

Privy Council Appeal No. 15 of 1935.

The Commissioner of Income Tax, Madras - - - - *Appellant*

v.

The Buckingham and Carnatic Company, Limited, Madras *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 25TH OCTOBER, 1935.

Present at the Hearing:

LORD THANKERTON.

SIR LANCELOT SANDERSON.

SIR GEORGE RANKIN.

[*Delivered by* SIR LANCELOT SANDERSON]

This is an appeal by the Commissioner of Income Tax from a judgment and order of the High Court of Judicature at Madras dated the 2nd day of May, 1934, whereby the High Court, upon the hearing of a case referred to it by the appellant under the provisions of the Indian Income-tax Act 1922 (XI of 1922), answered certain questions of law raised thereby adversely to the contentions of the appellant.

The questions of law referred to the High Court arose in the course of the assessment of the profits and gains of the business of the respondent company for the tax year beginning on the 1st April, 1931.

The main question arising for determination in this appeal is whether the allowance to be made to the respondent company in respect of depreciation of buildings and machinery used by them for the purposes of their business should be calculated by reference to the cost thereof to the respondent company or by reference to the original cost thereof to certain companies from which such buildings and machinery were acquired by the respondent company.

The material facts, as stated in the case which the Commissioner of Income Tax referred for the opinion of the High Court under section 66 (1) of the said Act are as follows:—

The Buckingham and Carnatic Company, Limited (hereinafter referred to as "the company") is a public limited company which was incorporated on the 29th of November, 1920, under the Indian Companies Act 1913.

The objects of the company were to acquire, take over, amalgamate with, work and carry on the businesses hitherto carried on in Madras and elsewhere by five limited companies which were registered under the Indian Companies Act and the goodwill of the said businesses, to enter into and carry into effect an agreement which had been prepared and was expressed to be made between the said five companies, their liquidators and the company, to carry on the business so to be acquired and generally to carry on the business of cotton spinners.

The said five companies were incorporated on various dates ranging from 1876 to 1888.

The above-mentioned agreement was entered into on the 3rd December, 1920.

The total cost of the buildings and machinery to the said five companies was as follows :—

| | <i>Rs.</i> |
|--------------------------------|------------|
| Dyeing and finishing machinery | 11,11,748 |
| Other machinery | 54,26,856 |
| Buildings | 25,73,603 |

The buildings and machinery were not taken over by the company at the actual cost thereof to the said five companies, but at their written down value on the 30th of November, 1920, which was as follows :—

| | <i>Rs.</i> |
|--------------------------------|------------|
| Dyeing and finishing machinery | 3,88,797 |
| Other machinery | 15,10,845 |
| Buildings | 15,55,737 |

In the year, subsequent to the amalgamation, i.e., in 1921-1922 the company was assessed on the entire profits of the said five companies as having succeeded to their business.

During the assessment the company claimed to deduct depreciation on the buildings and machinery calculated on the original cost thereof to the said five companies.

This claim was disallowed and depreciation, calculated on the written down cost; viz., the actual cost to the company, only was allowed.

From that year onwards the company claimed and was allowed depreciation in respect of the buildings and machinery calculated on the said written down cost plus depreciation in respect of any additions made to the buildings and machinery by the company in each year.

In the course of the assessment for 1931-32 the company again claimed depreciation as above on the ground that as it had succeeded to the business of the said five companies it was entitled to depreciation on the buildings and machinery which had been taken over from the said companies calculated on the original cost thereof to the said five companies.

This claim was based on a decision of the Madras High Court, viz.: *Massey & Co., Ltd. v. The Commissioner of Income Tax, Madras*, which was given on the 29th of November, 1928. The case is reported in 3 I.T.C. 302 and 56 Madras L.J. 451.

It appears however that the High Courts of Bombay and Patna had declined to follow the Madras decision.

In view of the conflicting decisions the Assistant Commissioner of Income Tax referred the matter to the Commissioner of Income Tax, Madras, the appellant in this appeal.

The appellant, as already stated, referred the case to the High Court. The first question submitted in the case for the opinion of the High Court was as follows:—

Question 1.—“Whether the Buckingham and Carnatic Company, Limited, which succeeded to the business of the Buckingham Mill Company, Limited, the Carnatic Mill Company, Limited, the Jamalnadugu Press Company, Limited, the Tiruppur Press Company, Limited, and the Tadpatri Cotton Press Company, Limited, is entitled under section 10 (2) (vi) of the Act, to depreciation allowance on the assets taken over from the five predecessor companies calculated on the original cost of these assets to such predecessor companies or on the value at which these assets were taken over by the Buckingham and Carnatic Company, Limited, from the predecessor companies?”

