

PETITIONER:
MAHABIR COLD STORAGE

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, PATNA

DATE OF JUDGMENT 07/12/1990

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
KULDIP SINGH (J)

CITATION:
1991 AIR 1357 1990 SCR Supl. (3) 469
1991 SCC Supl. (1) 402 JT 1990 (4) 754
1990 SCALE (2) 1226

ACT:

Income Tax Act, 1961--Section 31(1)--Development rebate entitlement to unity of ownership and use of asset in business not to be disrupted.

HEADNOTE:

The appellant-assessee is a registered firm. It started functioning w.e.f. May 3, 1956 at Purnea as the branch office of the partnership firm M/s Prayagchand and Hanumanmal Periwai with its Head Office at Calcutta. The firm consisted of two partners Prayagchand Periwai and Hanumanmal Periwai.

The partners had taken loan from Periwai & Co. Pvt. Ltd for erection of cold storage at Purnea and for its running capital. Later, Periwai & Co. was taken as a partner in the Purnea Branch for better management and financial assistance. The newly constituted partnership obtained separate registration under the Income Tax Act, 1922 as well as under the income Tax Act, 1961 and was separately assessed from the assessment year 1960-61.

In the assessment year 1959-60 Prayagchand Hanumanmal installed machinery of the value of Rs.5,80,055 in Sri Mahabir Cold Storage. For one reason or the other development rebate on the capital asset, namely, the machinery, was not claimed till the assessment year 1962-63 in which year the appellant claimed development rebate. The Income-tax Officer, and on appeal the Assistant Appellate Commissioner, disallowed the claim on the finding that the new firm had neither inherited the claim as a transferee, nor did it amount to a succession. But on second appeal, the Tribunal held that the appellant firm was nothing more than the old firm of M/s. Prayagchand Hanumanmal with a change in the constitution, and the continuity of the business remained intact; hence the appellant was the owner of the plant and machinery installed in the assessment year 1959-60.

The High Court answered the question referred to it in favour of the Revenue. The High Court held that the business at Purnea was carried on by the newly constituted partnership firm which itself

470
claimed to be a separate identity under the Income Tax Act,

and had obtained separate registration. The High Court observed that in respect of the plant or machinery installed by the old partnership firm at Calcutta, the new firm at Purnea, a distinct and different assessable identity, could not claim 'development rebate either under the repealed Act or the 1961 Act.

Before this Court it was inter alia contended that (i) M/s. Prayagchand Hanumanmal consisting of original partners, had taken M/s. Periwal and Co. merely for the purpose of better management and financial assistance; (ii) the old partnership had been continuing to have its identity as an assessable entity whose character had not been lost by taking as new partner M/s Periwal and Co. (Pvt) Ltd. for the purpose of benefit of profits only, and hence the assessee was entitled to the development rebate under section 33 of the Income-Tax Act.

On befall of the Revenue it was contended that the appellant was not "the assessee", nor the owner of the machinery and plant; the owner was M/s. Prayagchand Hanumanmal and as such the assessee was not entitled to the development rebate.

Dismissing the appeal, this Court,

HELD: (1) Under both the repealed Act as well as the 1961 Act two conditions precedent were required to be fulfilled for entitlement to development rebate, namely, the new machinery or plant installed must be (1) owned by the assessee and (2) used wholly for the purpose of the business carried on by him. There must exist unity of ownership and use in the business. [475A, F]

(2) Only the successor in interest of the business, in accordance with the provisions of the Act, so long as the twin requirements under section 33(1) are fulfilled, is entitled to the benefit. [475G]

(3) When the unity of ownership and use of the asset in the business is disrupted or a branch of an earlier business is taken over by a new firm which exists simultaneously with the other branches of the old business, the benefit of development rebate under Section 33(1) does not extend to either firm. [475H]

(4) The appellant assessee is a new identity under the Act. it is not a successor in interest of the old firm as per the provisions of the Act. [476G]

471

(5) Section 33(1) gives right to development rebate only to the owner who has acquired the ship or installed the machinery or plant. The necessary implication is that the assessee who claims development rebate should continue to remain to be the owner of the ship or plant or machinery during the relevant previous assessment year/years and the owner alone is entitled to the development rebate till it becomes nil. [476H-477A]

JUDGMENT: