

The assessing officer rejected the claim on the ground that the assessee had not become owner for want of deed of conveyance in its favour. The Commissioner of Income Tax allowed assessee's appeal. The Income Tax Appellate Tribunal set aside the decision by CIT on a reference. U/S 256, the H.C. agreed with the view taken by CIT. A

On behalf of the assessee it was contended that vesting of a title in the assessee though short of absolute ownership should entitle the assessee to claim depreciation under Section 32 of the Act. B

On behalf of the Revenue it was contended that the term 'owned' occurring in Section 32(1) should be assigned its legal meaning and without the execution and registration of a sale deed the assessee was not entitled to claim depreciation under Section 32 of the Act. C

Allowing the appeal, the Court

HELD: 1.1. Section 32 of the Income Tax Act, 1961 confers a benefit on the assessee. The provision should be so interpreted and the words used therein should be assigned such meaning as would enable the assessee securing the benefit intended to be given by the Legislature to the assessee. It is also well settled that where there are two possible interpretations, the one, which is favourable to the assessee, should be preferred. [186-D-E] D

1.2. The terms 'own', 'ownership' and 'owned' are generic and relative terms. They have a wide and also a narrow connotation. The meaning would depend on the context in which the terms are used. [186-E-F] E

Black's law Dictionary, 6th Edn, *Dias on Jurisprudence*, 4th Edn, p. 400 and *Strud's Judicial Dictionary*, referred to. F

1.3. The term 'owned' occurring in Section 32(1) of the Act must be assigned a wider meaning. Any one in possession of property in his own title exercising such dominion over the property as would enable others being excluded therefrom and having right to use and occupy the property and/or to enjoy its usufruct in his own right would be the owner of the buildings though a formal deed of title may not have been executed. Therefore, the expression "building owned by the assessee" occurring in Section 32(1) of the Act, means the person who having acquired possession over the building in his own right uses the same for the purposes of the business or profession though a legal title has not been conveyed to him consistently with the requirements of laws such as Transfer of Property Act, Registration Act etc. G H

A but nevertheless is entitled to hold the property to the exclusion of all others.
[189-B-D]

CIT v. Poddar Cement Pvt. Ltd., [1997] 5 SCC 482; *State of U.P. v. Renusagar Power Company*, AIR (1988) SC 1737; *R.B. Jodhamal Kuthiala v. CIT*, (1971) 82 ITR 570 and *Nair Service Society Ltd. v. K.C. Alexander*, AIR (1968) SC 1165, followed.

Ramkumar Mills (P) Ltd. v. CIT, 180 ITR 464 (Kar), impliedly overruled and *Perry v. Clissold*, (1907) AC 73, referred to.

C 2. The very concept of depreciation suggests that the tax benefit on account of depreciation legitimately belongs to one who has invested in the capital asset, is utilizing the capital asset and thereby losing gradually investment caused by wear and tear, and would need to replace the same by having lost its value fully over a period of time. [190-B-C]

D *Badiani P.K. v. CIT*, (1976) 105 ITR 642, relied on.

Parks: Principles & Practice of Valuation, 5th Edn. P. 323 and *Paton: Account's Handbook*, 3rd Edn., referred to.

E 3. It is well settled that there cannot be two owners of the property simultaneously and in the same sense of the term. The intention of the Legislature in enacting Section 32 of the Act would be best fulfilled by allowing deduction in respect of depreciation to the person in whom for the time being vests the dominion over the building and who is entitled to use it in his own right and is using the same for the purposes of his business or profession. In the present case, the assessee has been denied the benefit of Section 32. On the other hand, the Housing Board would be denied the benefit of Section 32 because in spite of its being the legal owner it was not using the building for its business or profession. Such a benefit-to-none situation could not have been intended by the Legislature. Therefore, the High Court was not right in taking the view, which it did. [191-C-E; 192-B]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5374 of 1994.

From the Judgment and Order dated 18.6.92. of the Karnataka High Court in I.T.R.C. No. 93 of 1990.