The appellant agreed with the decisions of the Bombay and Patna High Courts and expressed the opinion that the allowance to be made in respect of depreciation of the assets acquired from the predecessor companies by the company should be calculated by reference to the value at which such assets were acquired by the company.

The appellant proceeded to refer three other questions, which he considered would arise in the event of the High Court adhering to the decision in *Massey & Co., Ltd. v. The Commissioner of Income Tax, Madras*. The said three questions were as follows:—

Question 2.—Whether the Buckingham and Carnatic Company, Limited, is entitled to have the depreciation allowance from the year 1921-22 to 1930-31 recalculated on the basis of that decision and to claim that the excess depreciation not allowed in those years should be allowed in its subsequent assessments or whether the claim for such excess depreciation lapses altogether?

Question 3.—Whether the Buckingham and Carnatic Company, Limited, is entitled to claim depreciation on buildings taken over from the predecessor companies in its subsequent assessments at the rates in force each year, till the total of such allowances to the Company and its predecessors is equal to the original cost of these buildings to the predecessor companies, or whether the Company should be allowed to claim depreciation on these buildings in each of its subsequent assessments at the rates in force each year only for a period not exceeding the life of the asset fixed under the present Act, calculated from the date on which they were first brought into use by the predecessor companies?

Question 4.—In calculating the amount of depreciation allowable in subsequent years to the Buckingham and Carnatic Company, Limited is the amount allowed to the predecessor companies to be taken into account in applying section 10 (2) (vi) proviso (c) of the Act?

The High Court held that it had not been shown that the decision in *Massey's* case was incorrect, and answered the questions as follows:—

(1) That the respondent company herein is entitled to depreciation allowance on the machinery and buildings taken over, calculated on the original cost of these assets to the aforesaid five predecessor companies.

(2) That the respondent company is entitled to the aggregate depreciation allowance based upon the original cost to the aforesaid predecessor companies.

(3) That the respondent company are entitled to an allowance for depreciation based upon a percentage on the original cost of the buildings to the predecessor companies.

(4) In calculating the amount of depreciation allowable in subsequent years to the Buckingham and Carnatic Company, Limited, the amount allowed to predecessor company shall be taken into account in applying section 10 (2) (vi) proviso (c) of the Act.

The main question is the first. The section of the Indian Income-tax Act 1922 which relates to this question is section 10, and the material part thereof is as follows:—

10.—(1) The tax shall be payable by an assessee under the head "Business" in respect of the profits or gains of any business carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely:—

(vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed:

Provided that—

(b) where full effect cannot be given to any such allowance in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or, if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years; and

(c) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under the Indian Income-tax Act, 1886, shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant, or furniture, as the case may be;

By section 2 (2) of the said Act, " assessee " means a person by whom Income-tax is payable. By section 2 (10) " prescribed " means prescribed by rules made under this Act.

No question arises in this appeal as regards the percentage prescribed by the rules.

The answer to the first question in this appeal depends upon the construction, which is to be put upon the words in the section 10 (2) (vi) : " the original cost thereof to the assessee ".

The High Court of Madras were of opinion that the other High Courts had stressed the importance of the words " to the assessee ", and had not given sufficient importance to the words " original cost ", and that as there was an ambiguity the most favourable construction to the company should be given to the words.

The learned judges expressed the further opinion that the Legislature was not envisaging any case of a successor company, and that what was in mind was the original company.

The case for the company at the hearing before the Board was put in rather a different way. It was contended on the company's behalf that the meaning of the above-mentioned material words was " the original cost thereof to the assessee for the time being " or " the original cost thereof to the assessee at the time of the original cost."

Their Lordships are not able to accept the construction of the material words adopted by the High Court, or that which was presented on behalf of the company before the Board. Both the above-mentioned constructions involve the insertion in the subsection of words which are not to be found therein, and are not in the least necessary for an intelligible construction thereof : a method of construction to which their Lordships can give no countenance.

They are of opinion that there is no ambiguity in the provisions of section 10 (2) (vi), and the ordinary and natural meaning of the words used must be taken as the proper construction.

