A

COMMISSIONER OF INCOME-TAX, MADRAS

v

MAHALAKSHMI TEXTILE MILLS LTD.

May 5, 1967

B [J. C. SHAH, S. M. SIKRI AND V. RAMASWAMI, JJ.]

Indian Income-tax Act, 1922 (*Act* 11 *of* 1922) *s.* 33—*Plea not raised before department—If can be before Tribunal.*

Expenditure on introducing the Casabalanca conversion system in the spinning plant of the assessee was not allowed as "development rebate" by the Income-tax Officer and the Appellate Commissioner. The Appel-
C late Tribunal after inspecting the factory and considering the literature and Government notifications, held that the expenditure, though not admissible as development rebate, was admissible as an allowance for current repairs to the existing machinery under s. 10(i) XV of the Income-tax Act. The High Court, on reference, accepted the Tribunal's finding and held that the Tribunal had jurisdiction to permit the assessee to raise a new contention which was not raised before the departmental
D authorities. In appeal by the Commissioner, this Court,

HELD : The appeal must be dismissed.

Under sub-s. (4) of s. 33 of the Indian Income-tax Act, 1922, the Appellate Tribunal is competent to pass such orders on the appeal "as it thinks fit". There is nothing in the Income-tax Act which restricts the Tribunal to the determination of questions raised before the departmental authorities. All questions whether of law or of fact which relate
E to the assessment of the assessee may be raised before the Tribunal. If for reasons recorded by the departmental authorities in rejecting a contention raised by the assessee, grant of relief to him on another ground is justified, it would be open to the departmental authorities and the Tribunal, and indeed they would be under a duty to grant that relief. The right of the assessee to relief is not restricted to the plea raised by him. [959D-F]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 784 of 1966.

Appeal by special leave from the judgment and order dated March 12, 1964 of the Madras High Court in Tax Case No. 157 of 1961.

G *D. Narsaraju* and *R. N. Sachthey,* for the appellant.

R. Gopalakrishnan and *N. Srinivasan,* for the respondent.

The Judgment of the Court was delivered by

Shah, J. The respondent—hereinafter called 'the assessee'—carries on the business of manufacture and sale of cotton yarn.
H In the previous year relevant to the assessment year 1956-57, the assessee spent Rs. 93,215/- for introduction of "Casablanca conversion system" in its spinning plant. Substantially this involved replacement of certain roller stands and fluted rollers fitted

with rubber aprons to the spinning machinery, removal of ring-frames from certain existing parts, introduction, *inter alia*, of ball-bearing jockey-pulleys for converting the original band-drivers to tape-drivers and other additions and alterations in the drafting mechanism.

The Income-tax Officer disallowed the claim of the assessee for Rs. 93,215/- because it was not admissible as "development rebate" since the introduction of Casablanca conversion system did not involve installation of "new machinery". The Appellate Assistant Commissioner agreed with the Income-tax Officer. In appeal to the Appellate Tribunal, besides submitting the claim that expenditure was allowable as development rebate, the assessee urged that the amount laid out for introducing the Casablanca conversion system was in any event expenditure allowable under s. 10(2)(v) of the Indian Income-tax Act. The Tribunal inspected the spinning factory of the assessee and studied the working of the machinery with the Casablanca conversion system in the process of spinning yarn. They also considered the literature published by the manufacturers of Casablanca conversion system and the relevant notification issued by the Ministry of Commerce, Government of India, defining the import policy, and held that as a result of "the stress and strain of production over a long period" there was need for change in the plant and that the assessee had replaced old parts by introducing the Casablanca conversion system. In the view of the Tribunal the expenditure incurred for introducing the Casablanca conversion system, though not admissible as development rebate, was admissible as an allowance under s. 10(2)(v) of the Indian Income-tax Act.

The Tribunal then referred the following two questions to the High Court of Judicature at Madras :

> "(1) Whether on the facts and in the circumstances of the case, the Tribunal had jurisdiction to decide whether the sum of Rs. 93,215/- constituted an allowable item of expenditure under s. 10(2)(v) of the Act ?
>
> (2) Whether on the facts and in the circumstances of the case, the sum of Rs. 93,215/- or any portion thereof is allowable as an expenditure incurred for current repairs under s. 10(2)(v) of the Act ?"

The High Court accepted the finding recorded by the Tribunal that by the introduction of the Casablanca conversion system no new machinery or plant was installed, but the introduction of the system amounted "to fitting of improved versions of certain minor parts" and expenditure in that behalf was of revenue nature. The High Court also held that the Tribunal had jurisdiction to permit the assessee to raise a new contention which was not raised

A before the departmental authorities. The Commissioner has appealed to this Court, with special leave.

The Tribunal had evidence before it from which it could be concluded that by introducing the Casablanca conversion system the assessee made current repairs to the machinery and plant. B The High Court observed that certain moving parts of the machinery had because of "wear and tear" to be periodically replaced, and when it was found that the old type of replacement parts were not available in the market, the assessee introduced the Casablanca conversion system, but thereby there was merely replacement of certain parts which were a modified version of the C older parts. Counsel for the Commissioner has not challenged these findings and the answer to the second question recorded in the affirmative by the High Court must be accepted.

By the first question the jurisdiction of the Tribunal to allow a plea inconsistent with the plea raised before the departmental authorities is canvassed. Under sub-s. (4) of s. 33 of the Indian D Income-tax Act, 1922, the Appellate Tribunal is competent to pass such orders on the appeal "as it thinks fit". There is nothing in the Income-tax Act which restricts the Tribunal to the determination of questions raised before the departmental authorities. All questions whether of law or of fact which relate to the assessment of the assessee may be raised before the Tribunal. If for E reasons recorded by the departmental authorities in rejecting a contention raised by the assessee, grant of relief to him on another ground is justified, it would be open to the departmental authorities and the Tribunal, and indeed they would be under a duty to grant that relief. The right of the assessee to relief is not restricted to the plea raised oy him.

F The Tribunal in the present case was of the opinion that in order to adjust the liability of the assessee, it was necessary to ascertain the true nature of the Casablanca conversion system. The assessee had, it is true, contended that the introduction of the Casablanca conversion system was of the nature of machinery or plant which being new had been installed for the purpose of G business within the meaning of s. 10(2)(vi-b) of the Indian Income-tax Act. The Tribunal rejected the claim of the assessee, but on that account the Tribunal was not bound to disallow the claim of the assessee for allowance of the amount spent, if it was a permissible allowance on another ground. The Tribunal on investigation of the true nature of the alterations made by the H introduction of the Casablanca conversion system came to the conclusion that it did not amount to installation of new machinery or plant, but it amounted in substance to current repairs to the existing machinery.

The subject-matter of the appeal in the present case was the right of the assessee to claim allowance for Rs. 93,215/-. Whether the allowance was admissible under one head or the other of sub-s. (2) of s. 10, the subject-matter for the appeal remained the same, and the Tribunal having held that the expenditure incurred fell within the terms of s. 10(2)(v), though not under s. 10(2)(vi-b), it had jurisdiction to admit that expenditure as a permissible allowance in the computation of the taxable income of the assessee. A B

The High Court was, therefore, right in answering the first question in the affirmative.

The appeal fails and is dismissed with costs. C

Y.P. *Appeal dismissed.*