

PETITIONER:
THE EAST INDIA HOTELS LIMITED, CALCUTTA

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, CALCUTTA

DATE OF JUDGMENT: 08/11/1996

BENCH:
B.P. JEEVAN REDDY, K.S. PARIPOORNAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P. JEEVAN REDDY, J.

Under Section 256(2) of the Income Tax Act, two questions were referred for the opinion of the High Court viz.:

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in cancelling the Commissioner of Income-tax's Order Under Section 263 of the Income-Tax Act, 1961 for the assessment year 1977-78?"

"2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the assessee was entitled to extra depreciation allowance and also extra shift depreciation allowance on the reasoning that there was no prohibition for granting both the allowance either in the Income-tax Rules or in the Act?"

The High Court has answered the second question against the assessee and in favour of the Revenue following the judgment of that Court in S.P.Jaiswal Estates Private Limited v. Commissioner Income Tax [188 I.T.R. 603]. In view of its answer to question No.2, question No.1 was also answered in favour of the Revenue and against the assessee.

The assessment year concerned in this appeal is 1977-78. The assessment was made by the Inspecting Assistant Commissioner (I.A.C.) who allowed deduction for depreciation which included extra shift allowance on plant and machinery and also extra depreciation on office equipment. This order was revised by the Commissioner who set aside the assessment order and remitted the matter to the I.A.C. to redetermine the amount of admissible depreciation in accordance with law. He opined that in the case of an 'approved hotel' only extra depreciation allowance was admissible but not extra shift depreciation allowance. The

assessee preferred an appeal against the order of the Commissioner before the Tribunal. The Tribunal allowed the appeal on merits following its earlier decision relating to an approved hotel.

In S. P. Jaiswal Estates Private Limited, the Calcutta High Court has taken the view that in the case of hotels, the very concept of double or extra shifts is inapplicable. The High Court has opined that the said CONCEPT is relevant only in the case of factories. It was following the said decision that question No.2 was answered in favour of the Revenue. It is brought to our notice that in a subsequent decision in S.P.Jaiswal Estates (P) Ltd. [216 I.T.R. 145] another Division Bench has taken a contrary view. The latter Division Bench has held that even a hotel is entitled to extra shift allowance.

The rates of depreciation are provided in Appendix to the Income Tax Rules. Whether it is prior to 1.4.1970 or thereafter, depreciation is allowed on "machinery and plant", mentioned as Item III in the Appendix. Prior to 1.4.1970, the rate of depreciation on machinery and plant was 7 per cent. But in the case of a concern working double shift, an additional 50 per cent of the said rate of depreciation was allowed. Similarly in the case of triple shift, another 50 per cent of the said rate was allowed. In other words, in the case of a concern working for three shifts, the rate of depreciation allowed was 14 per cent. After 1.4.1970, the extra shift depreciation allowance was practically continued in same terms in clause (iv) of Item III, though there was a change in the rate. Clause (iii) of Item III, however, provided "extra depreciation allowance" for "approved hotels". It would be appropriate to read clauses (iii) and (iv) of Item III, to the extent they are relevant for our purposes.

"(iii) An extra allowance of depreciation of an amount equal to one half of the normal allowance shall be allowed in the case of machinery and plant installed by an assessee, being an Indian company, in premises used by it as a hotel is for the time being approved by the Central Government for the purpose of Section 33 of the Act. Explanation: For the purpose of this sub-item and sub-item (iv)" normal allowance means the amount of depreciation allowance under this item or the extra shift depreciation allowance under sub-item (iv) which is allowable under Rule 5.

"(iv) An extra allowance upto a maximum of an amount equal to one-half of the normal allowance shall be allowed where a concern claims sub-allowance on account of double shift working and establishes that it has worked double shift. An extra allowance upto a maximum of an amount equal to the normal allowance, instead of one-half of the normal allowance shall be allowed where a concern claims such allowance on account of triple shift working and establishes that

if has worked triple shift." "

The contention of the Revenue is that an approved hotel - (the appellant is admittedly running an approved hotel) is entitled only to the depreciation allowance provided by clause (iii) and not to the extra shift depreciation allowance provided by clause (iv). The contention is that an approved hotel is not entitled to both the said allowances simultaneously and that it is entitled only to the extra depreciation allowance in clause (iii) but not to extra shift allowance in clause (iv). It is not possible to agree. The depreciation is allowed on machinery and plant and not with reference to the nature or character of the activity carried on in the premises where the said machinery is installed. Indeed prior to 1.4.1970, there was no reference to hotels in Item III. If any machinery is installed in a hotel, such machinery is certainly entitled to depreciation allowance. Admittedly, there is no provision in the Appendix whether before 1.4.1970 or thereafter stating that a hotel is not entitled to extra shift depreciation allowance. The expression "shift" is not defined in the Income Tax Act. It is defined only in the Factories Act. The definition is of great relevance to the controversy herein. It reads:

"(r) where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a "relay" and each of such periods is called a "shift"."

A reading of the definition shows that the concept of shift is with reference to the workers and not with reference to the concern or establishment. In a hotel which works twenty four hours a day, there is bound to be two or more sets of workers working during different periods of the day. If so, the concept of shift cannot be said to be inapplicable or irrelevant in the case of a hotel. We are, therefore, of the opinion that a hotel is also entitled to claim extra shift depreciation allowance on the machinery and plant under clause (iv) of Item III (after 1.4.1970). So far as the extra depreciation allowance provided by clause (iii) is concerned, it is a special and an additional allowance provided for 'approved hotels' only. It does not, however, mean that an approved hotel, to which the depreciation provided in clause (iii) is allowed, is deprived of the depreciation provided in clause (iv). If the argument of Revenue is accepted, a strange consequence would follow: a hotel which is not approved may get extra shift depreciation allowance (for three shifts) under clause (iv) while an approved hotel will get only the depreciation provided by clause (iii) which would be less than the depreciation allowance provided by clause (iv). We are, therefore, of the opinion that plant and/or machinery installed in a hotel is entitled to extra shift depreciation allowance provided by clause (iv) of Item III in Appendix-I and that an approved hotel is entitled, in addition, to extra depreciation, allowance provided by clause.

For the above reasons, question No.2 is answered in the affirmative i.e., in favour of the assessee and against the Revenue. Consequently, question No.1 is also answered in favour of the assessee and against the Revenue. The civil appeal is allowed accordingly. No costs.