

à' IN THE SUPREME COURT OF INDIA@@
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CIVIL APPELLATE JURISDICTION@@
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CIVIL APPEAL NO. 1288 OF 1998@@
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Tamilnadu Civil Supplies Corpn. Ltd.Appellant(s)

versus

Commnr. of Income-Tax, Tamilnadu ...Respondent(s)

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The question for consideration in this appeal by the assessee against the judgment and order of a Division Bench of the High Court at Madras reads thus:

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"(1) Whether, on the facts and in the circumstances of the case, the petitioner is entitled to depreciation and/or development rebate as claimed in respect of assessment years 1973-74 and 1974-75?"

.SP2

The High Court answered the question in the negative and against the assessee. The authorities and the Tribunal had also taken the view that the assessee was not entitled to depreciation under Section 32 of the Income Tax Act, 1961 for the two assessment years in question, namely, Assessment Years 1973-74 and 1974-75, the previous years whereof ended on 31st March, 1973 and 31st March, 1974 respectively.

Learned counsel on behalf of the assessee has placed great emphasis upon the decision of this Court in Mysore Minerals Ltd.@@
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vs. Commissioner of Income-Tax [239 I.T.R. 775] which has@@
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interpreted the word 'owned' in Section 32 broadly. It did so in the following circumstances:

The assessee before it had purchased certain houses from the Housing Board and had made part payment thereof. It had acquired possession of the houses but the deed of conveyance was not executed until after the financial year in question. Even so, the assessee's claim for depreciation of the buildings, which it had used for the purpose of its business, was upheld on the basis that it had acquired dominion over the buildings.

We will assume the correctness of the judgment but, on the facts found, it is not possible to reach the conclusion that the assessee had acquired dominion over the mills in question. There is nothing on the record which indicates this nor is that the finding of the Tribunal.

In the circumstances, the appeal is dismissed with costs.

.SP1

(Signed order is placed on the file.)