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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 252 OF 2002

Parle Bisleri Private Limited … Appellant
V/s.
The Deputy Commissioner
of Income-Tax, Special Range 6, Bombay … Respondent

Mr.Jeet Kamdar i/b. Mr. Atul Jasani for the Appellant.
Mr. Arvind Pinto for the Respondent – Revenue.

CORAM : NITIN JAMDAR &
N.R. BORKAR, JJ.
DATE : 15 JUNE 2022.

ORAL JUDGMENT *(PER NITIN JAMDAR, J.)*

. The Appellant/Assessee, by way of this appeal under Section 260-A of the Income Tax Act, 1961 (the Act), has challenged the order passed by the Income Tax Appellate Tribunal, Bombay dated 21 September 2001 in Income Tax Appeal No. 8985/BOM/1992 for the assessment year 1989-90.

2. The appeal was admitted on 26 July 2004 on the following substantial question of law.

> *"Whether the bottles and crates that the appellant-assessee uses in the course of carrying out its business can be treated as plant within the meaning of Section 32(1)(i) of Income Tax Act, 1961?"*

3. The question of law as framed arises in the following facts. Appellant was engaged in the business of manufacturing soft drinks

and agro-based beverages, and it purchased bottles and crates from various suppliers. The soft drinks, manufactured by the Appellant, were filled in bottles stacked in crates and distributed to its customers.

4. In its return for the assessment year 1989-90, the Appellant/Assessee claimed 100% deduction on the bottles and crates purchased by it. The total purchase cost of bottles and crates was Rs.47018507/-, and each bottle and crate was less than Rs.5000/-. According to the Appellant, the bottles and crates were the tools by which the Appellant carried on its business of manufacturing and sale of soft drinks. Since the cost of each bottle and crate was less than Rs.5000, the Appellant claimed 100% depreciation on the bottles and crates as per the proviso to Section 32(1)(ii) of the Act.

5. The Assessing Officer passed the order on 26 March 1992 under Section 143 (3) of the Act holding that the bottles and crates cannot be construed as "Plant" as per the definition of Section 43(3) of the Act and they have to be construed as stock-in-trade and accordingly, the depreciation as claimed by the Appellant was not allowed. The Appellant filed an appeal before the Commissioner of Income Tax (Appeals) on 30 April 1992. The Appellant relied upon the decisions of the Rajasthan High Court in the case of

Commissioner of Income Tax vs. Jai Drinks (P.) Ltd.[1] and Andhra Pradesh High Court in the case of *Commissioner of Income Tax vs. Sri Krishna Bottlers Pvt. Ltd.*[2] holding that the crates and bottles used for the business of manufacture and sale of soft drinks will have to be treated as falling under the definition of "Plant". Following these decisions, the Commissioner of Income Tax (Appeals) allowed the appeal filed by the Appellant on 31 July 1992.

6. The Respondent - Revenue filed an appeal before the Income Tax Appellate Tribunal, and the Appellant also filed an appeal on different grounds. Before the Tribunal, the Appellant relied upon the decisions of the Division Bench of the Rajasthan High Court in *Jai Drinks (P.) Ltd.* and the Andhra Pradesh High Court in *Sri Krishna Bottlers Pvt. Ltd.* The Tribunal, however, held against the Appellant observing as under :

> "*21. We have perused the relevant orders contained at pages 19,20 and 28 of the paper book wherein it has been held that the assessee is entitled to 100% depreciation on bottles and crates. The Hon'ble Supreme Court in the case of State of Bihar and Others v. Steel City Beverages Ltd. and another (235 ITR 131) at page 140-141 held as under:*
>
> > *"… Therefore, the context in which the word 'plant' is used in rule 2(v) indicates that it is not used in its wider sense and does not include within its meaning land, building and machinery.*

1 (1988) 173 ITR 100 (Raj.)
2 (1989) 175 ITR 154 (A.P.) (A.P

> *It also appears that the rule – making authority did not intend 'plant' to mean what is not a fixed asset. For all these reasons, we are of the view that by 'plant' what is intended by the rule making authority is that apparatus which is used by the industry for carrying on its industrial process of manufacture. In respect of an industry manufacturing soft drinks and beverages, it can be said that plant would mean that apparatus which is used for manufacturing soft drinks or beverages and not articles like crates and bottles used for storing the manufactured product."*

In view of the decision of the Hon'ble Supreme Court, we are of the opinion that depreciation was rightly denied by the A.O. Therefore, we restore his order and set aside the order of the learned CIT (A). This ground is allowed."

