

## TAX FLASH NEWS

### Ponds specially designed for breeding of prawns are treated as plant which are eligible for depreciation under the Income-tax Act – Supreme Court

#### Background

Recently, the Supreme Court in the case of Victory Aqua Farm Ltd.<sup>1</sup> (the taxpayer) held that ponds which are specially designed for rearing/breeding of prawns are treated as tools of the business of the taxpayer. Therefore, such ponds are plant which are eligible for depreciation under Section 32 of the Income-tax Act, 1961 (the Act).

#### Facts of the case

- The taxpayer, a company doing a business of 'Aqua Culture', grows prawns in specially designed ponds.
- In the return of income, the taxpayer had claimed depreciation in respect of these ponds by raising a plea that these prawn ponds are tools to the business of the taxpayer and, therefore, they constitute as a 'plant' within the meaning of Section 32 of the Act. However, the Assessing Officer (AO) disallowed the claim of the taxpayer.
- Earlier, the Division Bench of the Kerala High Court in the taxpayer's own case had held that it is not a 'plant'. However, another Division Bench did not agree with the earlier decision and had rendered a contrary decision.
- In the present case, the Supreme Court observed that the Division Bench of the High Court of Kerala which had given the latter decision should have referred the matter to a larger Bench, as otherwise it was bound by the earlier decision of the Co-ordinate Bench.

- Appeals were filed against both the decisions and the validity of the decision rendered in the first case was also questioned by the taxpayer. Therefore, the Supreme Court considered it necessary to decide these appeals on merits, rather than remanding the case back to the High Court to be considered by a larger Bench.
- The question before the Supreme Court was whether a 'natural pond', which as per the taxpayer is specially designed for rearing prawns, would be treated as a 'plant' within Section 32 of the Act for the purposes of allowing depreciation thereon.

#### Supreme Court's ruling

- If ponds are 'plants', then they are eligible for depreciation at the rates applicable to plant and machinery and the case would be covered by the provisions of Section 32 of the Act. The decision of the Supreme Court in the case of Karnataka Power Corporation<sup>2</sup> decided this issue wherein the Court had taken into consideration the earlier judgments and suitably dealt with them.
- The tax department had contended that the pond in question was natural and not constructed/specially designed by the taxpayer. The Supreme Court did not agree with the same. The Kerala High Court decision which was in favour of the taxpayer had specifically mentioned that the prawns are grown in specially designed ponds, which are not natural ponds.
- The Kerala High Court decision rightly rests this case on a 'functional test' and since the ponds were specially designed for rearing/breeding of

<sup>1</sup> ACIT v. Victory Aqua Farm Ltd. [2015] 61 taxmann.com 166 (SC)

<sup>2</sup> CIT v. Karnataka Power Corporation [2002(9) SCC 571]

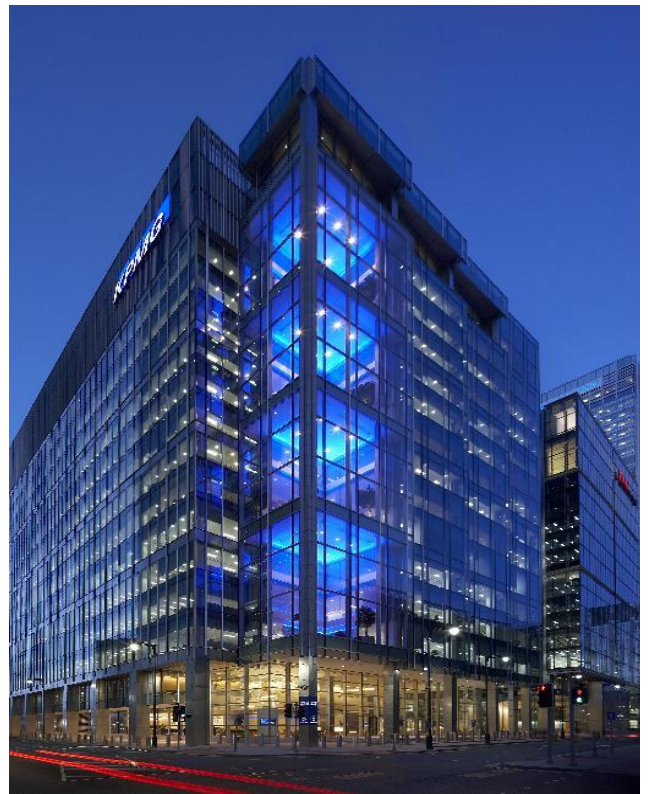
the prawns, they have to be treated as tools of the business of the taxpayer and depreciation was admissible on these ponds.

## Our comments

The meaning of the term 'plant' and allowability of depreciation on the same has been a subject matter of debate from a long time. The courts have held that plant, in its ordinary sense, includes whatever apparatus is used by a businessman for carrying on his business; not his stock-in-trade which he buys or makes for sale, but all goods and chattels, fixed and movable, which he keeps for employment in his business with some degree of durability.

The Delhi High Court in the case of Pure Ice Cream<sup>3</sup> held that cold storage room, platform for machinery, observation tower and cooling tower are 'plant' and hence are eligible for depreciation. The Supreme Court in the case of Gwalior Rayon Silk Mfg. Co. Ltd.<sup>4</sup> held that the roads laid within the factory premises as links for providing an approach to the buildings, are necessary adjuncts to the factory buildings to carry on the business activity of the taxpayer and would be considered as building within the meaning of Section 32 of the Act. In the case of Gwalior Rayon Silk, the Supreme Court has, *inter alia*, considered the function performed by 'roads' to categorise them as 'buildings'.

The Supreme Court in this decision applied functional tests and held that ponds which are specially designed for rearing/breeding of prawns are treated as 'plant' under the Act. As these ponds are 'plants', they are eligible for depreciation under the provisions of Section 32 of the Act at the rates applicable to 'Plant and Machinery'.



<sup>3</sup> CIT v. Pure Ice Cream [1881] 129 ITR 394 (Del)

<sup>4</sup> CIT v. Gwalior Rayon Silk Mfg. Co. Ltd. [1992] 62 Taxman 471 (SC)

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