IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE UMAR ATA BANDIAL

CIVIL PETITION NO.2640 OF 2016
(Against the judgment dated 31.5.2016 of the Islamabad High Court, Islamabad passed in ITR No.24/2008)

M/s Shifa International Hospital, Islamabad
...Petitioner(s)

VERSUS

Commissioner of Income Tax/Wealth Tax, Islamabad
...Respondent(s)

For the petitioner(s): Hafiz Muhammad Idrees, ASC

For the respondent(s): Mr. Babar Bilal, ASC
Ms. Shazia Bilal, ASC

Date of hearing: 02.02.2017

...

ORDER

MIAN SAQIB NISAR, CJ.- The facts of the case are that the petitioner assessee is a public limited company and derives income from operating a hospital called *"Shifa International Hospital"*. It filed its return for the assessment year 2000-2001 declaring a net income of Rs.5,054,009/- and claimed 10% depreciation allowance qua the hospital building upon the income earned from the hospital, however, the Deputy Commissioner of Income Tax *(Assessing Officer)* allowed depreciation allowance only to the extent of 5%. Aggrieved, the petitioner filed a departmental appeal which was accepted by the Commissioner of Income Tax (Appeals) *[CIT (Appeals)] vide* order dated 9.8.2004 and 10% depreciation allowance was allowed. The respondent-department challenged this order before the Income Tax Appellate Tribunal which affirmed the order of the CIT (Appeals).

However, the reference filed by the respondent before the learned High Court was allowed and it was held *vide* impugned judgment that the petitioner's hospital though a building, did not fall within the definition of a "factory" or a "workshop" thus depreciation allowance of 5% as opposed to 10% as earlier held by the Assessing Officer was allowed.

2. Learned counsel for the petitioner, while referring to judgments from the Indian jurisdiction reported as **Commissioner of Income Tax Vs. Dr. B. Venkahta Rao (2001 PTD 1124)** and **Commissioner of Income-tax Vs. Dr. B. Venkata Rao [(1993) 202 ITR 303]** argued that a nursing home had been declared a "plant", thus on the same footing the petitioner's hospital should be considered a "factory" or "workshop", entitling the petitioner to 10% depreciation allowance.

3. Heard. In the instant case, we find that as per the provisions of Section 23 read with the Third Schedule of the Income Tax Ordinance, 1979 *(the Ordinance)* the petitioner is entitled to depreciation allowance upon the income derived from the hospital, however the extent thereof is the moot point and the relevant law in this context reads as under:-

> *"23. **Deductions.**- (1) In computing the income under the head "Income from business or profession", the following allowances and deductions shall be made, namely:-*
> *⋮*
>
> *(v) in respect of depreciation including First Year Allowance or Reinvestment Allowance or Industrial Building Allowance of any such building, machinery, plant, furniture or fittings, being the property of the assessee, the allowance admissible under the Third*

Schedule, except depreciation or First Year Allowance on assets given on lease shall be allowed against income from lease rentals only;

⋮

(xxii) ……

THE THIRD SCHEDULE

(See Section 23)

RULES FOR THE COMPUTATION OF DEPRECIATION ALLOWANCE

1. Allowances for depreciation.- (1) Where, in any income year, any building, machinery, plant or furniture owned by an assessee is used for purposes of any business or profession carried on by him, or in any income year commencing on or after the first day of July, 1982, any machinery or plant is given on lease by the assessee, being a scheduled bank, a financial institution or such modaraba or leasing company as is approved by the Central Board of Revenue for purposes of this Schedule, on such conditions as may be specified, an allowance for depreciation shall be made in computing the profits and gains of the business or profession of the assessee in the manner hereinafter provided.

