

* **HIGH COURT OF DELHI : NEW DELHI**

+ **ITA No. 571 of 2007**

Judgment reserved on: January 4, 2008

% Judgment delivered on: January 11, 2008

The Commissioner of Income Tax (Central)
New Delhi ...Appellant

Through Mr. R.D. Jolly, Advocate

Versus

Saraya Industries Ltd.
11, Panchsheel Park Shopping Centre
New Delhi ...Respondent

Through Mr. Krishan Mahajan with
Mr. K. Sampath, Advocates

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J.

The Revenue is aggrieved by an order dated 8th June, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench

'B', New Delhi in ITA No.1886/Del/2003 relevant for the assessment year 1990-91.

2. The grievance of the Revenue relates to the deletion of penalty by the Commissioner of Income Tax (Appeals) as well as by the Income Tax Appellate Tribunal. The penalty was imposed by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 (for short the Act).

3. The Assessee claimed depreciation on a biogas plant and that was disallowed by the Assessing Officer on the ground that the plant had not started giving the end product, that is, biogas during the relevant previous year but only from the subsequent accounting year. According to the Assessing Officer, by claiming depreciation in the assessment year 1990-91, the Assessee had furnished inaccurate particulars for reducing its tax liability and was, therefore, liable to be penalized.

4. The Commissioner reversed the Assessing Officer by holding that the Assessee had not furnished inaccurate particulars. At best, it was a case of rejection of the Assessee's explanation for a claim of depreciation and, therefore, the case

would not be covered by Section 271(1)(c) of the Act.

5. The Tribunal held that the Assessee is really a distillery unit and in terms of the provisions of the Water (Prevention and Control of Pollution) Act, 1974, it was mandatory for the Assessee to treat its effluent before discharging the same either on the ground or in a drain or a water body. The Assessee had employed Swiss technology for treatment of the distillery effluent and it so transpires that the technology is such that it also helps in producing biogas which could be utilized by the Assessee for its business of running a distillery.

6. Possession of the effluent treatment plant was handed over to the Assessee on 20th March, 1990 and the Assessee immediately put it to use on 21st March, 1990 by filling the main reactor with water and providing media for injecting seed material and development of bio-cell for methane gas generation. The required quantity of sludge, that is, industrial waste was also added to the plant.

7. According to the Assessee, since the process was technical and biological, it took some time for the biological

reaction to stabilize and the actual manufacture of biogas started in the subsequent year, that is, 1991-92.

8. The Assessee claimed depreciation on the ground that since the effluent treatment plant had been put to use for its business purposes, and even though the gestation period resulted in production of biogas only in the subsequent assessment year, that would not deprive the Assessee from claiming depreciation.

9. On the above reasoning, the Tribunal accepted the view of the Commissioner and set aside the levy of penalty by the Assessing Officer. According to learned counsel for the Revenue before us, the imposition of penalty was fully justified since the Assessee had furnished inaccurate particulars and was liable under Section 271(1)(c) of the Act.

10. We are not in a position to agree with learned counsel for the Revenue. In the first instance, it must be noted that the business of the Assessee was not that of manufacture of biogas. It was a distillery and the Assessee was required by law to treat the effluent before discharging it. It just so transpires that the technology used by the Assessee for treatment of effluent was

capable of enabling the Assessee to produce biogas. Manufacture of biogas was not the business of the Assessee but was ancillary to the treatment of effluent.

11. The claim of depreciation by the Assessee was in terms of Section 32(1) of the Act and as pointed out by learned counsel for the Assessee, what is of importance is that the plant or machinery should be owned by the Assessee and used for the purposes of its business. According to the Assessee, both conditions were satisfied by the Assessee but, unfortunately, the Assessing Officer took a different view.

12. In *The Liquidators of Pursa Limited v. Commissioner of Income-tax, Bihar*, [1954] 25 ITR 265, the expression "used for the purpose of the business" as appearing in Section 10(2)(vii) of the Income Tax Act, 1922 was considered by the Supreme Court. It was held that the words obviously mean "used for the purpose of enabling the owner to carry on the business and earn profits in the business."

13. This Court had occasion to consider the expression as appearing in the 1922 Act in *Capital Bus Service (P) Ltd. v.*

Commissioner of Income-tax, New Delhi, [1980] 123 ITR 404.

After surveying the decisions on the subject, it was held that there was a consensus of judicial opinion in favour of adopting a liberal interpretation or a wider interpretation to the expression “used for the purposes of the business”.

14. In *Multican Builders Ltd. v. Commissioner of Income-tax [2005] 278 ITR 142*, the Calcutta High Court considered the expression “used for the purpose of business or profession” as appearing in Section 32 of the Act and concluded that the claim of depreciation is not dependent on the “actual” use or the asset being “put to” use. The expression has to be interpreted in the ordinary grammatical sense, as in common parlance and not in the legal or technical sense.

15. This Court had occasion to consider the expression as appearing in Section 32 of the Act in *Commissioner of Income-tax v. Refrigeration & Allied Industries Ltd., [2000] 113 TAXMAN 103*. This Court noted that even though the Supreme Court had left the question of active or passive user open in the Liquidators of Pursa Ltd., but in *Machinery Manufacturers Corporation Ltd. v. Commissioner of Income-tax, [1957] 31 ITR 203*, the Bombay

High Court had given it a wider meaning. After considering *Commissioner of Income-tax v. Dalmia Cement Ltd., [1945] 13 ITR 415* and *Commissioner of Income-tax v. Viswanath Bhaskar Sathe, [1937] 5 ITR 621*, this Court was of the view that passive user of machinery such as by keeping it in good working condition so that it could be used at any moment would be the correct approach to adopt for interpreting the expression “used for the purposes of the business” occurring in Section 32 of the Act.

16. All these decisions suggest that the expression “used for the purposes of the business” needs to be liberally interpreted. This is precisely what the Assessee did and the view taken by the Assessee was certainly a plausible view - it just so happens that the Assessing Officer did not agree with the Assessee. But that by itself would not mean that the Assessee had furnished inaccurate particulars for the purposes of reducing its tax liability. A penal provision such as the one that we are concerned with ought to be strictly construed.

17. We may also note that it has concurrently been held by the Commissioner as well as by the Tribunal that the Assessee

had not furnished inaccurate particulars. We do not think, under these circumstances, that it would be appropriate to reverse the view taken by the Commissioner as well as by the Tribunal. No substantial question of law arises in this regard inasmuch as there is nothing to show that the decision of the Tribunal is perverse or that the claim made by the Assessee was motivated.

18. The appeal is dismissed with costs. We assess counsel's fee at Rs.10,000/- which will be paid by the Revenue by depositing the amount by way of a cheque in the name of the Registrar General of this Court within four weeks from today.

19. List for compliance on 20th February, 2008.

MADAN B. LOKUR, J

JANUARY 11, 2008
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V.B. GUPTA, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.