CIVIL REFERENCE

Before Mehar Singh and Inder Dev Dua, JJ.

THE AMBALA BUS SYNDICATE LTD.,—*Petitioner.*

versus

THE COMMISSIONER OF INCOME-TAX PUNJAB,—*Respondent.*

Income-Tax Reference No. 20 of 1962.

1963

Feb., 11th.

Income-tax Act (XI of 1922)—S. 10(2)(vi) paragraph 2 and S. 10(5)—New body set on a motor vehicle for transporting passengers—Whether entitled to initial depreciation.

Held, that paragraph 2 of clause (vi) in sub-section (2) of section 10 of the Indian Income-tax Act, 1922, refers to 'plant being new', and it is clear that a plant that is partly not new is not within the scope of these words. Again sub-section (5) of stction 10 defines 'plant' to include vehicles, and here again the intention does not appear to be to include part of a vehicle such as the body of a vehicle in that definition. An engine, which may be a complete machinery unit by itself, is not the same thing as a body on a vehicle which cannot be considered to be complete in any sense as a useful unit unless it is fixed on vehicle and the vehicle thus becomes complete for use. The assessee is, therefore, not entitled to the initial depreciation on the new bodies set on its motor vehicles under section 10(2)(vi), paragraph 2 of the Indian Income-tax Act, 1922.

Case referred by the Income-tax Appellate Tribunal Delhi Bench, on 12th March, 1962 for decision of the following question of law involved in the case:—

> *"Whether in the facts and circumstances of the case, the assessee is entitled to initial depreciation on the item of Rs. 32,947?".*

DEVA SINGH RANDHAWA, ADVOCATE AND S. S. MAHAJAN, ADVOCATE, for the Petitioner.

D. N. AWASTHY ADVOCATE, AND H. R. MAHAJAN ADVOCATE, for the Respondent.

ORDER

Mehar Singh, J. MEHAR SINGH, J.— The assessee plies a number of passenger buses for hire. In the assessment year 1954-55, in regard to the accounting year 1953-54, the assessee claimed an allowance of Rs. 32,947 under section 10(2)(vi), paragraph 2, on the ground of having acquired new plant inasmuch as it had had new bodies set on its motor vehicles, with the object of increasing sitting capacity for passengers so that it may augment its gains.

The Income-tax Officer as also on appeal the Appellate Assistant Commissioner found the amount expended by the assessee on replacement of old bodies on its vehicles by new bodies as representing capital expenditure and this has not been a matter of controversy between the parties. The claim was disallowed by the Income-tax Officer but the Appellate Assistant Commissioner allowed it as initial depreciation item under the said provision. On a further appeal by the respondent the Income-tax Appellate Tribunal, Delhi Bench 'B' has reversed the appellate order restoring that of the Income-tax Officer holding that the body of a bus is neither a machinery by itself nor is it a plant within the meaning and scope of section 10(2)(vi), paragraph 2. On application of the assessee it has made reference of this question to this Court,—

> Whether in the facts and circumstances of the case, the assessee is entitled to initial depreciation on the item of Rs. 32,947?

The second paragraph of clause (vi) in subsection (2) of section 10 provides for allowance in

the shape of initial depreciation where 'the machinery or plant being new, * * * * *, has been installed after the 31st day of March, 1945, and before the 1st day of April, 1956, a further sum (which shall however not be deductible in determining the written down value for the purposes of this clause) in respect of the year of * * * * installation equivalent * * (c) in the case of machinery or plant, to twenty per cent of the cost thereof to the assessee, and sub-section (5) of section 10 says that 'plant' includes vehicles. The contention of the learned counsel for the assessee is that in view of sub-section (5) each vehicle of the assessee is a plant, and a part of that plant in the shape of new body on the vehicle has itself to be considered as a plant for the purposes of paragraph 2 of clause (vi) in sub-section (2) of section 10. There is no direct case which deals with this aspect of the matter and from which the learned counsel can obtain assistance in support of his argument. There are four reported cases in which somewhat conflicting judicial opinions have prevailed but the cases concerned not replacement of an old body by a new body of a vehicle but replacement of petrol engine by a diesel engine. The first case is *Maneklal Vallabhdas Parekh* v. *Commissioner of Income-tax*, Bombay (North) (1). In that case on behalf of the assessee initial depreciation was claimed under clause (vi) both on the ground that the new diesel engine, that replaced the old petrol engine in the vehicle, was within the expression 'plant', as also 'machinery' as used in paragraph 2 of clause (vi), it having been stated in the arguments that

(1) (1959) 37 I.T.R. 142.

The Ambala Bus Syndicate Ltd. *v.* The Commissioner of Income-Tax, Punjab

Mehar Singh, J.

'vehicles' are particularly included in the expression 'plant' by sub-section (5) of section 10. The learned Judges observed—

> "Though by the definition of 'plant' vehicles are included, we would not, especially in interpreting a taxing statute, be justified in holding that what is installed in a vehicle which in substance forms part thereof would also be regarded as included in the connotation of that expression."

