INCOME TAX REFERENCE.

Before D.K. Mahajan and Gopal Singh, JJ.

THE COMMISSIONER OF INCOME-TAX, PATIALA.—*Applicant*

versus

M/S HINDUSTAN MILK FOOD MANUFACTURERS LTD.—*Respondent.*

Income Tax Reference No. 21 of 1966.

May 3, 1971.

Income-tax Act (XI of 1922)—Sections 10 and 15—Assessee importing 80 per cent new and 20 per cent conditioned machinery from abroad—Total capital invested in acquiring and installing such machinery in India—Whether exempted under section 15(c).

Held, that the use of the word "building" in section 15-C(2) of Income-tax Act, 1922, in relation to transfer clearly indicates that the transfer is of a thing existing in India whether that is building or machinery or plant, otherwise the Legislature would not have clubbed the word "building" along with "machinery or plant". In the very context of the provision, the machinery can be new or old and all that would have to be seen whether in the case of old machinery it had been used in a business in India or not. The object of this provision is that the benefit of section 15-C is not available qua the same item twice. The correct approach, therefore, is to see whether the machinery has been in use in any other business in India and not in any business anywhere else in the world. The use of word "new machinery" in section 10(2)(vib) of the Act furnishes no guide for interpretation of the word 'machinery' in section 15-C(2). Both the provisions have been enacted for different purposes and thus one will not control the other. It is of significance that in section 10(2) (vib) the word 'building' is not used by the legislature along with the word 'machinery'. Moreover in section 10(2)(vib) the legislature used the "new" before "machinery" whereas in section 15-C(2) the word "new" has not been used before the word "machinery". Hence an assessee, who has imported 80 per cent new and 20 per cent conditioned machinery from abroad is entitled to exemption under section 15-C(2) of the Act on the total capital invested in acquiring and installing such machinery. (Para 3)

Reference under section 66(1) of the Income-tax Act, 1922 made by the Income Tax Appellate Tribunal, Delhi Bench 'C' for opinion of the below noted questions of law in a case R.A. No. 1434 of 1964-65, arising out of I.T.A. No. 14492 of 1963-64 for the Assessment year 1961-62.—

(1) *"Whether on the facts and in the circumstances of the case, the assessee's industrial undertaking was not formed by the transfer to its business of machinery or plant previously used in any other business within the meaning of section 15 C(2) (i) of the Income-tax Act, 1922, for the purposes of tax exemption in accordance with section 15-C(1) of the said Act?"*

(2) *"Whether on the facts and in the circumstances of the case, the machineries worth Rs. 2,68,515 was new machinery within the meaning of section 10(2) (vib) of the Income-tax Act, 1922?"*

D. N. AWASTHY AND B. S. GUPTA, ADVOCATE, for the appellant.

S. E. DASTUR, S. M. GROVER, I. B. BHANDARI, for R. K. D. BHANDARI, ADVOCATES, for the respondent.

JUDGMENT

The judgment of this Court was delivered by:—

MAHAJAN, J.—(1) Two interesting questions of law have been referred by the Income-tax Appellate Tribunal, Delhi Bench 'C', for our opinion. They are as follows:—

(1) Whether on the facts and in the circumstances of the case, the assessee's industrial undertaking was not formed by the transfer to its business of machinery or plant previously used in any other business within the meaning of section 15C(2)(a) of the Income-tax Act, 1922, for the purposes of tax exemption in accordance with section 15C(1) of the said Act ?

(2) Whether on the facts and in the circumstances of the case the machineries worth Rs. 2,68,515 was new machinery within the meaning of section 10(2) (vib) of the Income-tax Act, 1922 ?

(2) In order to settle these questions, it is necessary to set out the relevant facts. The assessee is a public limited company. It is engaged in the production of milk foods. For its establishment, it imported machineries from United Kingdom. It is now common ground that 80 per cent of that machinery was absolutely new; only 20 per cent of the machinery was reconditioned. There is no evidence that the reconditioned machinery was used in England, after reconditioning before it was sent out to India. However, a finding has been returned that the said machinery had no benefit of tax exemption under section 15-C in the United Kingdom. The assessee claimed tax exemption under section 15-C of the Income-tax Act, 1922, on the ground that the total capital invested in acquiring and installing the machinery had been expended for purposes of this

industry. The assessee also claimed development rebate under section 10(2) (vib). The Income-tax Officer repelled the claim of the assessee and held that in order to get the benefit of section 15-C, the machinery must be totally new. In his opinion, as part of the machinery was used previously in another business, he refused to grant the benefit of the aforesaid provision. Regarding the development rebate, it is not necessary to set out how the matter was dealt by the Income-tax Officer as well as the Appellate Assistant Commissioner. Suffice it to say that the Appellate Tribunal has allowed the assessee's total claim for development rebate under section 10(2)(vib). So far as the question of benefit of section 15-C is concerned the Appellate Assistant Commissioner affirmed the decision of the Income-tax Officer, whereas on appeal the Tribunal has reversed that decision and given the assessee the benefit of section 15-C. The Department being dissatisfied moved the Tribunal for a reference under section 66(1) of the 1922 Act. The Tribunal has thus referred the two questions of law already set out in the earlier part of this order, for our opinion.

