

## INCOME-TAX REFERENCE.

*Before Rankin C. J., O. C. Ghose and Buckland J.J.*

*In re* SHEWDAYAL JAGANNATH.\*

1930

Nov. 24;  
Dec. 9.

*Income-tax—Obsolescence allowance—Worn-out machine, if obsolete—Indian Income-tax Act (XI of 1922), s. 10 (2) (vii).*

Obsolescence allowance is not claimable merely because machinery has become worn out and is sold or discarded for that reason.

A machine is said to be obsolete, not because it has come to the end of its working "life" but by reason that newer types of machinery or newer methods become necessary in the face of competition.

*Rathan Singh v. Commissioner of Income-tax, Madras* (1) relied on.

Whether a machine is obsolete or not is a question of degree and a question of fact, and the findings of the Commissioner of Income-tax must be accepted.

*South Metropolitan Gas Co. v. Dadd* (2) relied on.

## INCOME-TAX REFERENCE.

All necessary facts appear from the judgment.

*Hemendranarayan Bhattacharya* for the assessee. From Webster's Dictionary it appears that "obsolete" means "worn out."

The machinery in this case has been discarded and should be taken as "obsolete," as follows from *Secretary, Board of Revenue (Income-tax), Madras v. Ramanathan Chettiar* (3).

*N. N. Sircar, Advocate-General* (with him *Radhabinode Pal*) for the Income-tax Department. Clause (vii) of sub-section (2) of section 10 of the Indian Income-tax Act must be read with clause (vi) of the said sub-section. Simply because machine is worn out it cannot be called obsolete. *Rathan Singh v. Commissioner of Income-tax, Madras* (1).

*Bhattacharya*, in reply.

*Cur. adv. vult.*

\*Reference No. 5 of 1930 under section 66 (2) of the Indian Income-tax Act.

(1) (1925) 2 Ind. Tax Cas. 107. (2) (1927) 13 Tax Cas. 205.  
(3) (1923) 1 Ind. Tax Cas. 244.

1930

In re  
Shewdayal  
Jagannath.

RANKIN C. J. In this case, the assessees claim to be entitled to the allowance authorised by section 10, sub-section (2), clause (vi) of the Income-tax Act: "in respect of any machinery or plant which, in consequence of its having become obsolete, has been sold or discarded." The Commissioner for Income-tax has disallowed the claim and has stated a case for the opinion of the Court upon the question: "Was the claim for obsolescence allowance rightly disallowed?"

It appears that the assessees purchased some old machinery and started an oil mill in Calcutta just before the beginning of the year 1927-28, being Ramnavami year 1984. It was, however, worked at a loss and the oil mill was accordingly closed down in that year, some parts of the machinery being sold and the remainder scrapped. The present question arises out of the assessment for 1929-30 which has been based upon the income of the previous year, namely, Ramnavami 1985. The finding of the Commissioner is to the effect that the business of the oil mill closed down in 1984 for the reason that the machinery being old and worn could not be worked at a profit in the face of competition, and he takes the view accordingly that the machinery was not scrapped because it was obsolete but because it was worn out, with the result that the working expenses were heavy in comparison with new machines. He has negatived the suggestion that new inventions or the employment of newer types of machinery were any part of the reasons for which the oil mills were closed down.

In these circumstances, it appears to me that, unless we are to hold that the obsolescence allowance is claimable whenever machinery has become worn out and is sold or discarded for that reason, the assessees cannot succeed. The allowance given by clause (vi) of sub-section (2) of section 10 of the Act, is to be read with the allowance for depreciation given by clause (vi). Both are exceptions made by the statute to the general principle that so far as the fixed capital of a business is concerned, appreciation or depreciation do

not enter into the computation of profits. *Prima facie*, the proper heading under which provision is made for the loss in value occasioned by wear and tear or continuous user is the heading "depreciation." The statute recognises, however, that machinery and plant may have to be discarded not because it has come to the end of its working "life" but by reason that newer types of machinery or newer methods have become necessary in the face of competition. Even if it is good of its kind, obsolescence allowance comes into play in such a case; but it is another matter altogether to hold that whenever a machine becomes worn out and it is seen that the aggregate of the allowances made for depreciation has not exhausted its original cost, allowance for obsolescence can be claimed in respect of the balance. In the case of *Rathan Singh v. Commissioner of Income-tax, Madras* (1), the Madras High Court held as follows:—

" 'Obsolete' as applied to machinery means machinery 'which has got out of date because it has been 'superseded by later machinery more suitable to its 'purpose and therefore although able to perform its 'functions it is not, in common parlance, sufficiently 'up to date to make it machinery that a prudent man 'would continue to use, but machinery which he would 'replace as being, in the ordinary meaning of the 'term, 'obsolete.' " Now, there is always a certain danger in committing one's self to a definition, but for the purposes of the present case, this exposition is, I think, correct and sufficient. It is not possible for us to hold that the Commissioner of Income-tax, upon the findings of fact at which he arrived, was obliged in law to permit the assessee to make the deduction which they claim. We may say here what Rowlatt J. said in *South Metropolitan Gas Co. v. Dadd* (2): "It 'quite clearly is a question of degree, and a question 'of fact, when machinery becomes obsolete, and I 'cannot see any evidence that the Commissioners have 'not addressed their minds to a proper question."

1930

In re  
*Shewdayal*  
*Jagannath.*

Rankin C. J.

(1) (1925) 2 Ind. Tax Cas. 107, 110.

(2) (1927) 13 Tax Cas. 205, 211.

1930

In re  
*Shewdayal*  
*Jagannath.*

The question referred to us must be answered in the affirmative and the assesseees must pay the costs of the reference.

GHOSE J. I agree.

BUCKLAND J. I agree.

*Reference accepted.*

Advocate for the assesseees: *Hemendranarayan*  
*Bhattacharya.*

Advocate of the Income-tax Department: *Radha-*  
*binode Pal.*

S. M.