The sub-section provides for the allowance in respect of depreciation of buildings and machinery, which are the property of the assessee, to the extent of the percentage prescribed on the original cost thereof to the assessee. The word " assessee " is used in the subsection in two places : firstly with regard to the ownership of the property and secondly with regard to the original cost thereof.

In the ordinary and natural meaning of the subsection the word " assessee " used in the two connections must refer to the same person. —Who then is that person? The answer is given by the subsection itself, namely, the person who owns the property in question and who is being assessed and the depreciation is to be based on the original cost of such pro-

perty to such person, viz., in this case the company. If there were any doubt about this being the correct interpretation it would be removed by reference to the definition of "assessee" contained in section 2 (2) of the Act. The word means the person by whom Income-tax is payable, in this case the company.

It follows therefore that the cost which is to be considered for the purpose of the allowance for depreciation must be the original cost to the person by whom the Income-tax is payable, in this case the company.

In the case of *Massey & Co. Ltd. v. The Commissioner of Income Tax, Madras*, three questions were submitted for the High Court's opinion. The third was as to "res judicata", to which no further reference need be made. The first two were as follows:—

(1) Whether Messrs. Massey and Company Limited who succeeded to the business of the Madras Engineering Works Limited are entitled to carry forward for the purposes of assessment depreciation to which full effect could not be given in the years previous to the succession by Massey and Company Limited.

(2) Whether Messrs. Massey and Company Limited can be allowed to calculate depreciation on assets taken over from the Madras Engineering Works Limited on the original cost of those assets to the latter, or at the value at which they were taken over by Messrs. Massey and Company Limited.

The High Court for reasons stated in the judgment of the Chief Justice held that the answer to the first question should be in the affirmative.

The answer to the above-mentioned second question was that the calculation must be made on the original cost to the Madras Engineering Company and not on the value at which the buildings, machinery, etc., were taken over by Massey and Co. It should be noted that no reasons for the decision with reference to the second question were given.

In their Lordships' opinion it is not necessary to express, and they do not express any opinion as to the correctness of the answer to the first question in the above-mentioned case, but they feel obliged to say that for the reasons, which have been already given, they cannot agree with the answer which the Madras High Court gave to the second question.

In the case of the *Commissioner for Income Tax Bombay Presidency v. The Saraspur Mills Co., Ahmedabad*, I.L.R. 56 Bom. 129, the High Court of Bombay refused to follow the decision of the Madras High Court in *Massey v. Commissioner of Income Tax, Madras* and held that

(1) When an assessee succeeds another in business the words "on the original cost thereof to the assessee" in section 10 (2) (vi) of the Indian Income-tax Act, 1922, refer to the original cost to the person who is being actually assessed and not to the previous owner of the business.

(2) Consequently assesseees are entitled to have the depreciation allowance under the said section 10 (2) (vi) of the said Act calculated

on the original cost to them and not to the previous owner from whom they have purchased the business.

In *Motiram Rosan Lal Coal Co., Ltd. v. Commissioner of Income Tax* I.L.R. 12 Pat. 12, the High Court of Patna approved of and followed the above-mentioned decision of the Bombay High Court, and dissented from the decision of the Madras High Court in *Massey & Co. v. The Commissioner of Income Tax, Madras*.

For the reasons already stated their Lordships agree with the decisions of the Bombay and Patna High Courts in the above-mentioned cases on the question now under consideration.

In view of that conclusion, it is not necessary for their Lordships to express any opinion on the second, third or fourth questions submitted to the High Court in this case, for, as the Commissioner pointed out in his reference, these questions only arise if it should be held that the decision in the case of *Massey & Co. v. Commissioner of Income Tax, Madras*, in respect of the matter raised in the first question was correct.

Their Lordships therefore are of opinion that the appeal should be allowed and the judgment and order of the High Court dated the 2nd of May, 1934, should be set aside.

The answer to the first question in the reference should be that the company, which succeeded to the business of the five companies mentioned therein, is entitled under section 10 (2) (vi) of the Act to depreciation allowance on the assets taken over from the five predecessor companies calculated on the value at which those assets were taken over by the company from the predecessor companies, and not upon the original cost of those assets to such predecessor companies.

The company must pay the costs of the appellant in the High Court and of this appeal.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

THE COMMISSIONER OF INCOME
TAX, MADRAS

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THE BUCKINGHAM AND CARNATIC
COMPANY, LIMITED, MADRAS

DELIVERED BY SIR LANCELOT SANDERSON

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