⋮

(4) ……

2. Rates of depreciation allowance.- (1) The allowance under rule 1 shall be computed at the rates specified in the Table annexed hereto:-

TABLE

Class of asset	***Description***	***Rate per cent of the written down value***
1	*2*	*3*
BUILDING		
I	*Building (not otherwise specified)*	*5 (general rate)*

II	*Factory or workshop (excluding godowns and Offices)*	*10*
IIA	*Residential quarters for labour*	*10*

Section 23 of the Ordinance read with Rule 1 of the Third Schedule to the Ordinance *(the Schedule)* allows for depreciation allowance with respect to any building, machinery, plant, furniture or fittings, being the property of the assessee, while computing income under the head "income from business or profession", as provided in the Schedule under which three categories of buildings and their respective percentage rates have been specified, i.e. (i) 5% for a building *(not otherwise specified)*; (ii) 10% for a factory or workshop *(excluding godown and offices)*; and (iii) 10% for residential quarters for labour. A bare reading of the aforesaid provisions makes it clear that the type of building specified in Entry I of the Schedule is of a generic nature, i.e. a building which is not otherwise specified with particularity. However Entries II and IIA of the Schedule are exceptions to Entry I, as they have been otherwise specified with particularity. The effect of this is that from the generic category "buildings" in Entry I for which the general rate of depreciation allowance is 5%, other types of buildings are set apart with particularity, i.e. factory or workshop *(excluding godown and offices)* and residential quarters for labour, for which a rate of 10% depreciation allowance is provided. Since it is the petitioner's case that its hospital is not a "building", but a "factory" or "workshop" under Entry II of the Schedule and thus liable to 10% depreciation allowance, therefore we are restricting ourselves to a discussion of Entries I and II, and not IIA of the Schedule. Here we find it relevant to discuss the ordinary meanings of the terms "building", "factory"

and "workshop", as they have not been defined anywhere in the Ordinance, to determine which category a hospital might fall in. The Concise Oxford Dictionary (New Ed. 1982) defines the aforesaid three terms as follows:-

> *"Building:- permanent fixed thing built for occupation (house, school factory, stable, etc.).*
> *Factory:- building(s) and equipment for manufacturing, workshop.*
> *Workshop:- room or building in which manufacture is carried on."*

Whereas Chambers 21st Century Dictionary (1997 Ed.) defines them as under:-

> *"Building:- a structure with walls and a roof, such as a house.*
> *Factory:- a building or buildings with equipment for the large-scale manufacture of goods.*
> *Workshop:- a room or building where construction and repairs are carried out."*

4. From the ordinary dictionary meanings, it is clear that a "factory" and "workshop" fall within the definition of a "building", thus if Entry II did not exist, all buildings, including factories and workshops would fall under Entry I entitling assessees to the general rate of 5% depreciation allowance. However, as mentioned above, Entry II creates an exception to Entry I by providing otherwise for two specific types of buildings, i.e. a factory or workshop *(excluding godown and offices)* for which the rate of 10% depreciation allowance is to apply. It is settled law that the provisions of a fiscal statute are to be strictly construed and applied, hence a hospital whilst being an enclosed

structure is undoubtedly a building, however, by no stretch of imagination can it be considered to fall within the definition of a factory or workshop, as it is not a building where goods are manufactured, repaired or assembled. Therefore, the petitioner is only entitled to depreciation allowance at the general rate of 5% instead of 10% as claimed by it.

5. As regards the Indian judgments relied upon by the learned counsel for the petitioner, these judgments are from a foreign jurisdiction and may be relevant in understanding and resolving the issues before us but they have no binding effect upon the Courts in Pakistan. We are of the opinion that they are also distinguishable from the instant case as the provisions of law analysed therein are not *pari materia* to the law of our country being examined in this case, besides the facts of those cases are entirely different as they pertain to the question of whether a nursing home fell within the purview of “plant” and not a “factory” or “workshop”.

6. In the light of the above, we opine that the view set out by the learned High Court is correct being based upon proper appreciation of the law. No case for interference has been made out. Dismissed accordingly.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
2nd February, 2017
Approved For Reporting
Waqas Naseer/*