Thus the Tribunal following the decision of the Supreme Court in the case of *State of Bihar vs. Steel City Beverages Ltd.*[3] opined that the depreciation claimed by the Appellant was rightly denied by the Assessing Officer in light of the definition of "Plant" as held by the Supreme Court in the case of *Steel City Beverages Ltd.*. Both the appeals were disposed of by the Tribunal by the impugned order dated 21 September 2001. Being aggrieved by the said order, the Appellant filed the present appeal. The appeal is admitted on the question of law as reproduced above.

3 235 ITR 131

7. We have heard Mr. Jeet Kamdar, the learned Counsel for the Appellant and Mr. Arvind Pinto, learned Counsel for the Respondent.

8. Section 43(3) of the Act as it stood at the relevant time, i.e., assessment year 1989-90 reads thus:

> *"43(3) "plant" includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession."*

9. Mr.Kamdar, the learned Counsel for the Appellant submitted that the Tribunal had not followed the decisions of the Andhra Pradesh High Court and Rajasthan High Court, which are directly on the point as to the definition of "Plant" in Section 43(3) of the Act and has erroneously relied on the decision of Supreme Court in the case of *Steel City Beverages Ltd., w*hich is on the bare perusal of the same, is distinguishable and is rendered in the context of different enactment having different ambit. Mr Kamdar submitted that for the assessment years 1985-86, 1986-87 and 1988-89, the Tribunal has held in favour of the Appellant/Assessee holding that the Appellant is entitled to depreciation on the bottles and crates as claimed. Mr. Kamdar submitted that even subsequent to the concerned assessment year, i.e. the assessment year 1991-92, the Tribunal has held in favour of the Appellant and only for the assessment year in question, i.e., 1989-90, a different view is taken.

Mr. Kamdar relied upon the following decisions in support of his submissions:

> *(i) Commissioner of Income – Tax, Andhra Pradesh vs. Taj Mahal Hotel*[4] *;*
> *(ii) Scientific Engineering House P. Ltd. vs. Commissioner of Income-Tax, Andhra Pradesh*[5]*; and*
> *(iii) Commissioner of Income Tax vs. Srikrishna Bottlers (P.). Ltd.*[6]*;*

10. Mr. Pinto, the learned Counsel for the Respondent – Revenue, on the other hand, contended that the bottles and crates could not, by any stretch of the imagination, be construed as "Plant" as it is not relatable to ships, vehicles, books, scientific apparatus and surgical equipment used for the business or profession. Mr. Pinto submitted that bottles and crates must have some relevance or connection to the categories mentioned in Section 43(3) of the Act to fall under the definition of "Plant". Mr. Pinto submitted that the bottles and crates could not be considered used for the Appellant business, which is manufacturing soft drinks. Mr. Pinto submitted Appendix-I to the Income Tax Rules 1962 framed under Rule 5, wherein the table of Plant and machinery listed does not have any reference to bottles and crates; therefore, they cannot be considered as falling under the definition of "Plant". Mr. Pinto submitted that the decisions of the Rajasthan High Court in the case of *Jai Drinks (P.) Ltd.* and the Andhra Pradesh High Court in the case of *Sri*

4 (1971) 82 ITR 44 (SC)
5 (1986) 157 ITR 86 (SC)
6 (2005) 274 ITR 11 (A.P.)

Krishna Bottlers Pvt. Ltd. are considered by the Supreme Court in the case of *Steel City Beverages Ltd.*, and it is held that the definition of “Plant” will not include bottles and crates and therefore, this decision was rightly followed by the Tribunal.

11. The definition of “Plant”, reproduced above, shows that it is an inclusive definition. The Division Bench of Rajasthan High Court in the case of *Jai Drinks (P.) Ltd.* followed the decision of the Supreme Court in the case of *Taj Mahal Hotel,* where the Supreme Court, after considering the term “Plant” under the provisions of the Act, observed that the same has to be construed in a wide manner. In *Taj Mahal Hotel*, the Supreme Court construed the definition of "Plant" as occurring in Section 10(5) of the Indian Income-tax Act, 1922 ("the 1922 Act"), which corresponded to Section 43(3) of the 1961 Act. It was held that had the definition of "Plant" was an inclusive definition, and the intention of the Legislature was to give it a wide meaning which is evident from the fact that articles like books and surgical instruments were expressly included in the definition of "Plant". The Rajasthan High Court also followed the decision of the Supreme Court in *Scientific Engineering House (P.) Ltd.*, wherein while construing the definition of "Plant" in Section 43(3), the question of whether drawings, designs, charts, plans, etc., were within the definition of "Plant" where the assessee's business was to manufacture scientific instruments was answered in favour of the

assessee. The tests to be applied was also laid down by the Supreme Court in this decision. The Rajasthan High Court in *Jai Drinks (P.) Ltd.* held that applying the above test indicated by the Supreme Court, there is no escape from the conclusion that the bottles and crates used for bottling the soft drinks manufactured by the assessee fall within the definition of "Plant" contained in section 43(3).

