Circular No. 109 dated March 20, 1973 the Board clarified the legal position regarding depreciation allowance in respect of normal, double/triple shift working in seasonal factories and other concerns. The said Circular contained separate directions regarding calculating normal depreciation and extra shift allowance upto assessment year 1969-70 and from assessment year 1970-71 onwards. As regards extra shift allowance from assessment year 1970-71 onwards it was indicated that the said allowance should be calculated separately for the period for whcih the concern has actually worked double shift only and the period for which it has worked triple shift, expressed in terms of the proportion which such period bears to the normal number of working days during the previous year. In the latter dated September 29, 1979 from the Under Secretary to the Board to the Commissioner of Income Tax, Calcutta (Central) on the subject of calculation of depreciation, extra shift allowance in respect of plant and machinery, it was stated :

> "I am directed to refer to your letter No. A/21233/CT/6A/102/69-70 dated 1.11.1969 on the above subject and to say that the Board have decided, that where a concern has worked double shift or triple shift, extra shift allowance will be allowed in respect of th entire plant and machinery used by a concern which has worked extra shift without making any attempt to determine the number of days on which each machinery of plant actually worked extra shift during the relevant previous year."

Subsequently the Board issued Instruction No. 1605 dated February 26, 1985 wherein, after referring to the decisions of the Allahabad High Court in Kundan Sugar Mills vs. Commissioner of Income Tax [supra] and the Calcutta High Court in Anantpur Textiles Ltd. vs. Commissioner of Income Tax [supra] as well as the impugned judgment it has been stated :

> "The instructions issued earlier has been considered again by the Board. In exercise of the powers conferred by Sec. 119(1) of the Income Tax Act, 1961, the Central Board of Direct Taxes, being of the opinion, that it is expedient for the proper administration of these provisions directs that the grant of extra shift allowance for plant and machinery be calculated with reference to the working of a factory situated at a place and not with reference to the number of days each machinery or plant has worked. Where a concern has more than one factory, the extra shift allowance will be regulated for each factory in the above manner.
>
> As the determination of the number of days for each machinery of plant has worked in a factory is cumbersome, the existing instructions and the present clarification are aimed at simplifying the calculation of extra shift allowance."

Shri Dogra has submitted that the circulars of the Board are binding on the authorities and has placed reliance on the decision of this Court in K.P.Varghese vs. Income Tax Officer, Ernakulam & Anr. [1981] 131 ITR 597, wherein it has been laid down that apart from the fact that circulars of the Board are binding on the tax department they are in the nature of contemporanea expositio furnishing legitimate aid in the construction to the relevant provisions. Shri Dogra has also placed reliance on the decision of this Court in Keshavji Ravi & Co. vs. Commissioner of Income Tax, [1990] 183 ITR 1 [SC], wherein it has been laid down that the circulars of the Board are statutory in character though the Court did not consider it necessary to go into the question whether such circulars are recognised legitimate aid to statutory construction. The learned counsel has alsorelied on the decision of this Court in Commissioner of Income Tax v. Vasudeo V. Dempo, 1993 Supp. (1) SCC 612, wherein it was held that circulars issued by the Department are clearly meant to be accepted by the authorities, Dr. Gauri Shankar has, on the other hand, submitted that the circulars of the Board are not binding on the High Court or on this Court and has placed reliance on the decision of this Court in Kerala Financial Corporation vs. Commissioner of Income Tax. [1994] 210 ITR 129, wherein it has been laid down that circulars or instructions on directions of the Board cannot override the provisions of the question whether the circulars/instructions issued by the Board referred to above can be taken into consideration for the purpose of construing the provisions of Rule 5 and Appendix 1 to the Rules because the circulars/instructions referred-to-above are in consonance with the construction placed by us on the said provisions.

For the reasons aforementioned it must be held that extra shift allowance had to be calculated on the basis of number of days during which the concern had actually worked double shift or triple shift and the said allowance was not required to be calculated on the basis of number of days a particular item of machinery or plant had worked double shift or triple shift, we are, therefore, unable to uphold the impugned judgment of the High Court in this regard. In our opinion, the Tribunal had rightly held that the extra shift allowance had to be calculated on the basis of the number of days on

which the concern worked as a whole double shift or triple shift and not on the basis of each item of machinery being used in double shift or triple shift. Question No.4 must, therefore, be answered in the affirmative i.e., in favour of the assessee and against the Revenue.

In the result, the appeals are allowed, the impugned judgment of the High Court insofar as it relates to question No. 4 is set aside and the said question is answered in the affirmative, i.e, in favour of the assessee and against the Revenue. No order as to costs.