

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 1147 of 2005

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI

Sd/-

and

HONOURABLE MR.JUSTICE G.R.UDHWANI

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

COMMISSIONER OF INCOME TAX-I, BARODA....Appellant(s)

Versus

ALEMBIC CHEMICAL WORKS CO. LTD....Opponent(s)

Appearance:

MR KM PARIKH, ADVOCATE for the Appellant(s) No. 1

MR SOPARKAR, ADVOCATE for MRS SWATI SOPARKAR, ADVOCATE for the Opponent(s) No. 1

CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**

and

HONOURABLE MR.JUSTICE G.R.UDHWANI

Date : 07/06/2016

ORAL JUDGMENT**(PER : HONOURABLE MR.JUSTICE KS JHAVERI)**

1. By way of this appeal, the department has challenged the judgment and order dated 23.3.2005 passed by the Income Tax Appellate Tribunal, Ahmedabad in ITA No.722/Ahd/1999, whereby the Tribunal has allowed the appeal preferred by the assessee reversing the view taken by the Assessing Officer and the CIT (Appeals). At the time of admitting this appeal, this Court framed the following substantial question of law.

“Whether, on facts and in the circumstances of the case and in law, the Appellate Tribunal was right in allowing the depreciation disallowed on Pollution Control Equipments interpreting the word “being” used in Appendix-I of the I.T.Rules as illustrative in nature, ignoring the fact that the assets eligible for depreciation @ 100% are specifically included under the head “Water Pollution Control Equipments” and that except the assets mentioned in (IA), (2) and (3) of Item No.III of Appendix-A, the remaining Plants & Machineries are eligible for depreciation @ 25% ?”

2. Counsel for the appellant, Mr.Parikh has taken us through the order of the Assessing Officer wherein with regard to depreciation it is observed as under:-

“(26) Depreciation:-

In this year, under consideration, assessee has claimed depreciation as per IT rules to the tune of

Rs.11,72,38,528/-. Perusal of depreciation chart revealed that depreciation on following assets is either claimed excess or is not allowable.

(i) Pollution Control Equipments: Addition to the pollution control equipments is shown to the tune of Rs.4,73,69,089/-. All the additions is shown in the second half of the year where the assets are used for less than 180 days. Depreciation on these assets is claimed 100%. Perusal of the details revealed that the items which are treated by the assessee as pollution control equipment, do not fit in the block of 100% depreciation as per IT rules. In the light of depreciation chart given in the IT rules. It was specifically asked to submit report of technical person as to out of Rs.4,73,69,089/-, how much cost of the assets are covered on which depreciation is allowable @ 100%. In compliance to the above, report of Shri J.J.Chaudhari, General Manager (Technical) is filed. In his report, he has given details of each assets and also the report as to how the particular assets added by the assessee in this year is covered under particular clause of Point No.III (2) (v) & (vi) Appendix-I of Rule-5 of I.T.Rules, 1962. According to the report of General Manager (Technical) assets worth Rs.3,62,16,971/- are covered in the block of 100% depreciation out of total addition of Rs.4,73,69,089/- shown by the assessee as pollution control equipment. It is also mention in the report that other equipment and machineries etc. which are thought not strictly covered in 100% block of IT rules but they function with main plant.

I have gone through the report of General Manager (Technical) as well as names of the items shown by the assessee as pollution control equipment and find that only plant & machineries worth Rs.3,62,16,971/- are allowable depreciation @ 100% (50% is allowed as the assets worked for less than 180 days) and on rest of the assets, depreciation is allowed at the normal rate applicable to plant and machineries. Though other assets worth Rs.1,11,52,118/- (Rs.4,73,69,089/- (-) Rs.3,62,16,971) may be working as pollution control equipment but they are not called pollution control equipment as per IT rules on which 100% depreciation is allowable. In view of above, depreciation on rest of the plant and machineries is allowed @ 25% and excess depreciation is calculated as under:-

Depreciation claimed @ 50% on	
Rs.1,11,52,118/-	= Rs.55,76,059/-
Less:	
Depreciation allowable 12.5% of above=	Rs.13,94,014/-

Excess Depreciation	= Rs.41,82,045/-
	=====

Thus, excess depreciation claimed on pollution control equipment of Rs.41,82,045/- is disallowable and added to the income."