H S.K. Mehta, Dhruv Mehta, Fazlin Anam and Ms. Shobha for the Appellant.

K.N. Shukla, Hemant Sharma and S.K. Dwivedi for the Respondent. A

The Judgment of the Court was delivered by

R.C. LAHOTI, J. The appellant-assessee is a private limited company. During the assessment year 1981-82 (accounting year ending on 31.3.1981) the assessee had purchased for the use of its Staff seven low income group houses from the Housing Board. The assessee had made part payments and was in turn made allotment of the houses followed by delivery of possession by the Housing Board. The actual deed of conveyance was not yet executed by the Housing Board in favour of the assessee. The assessee made a claim under Section 32 of the Income-tax Act in respect of depreciation of buildings used for the purpose of the business of the assessee. The claim was rejected by the assessing officer forming an opinion that the assessee had not become owner for want of deed of conveyance in its favour. The Commissioner of Income-tax allowed the appeal preferred by the assessee and directed the assessing officer to allow the assessee's claim for depreciation inasmuch as the company was acting as the owner and could exercise the rights of the owner qua the houses. The Tribunal in an appeal preferred by the Revenue set aside the decision of the CIT. On an application under Section 256 (1) of the Act filed by the appellant, the following question was referred by the Tribunal for the opinion of the High Court:-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in rejecting the claim of the assessee for depreciation in respect of the seven houses in respect of which the assessee has not obtained a deed for conveyance from the vendor although it had taken possession and made part payment of the consideration?"

The High Court relying on its own decision in *Ramkumar Mills (P.) Ltd. v. Commissioner of Income-tax*, 180 ITR 464 answered the question in the affirmative, that is, against the assessee. The aggrieved assessee has preferred this appeal pursuant to certificate under Section 261 of the Act granted by the High Court.

Section 32 of the Act allows certain deductions, one of them being depreciation of buildings etc., owned by the assessee and used for the purposes of the business or profession. It is the word 'owned' as occurring in sub-section (1) of Section 32 which is the core of controversy. Is it only an absolute owner or an owner of the asset as understood in its legal sense who can claim depreciation? Or, a vesting of title short of full-fledged or legal

- A ownership can also entitle an assessee to claim depreciation under Section 32? The learned senior counsel for the Revenue has submitted that the term 'owned' should be assigned its legal meaning and so long as an assessee, has not become an owner of the property in the sense that the title has not come to vest in him in the manner contemplated by law, he cannot claim benefit of deduction under Section 32 of the Act. Under Section 54 of the Transfer of Property Act, title in immovable property is transferred to a person by execution and registration of a sale deed. Admittedly that having not taken place, the assessee is not entitled to the benefit. The learned counsel for the assessee has on the other hand placing reliance of the decisions of this Court in *R.B. Jodha Mal Kuthiala v. CIT*, [1971] 3 SCC 369; (1971) 82 ITR 570 and *CIT. Bombay & Ors. v. Podar Cement Pvt. Ltd. and Ors.*, [1997] 5 SCC 482 submitted that the term 'owned' in Section 32 (1) should be assigned a contextual meaning and keeping in view the underlying object of the provision vesting of a title in the assessee though short of absolute ownership should also entitle the assessee to the benefit of Section 32 (1).

- D Section 32 of the Income-tax Act confers a benefit on the assessee. The provision should be so interpreted and the words used therein should be assigned such meaning as would enable the assessee securing the benefit intended to be given by the Legislature to the assessee. It is also well-settled that where there are two possible interpretations of a taxing provision the one which is favourable to the assessee should be preferred.

E What is ownership? The terms 'own' 'ownership' owned are generic and relative terms. They have a wide and also a narrow connotation. The meaning would depend on the context in which the terms are used. Black's Law Dictionary (6th Edition) defines 'owner' as under:-

- F "Owner. The person in whom is vested the ownership, dominion, or title of property; proprietor. He who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right of enjoy and do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right.