12. An identical issue arose for consideration before the Division Bench of Andhra Pradesh High Court in *Sri Krishna Bottlers Pvt. Ltd.*. The Division Bench took a review of the case law on the subject and culled out the legal propositions from the overview taken and observed thus:

> *"From the aforesaid rulings, the following principles can be gathered;*
> *(1) "Plant" in section 43(3) of the Act is to be construed in the popular sense, namely, in the sense in which people conversant with the subject matter with which the section is dealing would attribute to it. The word "plant" is to be given a "very wide" meaning. In its ordinary sense, it includes whatever "apparatus" is used by a businessman for carrying on his business, but it does not include his stock-in-trade, which he buys or makes for sale. It, however, includes all goods and chattels, fixed or movable, live or dead, which the tradesman keeps for permanent employment in his business. (2) But the building or the "setting" in which the business is carried on cannot be plant. (3) The thing need not be part of the machine used in the manufacturing process but could be merely an apparatus used in carrying on the business but having a "degree of durability". (4) Merely because the*

asset has a passive function in the carrying on of the business, it cannot be said that it is not plant. It may have a passive or an active role. (5) The subject must have a function in the trader's operation and if it has, it is prima facie a plant unless there was good reason to exclude it from that category. It must be a "tool in the trade" of the businessman. (6) Gross materiality or tangibility is not necessary and, in fact, intangible things like ideas and designs contained in a book could be "plant". They fall under the category of "intellectual storehouse". (7) In considering whether a structure is plant or premises, one must look at the finished product and not at the bits and pieces as they arrive from the factory. The fact that a building or part of a building holds the plant in position does not, convert the building into the plant. A piecemeal approach is not permissible, and the entire matter must be considered as a single unit unless, of course, the component parts can be treated as separate units having different purposes. (8) The functional test is a decisive test.

Bearing these principles in mind, we shall approach the facts of the present case. The bottles containing the soft drink cannot be stock-in-trade inasmuch as the bottle by itself is not the subject of sale. The customer or the retailer returns back the bottle to the assessee after the soft drink is consumed. Likewise, the shells which are sent to the customer or dealer also come back with the empty bottles, and they cannot also be stock-in-trade. What is the function these bottles and shells perform in the assessee's trade ? Are they essentially tools in the assessee's business? In our opinion, yes. The bottles are essential tools of the trade for it is through them that the soft drink is passed on from the assessee to the customer. Without these bottles, the soft drink cannot be effectively transported, like the silos in Schofield v. R. and H. Hall Ltd. [1974] 49 TC 538 (CA),

> *which are used to store grain and to empty the same, performing a trade function. As pointed out in Dixon v. Fitch's Garage Ltd. [1975] 50 TC 509 (Ch D), the bottles and the contents are "totally interdependent."So are the shells. The bottles and shells also satisfy the durability test for it is nobody's case that their life is too transitory or negligible to warrant an inference that they have no function to play in the assessee's trade. They are, therefore "plant" for the purposes of the Act."*

These two decisions have construed the very definition, which has fallen for consideration in this appeal, and have observed that the bottles and crates would fall within the ambit of the definition of "Plant" under Section 43(3) of the Act.

13. As regards the factual position, that is, use of glass bottles, return of bottles in the manner in which crates are used, the Revenue has accepted the facts of the present case and the factual position in the case of *Jai Drinks (P.) Ltd. and Sri Krishna Bottlers Pvt. Ltd.* are identical.

14. The Tribunal did not hold against the Appellant making a distinction in the facts on the factual situation but has not followed the decisions of Rajasthan High Court and Andhra Pradesh High Court as above relying on the decision of the Supreme Court in the case of *Steel City Beverages Ltd.* Therefore, the only question that will arise for consideration is whether the Supreme Court in the case of Steel City Beverages Ltd., has overruled the view taken in the case

of *Jai Drinks (P) Ltd. and Sri Krishna Bottlers Pvt. Ltd.* construing the provisions of Section 43 (3) of the Act.

