IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

I.T.R. No.4 of 1996.

Judgment reserved on: 31.12.2007.

Date of Judgment: 2.1.2008.

The Commissioner of Income-tax, Patiala ...Petitioner

-Versus-

M/s.Masaddi Ram Ganga Ram ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? No

For the Petitioner: Mr.Vinay Kuthiala & Ms.Vandana Kuthiala, Advocates.

For Respondent: Mr.Vishal Mohan & Mr.Rajneesh K.Lal, Advocates

---

Deepak Gupta, J.

The following question of law has been referred for the opinion of this Court under Section 256(2) of the Income Tax Act:

> "Whether, on the facts and in the circumstances of the case, the ITAT is right in law in holding the hotel premises as 'plant' and allowing depreciation @ 15% instead of 2.5% as per depreciation table?"

The only question to be decided is whether the depreciation in respect of a building of a hotel is to be granted @ 15% by treating it as a 'plant' or @ 2.5% as applicable to buildings.

This question is no longer res integra. The Apex Court in **Commissioner of Income-Tax vs.Anand Theatres, 244 ITR 192,** after taking into consideration a large number of cases held as follows:

"In the result, it is held that the building used for running of a hotel or carrying on cinema business cannot be held to be a plant because:

(1) The scheme of section 32 as discussed above clearly envisages separate depreciation for a building, machinery and plant, furniture and fittings, etc. the word "plant" is given inclusive meaning under section 43(3) which nowhere includes buildings. The rules prescribing the rates of depreciation specifically provide grant of depreciation on buildings, furniture and fittings machinery and plant and ships. Machinery and plant include cinematograph films and other items and the building is further given a meaning to include roads, bridges, culverts, wells and tube-wells.

(2) In the case of Taj Mahal Hotel (1971)82 ITR 44, this court has observed that the business of a hotelier is carried on by adapting building or premises in suitable way, meaning thereby building for a hotel is not apparatus or adjunct for running of a hotel. The court did not proceed to hold that a building in which the hotel was run was itself a plant, otherwise the court would not have gone into the question whether the sanitary fittings used in bath room was plant.

(3) For a building used for a hotel, specific provision is made granting additional depreciation under section 32(1)(v) of the Act.

(4) Barclay, Curle and Co.'s case (1970)76 ITR 62, decided by the House of Lords pertains to a dry dock yard which itself was functioning as a plant that is to say, structure for the plant was constructed so that dry dock can operate. It operated as an essential part in the operations which took place in getting a ship into the dock, holding it securely and then returning it to the river. The dock as a complete unit contained a large amount of equipment without which the dry dock could not perform its function.

(5) Even in England, courts have repeatedly held that the meaning of the word "plant" given in various decisions is artificial and imprecise in application, that is to use the words of Lord Buckley, "it is now beyond doubt that the

word 'plant' is used in the relevant section in an artificial and largely judge-made sense." Lord Wilberforce commented by stating that "no ordinary man, literate or semi-literate, would think that a horse, a swimming pool, movable partitions, or even a dry dock was plant."

(6) For the hotel building and hospital in the case of Carr v.Sayer 65 TC 15 (Ch.D.), it has been observed that a hotel building remains a building even when constructed to a luxury specification and similarly a hospital building for infectious diseases which might require a special layout and other features also remain a premises and is not plant.

It is to be added that all these decisions are based upon the interpretation of the phrase "machinery or plant" under section 41 of the Finance Act, 1971, which was applicable and there appears no such distinction for grant of allowance on different heads as provided under section 32 of the Income-tax Act.

(7) To differentiate a building for grant of additional depreciation by holding it to be a "plant" in one case where the building is specially designed and constructed with some special features to attract the customers and a building not so constructed but used for the same purpose, namely, as a hotel or theatre would be unreasonable."

This view has been followed by the Apex Court in **Commissioner of Income Tax, Cochin vs. A.B.A. Sons, (2003) 11 SCC 338.**

In view of the above settled law the question is decided in favour of the Revenue and against the assessee. The Registrar General of this Court is directed to send a copy of this order to the Income Tax Appellate Tribunal.

(Deepak Gupta),
Judge

January 2 , 2008.
PV

(V.K. Ahuja),
Judge