- G The term is, however, a *nomen generalissimum*, and its meaning is to be gathered from the connection in which it is used, and from the subject-matter to which it is applied. The primary meaning of the word as applied to land is one who owns the fee and who has the right to dispose of the property, but the terms also included one having a

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possessory right to land or the person occupying or cultivating it. A

The term "owner" is used to indicate a person in whom one or more interests are vested his own benefit....."

In the same Dictionary, the term 'ownership' has been defined to mean *inter alia*, as - "Collection of right to use and enjoy property, including right to transmit it to othersThe right of one or more persons to possess or use a thing to the exclusion of others. The right by which a thing belongs to some one in particular, to the exclusion of all other persons. The exclusive right of possession, enjoyment or disposal; involving as an essential attribute the right to control, handle, and dispose." B

Dias on Jurisprudence (4th Edn., at p.400) states : C

"The position, therefore, seems to be that the idea of ownership of land is essentially one of the 'better right' to be in possession and to obtain it, whereas with chattels the concept is a more absolute one. Actual possession implies a right to retain it until the contrary is proved, and to that extent a possessor is presumed to be owner." D

Stroud's Judicial Dictionary gives several definitions and illustrations of ownership. One such definition is that the 'owner' or 'proprietor' of a property is the person in whom (with his or her assent) it is for the time being beneficially vested, and who has the occupation, or control, or usufruct, of it; e.g., a lessee is, during the term, the owner of the property dismissed. Yet another definition that has been given by Stroud is : E

"owner" applies" to every person in possession or receipt either of the whole, or of any part, of the rents or profits of any land or tenement; or in the occupation of such land or tenement, other than as a tenant from year to year or for any less term or as a tenant at will." F

In State of U.P & Ors. v. Renuagar Power Compay and Ors., AIR (1988) SC 1737 (para 47) it was held that the word 'own' is a generic term embracing within itself several gradations of title, dependent on the circumstances, and it does not necessarily mean ownership in fee simple; it mean, "to possess, to have or hold as property". G

In CIT v. Podar Cement Pvt. Ltd., (supra) the question which came up for consideration before this Court was whether the rental income from the H

A house property which had come to vest in the assessee, but as to which the assessee was not legal owner for want of deed of title, was liable to be assessed as income from house property, or as income from other sources. To be assessable as income from house property within the meaning of Section 22 of the Act the property should be such "of which the assessee is the owner". This Court upon a juristic analysis of the underlying scheme of the Act and resorting to contextual and purposive interpretation, also having reviewed several conflicting decisions of different High Courts, held that the liability to be assessed was fixed on a person who receives or is entitled to receive the income from the property in his own right. Vide para 55, this court has held:

C "we are conscious of the settled position that under the common law owner means a person who has got valid title legally conveyed to him after complying with the requirements of law such as Transfer of Property Act, Registration Act etc. But in the context of section 22 of the Income-tax Act having regard to the ground realities and further having regard to the object of the Income -tax Act namely, "to tax the Income ", we are of the view, owner is a person who is entitled to receive income from the property in his own right."

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E In *R.B. Jodhamal Kuthiala v. CIT*, (1971) 82 ITR 570 it was held for the purpose of Section 9 of the Indian Income-Tax Act, 1922 that the owner must be the person who can exercise the right of the owner, not on behalf of the owner but in his own right.

F We may usefully extract and re-produce the following classic statement of law from *perry v. Clissold*, (1907) AC 73 quoted with approval in *Nair Service Society Ltd. v. K.C. Alexander and Ors.*, AIR (1968) SC 1165:

G "It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is for ever extinguished and the possessory owner acquires an absolute title."