15. The Supreme Court, in the case of *Steel City Beverages Ltd.*, considered the issue of whether the bottles and crates can be construed the definition of "Plant" and held bottles those could not be considered as stock in trade. However, the issue that arose before the Supreme Court under the Bihar Sales Tax Supplementary (Deferment of Tax) Rules 1990. That there is a difference between Bihar Rules and Income Tax Act as was noted by the Supreme Court in the said decision itself observing:

> *"Therefore, what we have to consider is whether under the 'Deferment Rules' , "plant" would include bottles and crates employed by an industrial unit manufacturing soft-drinks and beverages for carrying on its business. The word plant has a very wide meaning and a variety of articles, objects or things have been held to be plant. Dictionaries have defined plant as land, building, fixtures, machinery, implements and tools, and apparatus used in carrying on a mechanical operation or an industrial process. This Court in C.I.T. v. Taj Mahal Hotel [1971] 82 ITR 44 and Scientific Engineering House P. Ltd. v. CIT [1986] 157 ITR 86 referred to with approval the observations of Lindley LJ In Yarmouth v. France [1887] 19 QBD 647 that in its ordinary sense plant includes whatever apparatus is used by a businessman for carrying on his business - not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business. In that case, this Court further held that the test to decide whether a particular*

thing is plant would be : "Does the article fulfil the function of a plant in the assessee's trading activity? Is it a tool of his trade with which he carries on his business? If the answer is in the affirmative, it will be a plant". Learned counsel for the respondents, heavily relying upon this decision, submitted that the High Court was right in interpreting the word plant in the Deferment Rules as including bottles and crates also as they are used by the Company for carrying on its business. We cannot agree with this contention as we are of the view that the High Court was wrong in interpreting the word plant in Rule 2(v) so widely. <u>It failed to consider whether the object and scheme of the Deferment Rules permit such a wide interpretation. The High Court also failed to appreciate that the decisions of this Court in Taj Mahal Hotel [1971] 82 ITR 44 and Scientific Engineering House [1986] 157 ITR 86 were under the Income Tax Act and the observations made and the test indicated therein were in the context of the wide definition of the word plant given in that Act and, therefore, not of universal application.</u> Obviously, if plant is defined differently under a different provision or if the context so requires, it may have to be given a different and a narrower meaning. The Deferment Rules do not define plant and, therefore, what should have been considered by the High Court was what meaning should be given to it in the context of the Deferment Rules."

(emphasis supplied)

Thus, the Supreme Court made a categorical distinction between the language employed under the Income Tax Act and the enactment under its consideration. The Supreme Court observed that as regards the Bihar enactment under a different phraseology was used, the definition of "Plant" used in Bihar Rules was not used in a wider sense, unlike the Income Tax Act, where it was widely used. The Tribunal, before following the decision of the Supreme Court in *Steel City Beverages Ltd.*, had not adverted to these observations of the Supreme Court at all and, therefore, clearly erred in applying this decision and not following the decisions of the High Courts of Rajasthan and Andhra Pradesh cited before it, which had construed the same provision which was under consideration.

16. The learned Counsel for the Petitioner has placed before us the decisions rendered by different High Courts following the decisions of the Rajasthan High Court in the case of *Jai Drinks (P.) Ltd.* and the Andhra Pradesh High Court in the case of *Sri Krishna Bottlers Pvt. Ltd.* that bottles and crates would fall within the definition of "Plant". These are of *Commissioner of Income Tax vs. Saurashtra Bottling Pvt. Ltd.*[7]*, Commissioner of Income Tax vs. Aqueous Victuals P. Ltd.*[8] and *Joint Commissioner of Income – Tax vs. Anatronics General Co. (P.) Ltd.*[9]. The argument of the learned Counsel for the Respondent that bottles and crates could not be included in the definition of the "Plant" because they have no reference to the categories mentioned therein; therefore, cannot be accepted.

17. As regards the contention of the learned Counsel for the

7 (1998) 232 ITR 270 (Guj)
8 (2004) 266 ITR 573(All)
9 (2001) 113 Taxman 511

Respondent based on the Income Tax Rules and Depreciation Table is concerned, the Table is only states that certain categories, which are Machinery and Plants, will have particular rate and rest which fall under the Machinery and Plant will have different rate. Therefore, merely because the bottles and crates do not fall under the categories listed in Item 2 of the Schedule, it cannot be said that they need to be excluded from the definition of “Plant”, if they, otherwise fall within the definition of “Plant”. It has to be noted that, however, this question had arisen for the assessment year 1989-90 based on the situation therein, and therefore, the question is whether the Tribunal was right in holding against the Appellant for that particular assessment year. As noted in the decision of *Sri Krishna Bottlers Pvt. Ltd.,* as to what would happen if plastic bottles were used or the manner of use is changed in future, those would be the facts of that case.

18. Considering this position, the question of law which is framed as above, will have to be answered in favour of the Appellant/Assessee. Accordingly, the question is answered in favour of the Appellant.

19. Appeal is allowed. No order as to costs.

(N.R. BORKAR, J.) **(NITIN JAMDAR, J.)**