2.1 He has also taken us through the order of CIT, (Appeals), whereby CIT (Appeals) has confirmed the view taken by the

Assessing Officer and observed as under:-

“13. The next dispute pertains to the disallowance of depreciation in respect of Pollution Control Equipment. The appellant has claimed depreciation on the plant and machinery worth Rs.4,73,69,089/-. The assessing officer required the appellant to submit the report of technical expert to determine the extent of machineries out of the above eligible for 100% depreciation. The appellant produced the report of Shri J.J.Chaudhary, General Manager (Technical). As per the above report, machinery, assets worth Rs.3,62,16,971/- are covered in the block of 100% depreciation out of the total machinery above. The assessing officer has allowed the depreciation as per the above report.

13.1 The authorised representative of the appellant has submitted that though the balance machineries are not strictly covered in the 100% block of I.T. Rules, but they function with the main plant and therefore, depreciation at the rate of 100% should be allowed on the entire assets.

13.2 I have considered the submissions made in this regard. The assessing officer has discussed the matter in detail. It is observed that the report of the technical expert was filed by the appellant itself and the assessing officer has allowed 100% depreciation on the equipments and machineries as mentioned in the above report. Now the appellant comes with the plea that the balance machinery, though not covered under the block of 100% depreciation but the same should be allowed because this machinery is also functions with the equipments where 100% depreciation is allowable. I do not agree with the appellant. Disallowance is upheld.”

2.2 Thereafter, he took us through the reasoning adopted and the judgment sought to be relied upon by the Tribunal rendered by Madhya Pradesh High Court in the case of **CIT v. Shree Synthetic Limited, 162 ITR 819**. He contended that this judgment is pertaining to altogether a different issue and it is not applicable in the present case. He submitted that the Tribunal has travelled beyond the items which are referred in the Appendix-A and, therefore, this appeal is required to be allowed by setting aside the impugned judgment.

3. Counsel for the respondent submitted that while accepting the opinion of an expert, the General Manager (Technical), the Tribunal cannot accept the opinion in part and it should be accepted as a whole. He further submitted that the argument that since some of the equipments are not mentioned under the head, "Water Pollution Control Equipments", the Tribunal could not have allowed depreciation on such Pollution Control Equipments. In support of his submission, he has relied upon the decision of this Court in **Gujco Carriers v. Commissioner of Income Tax** reported in **256 ITR 50**, wherein it is observed as under:-

"Held accordingly, that the mobile crane of the assessee which admittedly was registered as a heavy motor vehicle, would clearly fall within the expression "motor lorries" (which means motor trucks) in entry III E (1A) of the Table in Appendix I under rule 5 of the Income-tax Rules, 1962, since it was used by the assessee in its business of running the crane on hire. The assessee was entitled to depreciation at the rate of 40 per cent on the mobile crane."

4. We have heard Mr.Parikh, learned advocate for the

appellant and Mr.Soparkar, learned advocate for the respondent. We have also gone through the documents produced on record. It is true that there are certain items referred in Rule 2, (v) of Appendix-A, which are eligible for 100% depreciation. Rule 2 (v) provides as under:-

“(2) (i)

(v) *Water pollution control equipments, being*

(a) *mechanical screen systems*

(b) *Aerated detritus chambers (including air compressor)*

(c) *Mechanically skimmed oil and grease removal systems*

(d) *Chemical feed systems and flash mixing equipment*

(e) *Mechanical flocculators and mechanical reactors*

(f) *Diffused air/mechanically aerated activated sludge systems*

(g) *Aerated lagoon systems*

(h) *Biofilters*

(i) *Methane-recovery anaerobic digester systems*

(j) *Air flotation systems*

(k) *Air/steam stripping systems*

(l) *Urea hydrolysis systems*

(m) *Marine outfall systems*

(n) *Centrifuge for dewatering sludge*

(o) *Rotating biological contractor or bio-disc*

(p) *Ion exchange resin column*

(q) *Activated carbon column”*

5. However, the Tribunal has rightly considered the opinion of the expert, which was placed on record and held that the equipments which are used are integral part of the plant. Therefore, the Tribunal has rightly allowed the appeal by reversing the view of both the lower authorities. If the authorities were not agreeable with the opinion of the expert, then appropriate procedure should have been followed, which is not followed in the present case. In view of this, the view taken by the Tribunal is correct and the question posed for our consideration is answered against the department and in favour of the assessee and it is held that the depreciation allowed by the Tribunal is just and proper and no interference is called for in the present appeal. Accordingly, present appeal is dismissed.

(K.S.JHAVERI, J.)

(G.R.UDHWANI, J.)

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