In regard to the second aspect of the argument the learned Judges say—

> "We are also unable to agree with the alternative contention of Mr. Mehta that these diesel engines constitute 'machinery being new which has been installed'. In our view, in order that initial depreciation should be allowable on machinery, it must be a self-contained unit capable of being put to use in the business, profession or vocation for the benefit of which it is installed."

So the learned Judges repelled both aspects of the argument. In the present case it is only the first aspect of the argument that is relevant. Although that was a case of replacement of a petrol engine by a new diesel engine but the learned Judges were clearly of the opinion that the expression 'plant' including a vehicle, could not be regarded as including part thereof. This case has been followed in *B. Srikantiah* v. *Commissioner of Income-tax, Andhra Pradesh* (2). That was also a case of replacement of a petrol engine by a new

(2) (1961) 41 I.T.R. 518.

diesel engine in the vehicle. In *Mir Mohd. Ali* v. *Commissioner of Income-tax, Madras* (3), the learned Judges of the Madras High Court have not agreed with the view of the Bombay High Court in the first mentioned case holding that machinery does not cease to be machinery merely because it has to be used in conjunction with one or more machines, nor merely because it is installed as part of a manufacturing or industrial plant. They were of the opinion that a diesel engine, replacing a petrol engine in a vehicle, was by itself 'machinery' within the meaning of section 10(2)(vi) and continued to be machinery even after it was made an integral part of the assessee's bus. This case has been followed in *Mr. George Mathew* v. *Commissioner of Income-tax, Kerala and Coimbatore* (4), the learned Judges in this case also not accepting the view of the Bombay High Court as to the scope of the expression 'machinery'. These last two cases are confined only to the consideration of the scope of the expression 'machinery', and these obviously are not relevant for the present purpose because what is being considered here is whether the new body set by the assessee on its vehicle is a 'plant' as that expression is used in section 10(2)(vi), Paragraph 2, read with sub-section (5) of section 10. The first two cases, though on facts different from the present case, are relevant to this extent that the same decide a question of approach that a part of a plant such as an engine in a vehicle is not within the definition of the expression 'plant' as in section 10(2)(vi), paragraph 2, and (5). So these cases rather support the claim of the Department.

The learned counsel for the assessee has contended that the assistance that he derives from

(3) (1960) 38 I.T.R. 413.
(4) (1961) 43 I.T.R. 535.

The Ambala Bus Syndicate Ltd.
v.
The Commissioner of Income-Tax, Punjab

Mehar Singh, J.

Mir Mohd. Ali's and B. Srikantiah's cases is that as a diesel engine replacing a petrol engine in a bus is 'machinery' so by analogy a new body, replacing an old body on a bus ought to be taken as 'plant' within the scope of the provisions as referred to. The analogy is not complete for one thing an engine, which may be a complete machinery unit by itself, is not the same thing as a body on a vehicle which cannot be considered to be complete in any sense as a useful unit unless it is fixed on vehicle and the vehicle thus becomes complete for use. So that there is no substance in this argument.

Paragraph 2 of clause (vi) in sub-section (2) of section 10, for the present purpose, refer to 'plant being new', and it is clear that a plant that is partly new and partly not new is not within the scope of these words. Again sub-section (5) of section 10 defines 'plant' to include vehicles, and here again the intention does not appear to be to include part of a vehicle such as the body of a vehicle in that definition.

The learned counsel for the assessee then presses that the substantial part of the vehicle so far as the assessee is concerned is the body of the vehicle which provides seating capacity for the passengers and for this reason a body of a vehicle should be considered within the scope of the definition of the expression 'plant', but the scope of that expression is to be viewed in the context in which it is used by the legislature and not in the approach which the assessee makes to the utility of a particular part of a vehicle. And further a body by itself is of no practical utility unless it is affixed to a vehicle which can then be used for transport. This argument is without substance.

The learned counsel for the assessee also refers to *Maden and Ireland Limited* v. *Hinton*, (5), in which the Court of Apeal in England held that knives and lasts inserted as members of heavy machines in the business of manufacturing boots, shoes and slippers were machinery or plant, and he contends that as part of the heavy machinery in that case was considered plant so that case lends support to the claim of the assessee. The learned Master of the Rolls at page 320 of the report points out that the Special Commissioner having come to the conclusion that knives and lasts in that case were within the meaning of the phrase 'machinery or plant', it was the duty of the Court *Prima facie* to accept the conclusion which then became a question of fact whether in truth, and in the light of all the special circumstances of the manufacturing process the knives and lasts can be properly described as 'plant' or 'machinery or plant'. It is obvious that in view of this observation this case is not helpful to the assessee and even in Mir *Mohd. Ali's* case, in which reference to Hinton's case has been made, the learned Judges have pointed out that that case is not an authority for the decision of a case like the one that was before them. So *Hinton's* case does not advance the argument on behalf of the assessee.

In the circumstances the approach to the matter by the learned income-tax Appellate Tribunal is correct and the answer to the question is that the assessee is not entitled to the initial depreciation under section 10(2) (vi), paragraph 2, as claimed by it. There is no order in regard to costs in this reference.

INDER DEV DUA, J.—I agree.

B.R.T.

(5) (1958) 37 Annotated Tax Cases 317.