(3) So far as the first question of law is concerned, it will be necessary to set out the relevant part of section 15-C(2) which applies to an industrial undertaking which "is not formed.... by the transfer to a new business of building, machinery or plant previously used in any other business.". The contention of the learned counsel for the Department is that we must read this provision along with section 10(2)(vib) and as in section 10(2)(vib) the word "new" occurs before the word "machinery", we must for purposes of section 15-C read the word "new" before the word "machinery", and in any case, by reason of the use of the word "used" before the words "in any other business", the learned counsel contends that the same result follows. We are unable to agree with this contention. In our opinion, the correct approach is that the machinery must have been in use in any other business in India and not in any business anywhere else in the world. This view finds ample support from the phraseology used in the provision. The use of the word "building" in relation to transfer clearly indicates that the transfer is of a thing existing in India whether that is building or machinery or plant, otherwise the Legislature would not have clubbed the word "building" along with "machinery" or "plant". In the very context of the provision, the machinery can be new or old and all that would have

to be seen is whether in the case of old machinery it had been used in a business in India or not. The object of this provision seems to be that the benefit of section 15-C is not available qua the same item twice. We are, therefore, clearly of the view that the contention of the learned counsel to the contrary cannot be accepted. No support can be derived for the said contention from the language of section 10(2)(vib). In the context of that provision, the interpretation placed on 'new machinery' furnishes no guide for interpretation of the word 'machinery' in section 15-C(2). Both the provisions have been enacted for different purposes and thus one will not control the other. It is of significance that in section 10(2)(vib) the word 'building' is not used by the legislature along with the word 'machinery'. Moreover in section 10(2) (vib) the Legislature used the word "new" before "machinery" whereas in section 15-C(2) the word "new" has not been used before the word "machinery".

(4) The main ground on which the Tribunal proceeded was that as the substantial part of the machinery is new, it is immaterial whether 20 per cent of the machinery is old. According to the Tribunal for all intents and purposes the entire machinery should be treated as new. We see no fundamental fallacy in this approach. Such a contention did find favour with the Madras High Court in **Commissioner of Income-tax Madras** v. *Fenner Cockill Ltd.* (1). Mr. Awasthy contends that the basis of percentage is not the basis that can be taken into account under the 1922-Act. It is undoubtedly true. We have not taken that as the basis. We have only used the proportion to illustrate the point. The basis for our view is the same as that adopted by the Madras High Court in **Fenner Cickill's case** (1). Therefore, whatever way the matter is examined, we are of the opinion that the Tribunal was right in allowing the benefit of section 15-C of the Act, to the assessee.

(5) So far as the second question is concerned, the learned counsel for the Department has confined his contention to the allowance of development rebate on the reconditioned machinery, the value of which is Rs 2,63,515. His contention is that this machinery is not new and, therefore. in the very terms of section 10(2)(vib), the assessee is not entitled to any rebate on the same. The matter is not **res integra**. A similar question fell for determination before the

(1) 74 I.T.R. 394.

Supreme Court in *Cochin Company* v. *Commissioner of Income-tax, Kerala* (2), and their Lordships took the view that in certain circumstances reconditioned machinery can be new machinery. In the present case material facts have not been determined and noticed in the statement of the case so as to enable us to determine the question satisfactorily. We, therefore, remit this part of the case to the Tribunal to find proper facts in the light of the Supreme Court decision in *Cochin Company's case* (2) and submit a supplementary statement of facts to us. This is necessary to enable us to justly determine the second question.

(6) We will deal with the matter of costs when the matter is finally disposed of, after the receipt of the supplementary statement of facts.

K. S. K.

CIVIL MISCELLANEOUS.

Before D. K. Mahajan and Gopal Singh, JJ.

HARGIAN SINGH ETC.,—*Petitioners*

versus

THE STATE OF HARYANA ETC.—*Respondents.*

Civil Writ No. 2756 of 1970.

May 4, 1971.

Punjab Agricultural Produce Markets Act (XXIII of 1961)—Section 12, as substituted by Punjab Agricultural Produce Markets (Haryana Amendment) Act (XXV of 1970), and section 16—Constitution of India (1950)—Article 14—Substituted section 12 taking away the right of election to the Market Committee—Whether undemocratic and violates Article 14 of the Constitution—Nominated Market Committee after the coming into force of section 12—Whether has the right to elect a Chairman and Vice-Chairman.

Held, that there does not inhere in any person the right of election to the office of a member of a Market Committee. It is entirely for the legislature to provide for constitution of market committees either by process of election of its members or by their nomination. The legislalture by

(2) 67 I.T.R. 199.