H Podar Cements case (Supra) is under the Income-tax Act and has to be taken as trend-setter on the concept of ownership. Assistance from the

law laid down therein can be taken for finding out meaning of the term 'owned' as occurring in Sec. 32 (1) of the Act. A

In our opinion, the term owned as occurring in Sec. 32(1) of the Income-Tax Act, 1961 must be assigned a wider meaning. Any one in possession of property in his own title exercising such dominion over the property as would enable other being excluded therefrom and having right to use and occupy the property and/or to enjoy its usufruct in his own right would be the owner of the buildings though a formal deed of title may not have been executed and registered as contemplated by Transfer of Property Act, Registration Act etc. 'Building owned by the assessee' the expression as occurring in Section 32 (1) of the Income-Tax Act means the person who having acquired possession over the building in his own right uses the same for the purposes of the business or profession though a legal title has not been conveyed to him consistently with the requirements of laws such as Transfer of Property Act., and Registration Act etc. but nevertheless is entitled to hold the property to the exclusion of all others. B C

Generally speaking depreciation is an allowance for the diminution in the value due to wear and tear of capital asset employed by an assessee in his business. Black's Law Dictionary (Fifth Edn.) defines depreciation to mean, inter alia: D

"A fall in value; reduction of worth. The deterioration or the loss or lessening in value, arising from age, use, and improvements, due to better methods. A decline in value of property caused by wear or obsolescence and is usually measured by a set formula which reflects these elements over a given period of useful life of property..... Consistent gradual process of estimating and allocating cost of capital investments over estimated useful life of asset in order to match cost against earnings....." E F

Parks in Principles & Practice of Valuation (Fifth Edn., at page 323) states: As for building, depreciation is the measurement of wearing out through consumption, or use, or effluxion of time. Paton has in his Account's Handbook (3rd Edn.) observed that depreciation is an out-of-pocket cost as any other costs. He has further observed-the depreciation charge is merely the periodic operating aspect of fixed asset costs. G

In *Badiani P.K. v. CIT*, (1976) 105 ITR 642 the Supreme Court has observed that allowance for depreciation is to replace the value of an asset H

A to the extent it has depreciated during the period of accounting relevant to the assessment year and as the value has, to that extent, been lost, the corresponding allowance for depreciation takes place.

B An overall view of the above said authorities show that the very concept of depreciation suggests that the tax benefit on account of depreciation legitimately belongs to one who has invested in the capital asset is utilizing the capital asset and thereby losing gradually investment caused by wear and tear, and would need to replace the same by having lost its value fully over a period of time.

C It is well-settled that there cannot be two owners of the property simultaneously and in the same sense of the term. The intention of the Legislature in enacting Section 32 of the Act would be best fulfilled by allowing deduction in respect of depreciation to the person in whom for the time-being vests the dominion over the building and who is entitled to use it in his own right and is using the same for the purposes of his business or profession. Assigning any different meaning would not subserve the legislative intent. To take the case at hand it is the appellant-assessee who having paid part of the price, has been placed in possession of the houses as an owner and is using the buildings for the purpose of its business in its own right. Still the assessee has been denied the benefit of Section 32. On the other hand, the Housing Board would be denied the benefit of Section 32 because in spite of its being the legal owner it was not using the building for its business or profession. We do not think such a benefit-to-none situation could have been intended by the Legislature. The finding of fact arrived at in the case at hand is that though a document of title was not executed by Housing Board in favour of the assessee, but the houses were allotted to the assessee by the Housing Board, part payment received and possession delivered so as to confer dominion over the property on the assessee whereafter the assessee had in its own right allotted the quarters to the staff and they were being actually used by the staff of the assessee. It is common knowledge, under the various scheme floated by bodies like housing boards, houses are constructed on large scale and allotted on part payment to those who have booked. Possession is also delivered to the allottee so as to enable enjoyment of the property. Execution of document transferring title necessarily follows if the schedule of payment is observed by allottee. If only the allottee may default the property may revert back to the Board. That is a matter only between the Housing Board and the allottee. No third person intervenes. The part payment made by allottee are with the intention of acquiring title. The

delivery of possession by Housing Board to allottee is also a step towards conferring ownership. Documentation is delayed only with the idea of compelling the allottee to observe the schedule of payment. A

For the foregoing reasons, in our opinion, the High Court was not right in taking the view which it did. The appeal is allowed. The judgment of the High Court is set aside. The question referred by the Tribunal to the High Court is answered in the negative, that is, against the Revenue and in favour of the assessee. No order as to the costs. B

V.S.S.

Appeal allowed.