

hurdles in the proper conduct of the Company's business. These circumstances, seen in the context of the aspect of business expediency, which as noticed earlier, has been held to be one of the important relevant factors in dealing with such matters, cannot, but lead to the irresistible conclusion that the payments made by the assessee, in cash, to the Amrit Banaspati Company Ltd. clearly fell within the exemption provided in clause (j) of rule 6DD of the Rules.

(13) Faced with this situation, Mr. Ajay Mittal, counsel for the Commissioner of Income Tax sought to rely upon *Hari Chand Virender Paul v. Commissioner of Income Tax, Patiala-I* (3), where payment of Rs. 28,000 odd in cash, by an assessee was held not to fall within clause (j) of rule 6DD of the Rules. A reading of this judicial precedent would show that the decision there was founded upon the peculiar facts of that case. The exceptional circumstances pleaded by the assessee being the demand of the seller for payment, in cash, after banking hours. It was found that the goods had been purchased on credit basis a number of days earlier and the assessee, therefore, had ample opportunity to make payment by crossed-cheque or bank draft and there were thus no such exceptional or unavoidable circumstances which could justify non-compliance with the provisions of sub-section (3) of Section 40A of the Act. These facts bear little or no resemblance to the circumstances of the present case and this precedent cannot, thus operate against the assessee.

(14) Taking therefore, an over-all view of the entire circumstances of the case, in the context of the settled position in law, as discussed, the reference is hereby answered in the negative in favour of the assessee and against revenue. There will, however, be no order as to costs.

J.S.T.

Before : S. S. Sodhi & N. K. Kapoor, JJ.

M/S DALIMA BJSCUTTS LTD., RAJPURA.—Applicant.

versus

THE COMMISSIONER OF INCOME-TAX, PATIALA,—Respondent.

Income-tax Reference No. 23 of 1980.

30th May, 1991.

Income-tax Act, 1961 (XLIII of 1961)—S. 32 (1) (vi)—Claim for initial depreciation on machinery—Assessee installed and commissioned electric generator set for its business—However, assessee

(3) 140 I.T.R. 148.

M/s Dalima Biscuits Ltd., Rajpura v. The Commissioner of Income-tax, Patiala (S. S. Sodhi, A.C.J.)

neither generating nor distributing electricity—Assessee not entitled to claim initial depreciation.

Held, that the crucial words in S. 32(1) (vi) of the Act are "new machinery or plant installed for purposes of business of generation or distribution of electricity or any other form of power". In other words, it is only where the business is of generation or distribution of electricity or any other form of power that the installation of new machinery of plant qualifies for initial depreciation in terms of S. 32(1) (vi) of the Act. The plain and obvious meaning of the relevant words used in S. 32 (1) (vi) of the Act provides no escape from the conclusion that as the business of the assessee was not that of generation or distribution of electricity or any other form of power, its claim for depreciation in respect of generator was rightly declined.
(Paras 2 & 4)

Income Tax Reference from the order of the Income Tax Appellate Tribunal Chandigarh Bench, Chandigarh, dated 14th September, 1979 arising out of R.A. No. 81 of 1979, I.T.A. No. 127 of 1977-78, Assessment Year 1976-77.

The following questions of law has been referred to this Hon'ble Court (Punjab and Haryana High Court, Chandigarh) for its opinion:—

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the initial depreciation under Section 32 (1) (vi) of the Income Tax Act, 1961, was not allowable on the generator set installed by the assessee during the accounting period relevant to the assessment year 1976-77 for the generation of electricity or power for consumption in the process of manufacture of its own products?"

S. S. Mahajan, Advocate, for the appellant.

Ajay Kumar Mittal, Advocate, for the respondent.

JUDGMENT

S. S. Sodhi, J.

(1) The matter here concerns the assessee's claim for initial depreciation under Section 32(1) (vi) of the Income Tax Act, 1961, in respect of an electric generator installed by it for its business.

(2) The assessee Messrs : Dalmia Biscuits Limited. Rajpura, derives its income from the manufacture and sale of biscuits. During

the relevant Assessment Year 1976-77, the assessee installed and commissioned an electric generator for its business at a cost of Rs. 6,56,533 and then put-forth a claim for initial depreciation for this generator under Section 32(1) (vi) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). It is the declining of this claim by all the authorities under the Income Tax Act that has now led to the following question being referred for the opinion of this Court, namely:

“Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the initial depreciating under Section 32 (1)(vi) of the Income Tax Act, 1961, was not allowable on the generator set installed by the assessee during the accounting period relevant to the assessment year 1976-77 for the generation of electricity or power for consumption in the process of manufacture of its own products?”

The question posed has indeed to be answered in the affirmative in favour of revenue and against the assessee in view of the clear and plain interpretation of the relevant statutory provision. The crucial words in Section 32(1) (vi) of the Act are “new machinery or plant installed for purposes of business of generation or distribution of electricity or any other form of power.” The use of the words here “for purposes of business of” admit of only one interpretation namely that the machinery or plant installed must be for the purposes of business of generation or distribution of electricity or any other form of power. In other words, it is only where the business is of generation or distribution of electricity or any other form of power that the installation of new machinery or plant qualifies for initial depreciation in terms of Section 32(1) (vi) of the Act.

(3) Mr. S. S. Mahajan, counsel for the assessee sought, on the other hand, to contend that as the generator had been installed for generation of electricity which was required for the business of the assessee, it must be taken to satisfy the requirements of Section 32(1) (vi) and the assessee was thus entitled to the depreciation claimed. This is indeed a contention which cannot be sustained. It is the well-established rule of interpretation of statutes that every word of a statute has to be assumed to have been deliberately and consciously incorporated therein by the Legislature and has thus to be given a meaning and effect. Courts are, therefore, enjoined upon

State of Punjab and another v. Mohan Lal Sharma
(Gokal Chand Mital, A.C.J.)

to avoid such interpretation as would leave any part of the provision enacted without effect.

(4) The plain and obvious meaning of the relevant words used in Section 32(1) (vi) of the Act, provides no escape from the conclusion that as the business of the assessee was not that of generation or distribution of electricity or any other form of power, its claim for depreciation in respect of the generator was rightly declined.

(5) This reference is answered accordingly. There will, however, be no order as to costs.

J.S.T.

Before : Gokal Chand Mital, A.C.J.

STATE OF PUNJAB AND ANOTHER,—Appellants.

versus

MOHAN LAL SHARMA,—Respondent.

Letters Patent Appeal No. 1748 of 1989.

1st August, 1991.

Constitution of India, 1950—Art. 226—Premature retirement—Employee promoted to the post of Inspector in 1982—Adverse remarks found subsequently in his service record including some of doubtful integrity—Promotion does not obliterate old entries—One stray entry of doubtful integrity in the entire service record is sufficient for purposes of ordering premature retirement—Entire record should be considered with special reference to recent entries—Order of premature retirement is valid.

Held, that before passing an order of premature retirement the entire record must be taken into account with special reference to the recent record and in case of doubtful integrity, the entire service record of an official has to be taken into account and any one entry to that effect is sufficient for purposes of ordering premature retirement.

(Paras 5 & 7)

State of Punjab v. Pirthi Singh, L.P.A. No. 1319 of 1990 decided on 26th April, 1991 (P & H)

(FOLLOWED)