THE HONBLE THE ACTING CHIEF JUSTICE SRI DILIP B.BHOSALE AND THE HONBLE SRI M.S.RAMACHANDRA RAO
AND
THE HONBLE SRI JUSTICE A.RAMALINGESWARA RAO

I.T.T.A. No. 95 OF 2001

05-06-2015

Commissioner of Income-Tax, Visakhapatnam Appellant

S.Vijaya Kumar Respondent

Counsel for Appellant : Sri S.Vivek Chandra Shekar

Counsel for Respondent : Sri Challa Gunaranjan

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>HEAD NOTE:

? Cases referred :

1) [(2011) 332 ITR 235 (AP)]

2) (MANU/AP/2311/2014)

3) [(1989) 175 ITR 154 (AP)]

4) (1997)227 ITC 646 (AP)

5) [(1977) 226 ITR 865 (Delhi)]

6) [(2001) 247 ITR 25 (Delhi)]

7) [1887] 19 QBD 647

8) [(1998) 229 ITR 776 (Allahabad)]

9) (2002) 256 ITR 320 (Punjab & Haryana)

10) (2003) 264 ITR 269(Madras)

11) (2005) 273 ITR 276 (Rajasthan)

12) (2006) 280 ITR 452 (Madras)

13) (2013) 354 ITR 180(Delhi)

14) (1998) 234 ITR 822 (Madhya Pradesh)

15) (2014) 367 ITR 122 (AP)

16) (1989) 177 ITR 0038

17) MANU-GJ-1163-2014

18) [1964 ITR 165]

19) [(1922) I.L.R.49 Cal.190 (P.C)]

20) [(1944) (1) Ch.281]

21) [Tax Cases Vol.49]

22) [1952 S.C 402]

23) [(1980) 122 ITR 288]

24) [(1974) 96 ITR 672]

25) [AIR 1988 Kerala 140]

26) AIR 2001 SC 1339

27) (1996) 221 ITR 368

28) (2011) 332 ITR 0235

29) AIR 1972 SC 168

30) (1887) (19) Q.B. 647

31) AIR 1986 SC 338

32) (1969) 71 ITR 587 (Mad)

33) (1997) 225 ITR 84 (Guj)

34) (1884) 13 QBD 583 (CA)

35) [2000 (5) SCC 393]

36) [(1970) 76 ITR 62 (HL)]

37) [(1977) 50 TC 491 (CA)]

38) [(1994) 210 ITR 668 (Karnataka)]

39) [(1970) 75 ITR 533 (All)]

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I.T.T.A. No. 95 OF 2001

JUDGMENT: (per the Honble The Acting Chief Justice Sri Dilip B.Bhosale, for himself and for the Honble Sri Justice A.Ramalingeswara Rao)

In view of divergence of opinions in two judgments of the Division Benches of this Court, the then learned Chief Justice made reference to this Full Bench to express opinion on the question Whether on the facts and in the circumstances of the case, the appellate Tribunal was justified in law in holding that the assessee was entitled to claim 100% depreciation on the centering/shuttering material?

2. The first Division Bench in Commissioner of Income Tax Vs. Raghavendra Constructions( ) (for short the first judgment) decided on 19.01.2011, while dealing with the aforesaid question, held that if a thing (material) itself is durable but cannot effectively stand alone without functional integration, it would not qualify as a plant and answered the question against the assessee and in favour of the Revenue. The second Division Bench in Commissioner of Income Tax Vs. Live Well Home Finance (P) Limited( )] decided on 27-11-2014 (for short the second judgment), however, answered the question in favour of the assessee and against the Revenue, applying durability and functional test to hold that every individual thing (material), such as shuttering plate used for formation is a plant.

3. Having noticed the divergent views/opinions expressed by two Division Benches, another Division Bench while dealing with the instant appeal (ITTA No. 95 of 2001), as prayed for by learned counsel for the parties, framed the question, as reproduced in the first paragraph, vide order dated 14-02-2015 directed the Registry to place the order along with the proceedings before the Honble the Chief Justice for appropriate orders. Accordingly, the above question has been referred to this Full Bench.

4. The facts that are necessary, to deal with the question, are that the respondent-assessee in ITTA No. 95 of 2001 had claimed deduction of Rs. 17,93,556/- being depreciation on machinery, centering and shuttering equipments at the rate of 100% for the Assessment Year 1991-92. According to the assessee, the assets include machinery below Rs. 5,000/- each of the value of Rs. 3,88,562/- and centering and shuttering equipments of the value of Rs. 13,19,434/-. In the instant case, we are concerned only with centering and shuttering materials. The Assessing Officer allowed depreciation to the extent of 33 1/3 % on the centering and shuttering materials. The assessee, feeling aggrieved and dissatisfied with the order of the Assessing Officer preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner (Appeals) allowed the appeal and directed the Assessing Officer to allow 100% depreciation as provided

for in the proviso to Section 32(1)(ii) of Income Tax Act, 1960 (for short the Act). Against this order, the Revenue went in appeal before the Income Tax Appellate Tribunal. The Tribunal, relying on its earlier order in ITA No. 435/Hyd/1997 dated 13.11.1998 culminating in the first judgment, upheld the order of Commissioner (Appeals). It is against this backdrop, the Revenue preferred the instant appeal under Section 260A of the Income Tax Act, 1961 (for short the Act). We make it clear that we have not stated the facts in detail, since, after expressing our opinion, we propose to send the appeals to the Court which is assigned to hear these appeals on merits and in the light of the opinion expressed by this Bench.

5. The arguments advanced by learned counsel for the parties were centered around Sections 32 and 43 of the Act. The relevant portion of Section 32 (1) (ii), as it stood at the relevant time, reads thus:-

Section 32. DEPRECIATION :

(1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of section 34, be allowed

(i) .

(ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed:

Provided that where the actual cost of any machinery or plant does not exceed five thousand rupees, the actual costs thereof shall be allowed as a deduction in respect of the previous year in which such machinery or plant is first put to use by the assessee for the purposes of his business or profession:

(emphasis supplied)

5.1 Section 32 deals with depreciation. For our purpose, it provides that a plant owned by the assessee and used for the

purposes of his business or profession, is entitled for certain deductions subject to the provisions of Section 34 and where the actual cost of any plant does not exceed Rs. 5000/-, the actual cost thereof shall be allowed as a deduction in respect of the previous year in which such plant is first put to use by the assessee for the purposes of his business or profession. It is well settled that a proviso is normally used as a legislative tool to carve out an exception from the main provision, which precedes the proviso. Section 32 of the Act, enables deductions in respect of buildings, machinery, plant or furniture owned by the assessee and used for the purpose of his business or profession and the first proviso enables deduction of the actual cost thereof where the actual cost of plant does not exceed Rs. 5,000/-, if such machinery or plant is first put to use by the assessee for the purpose of his business or profession in the previous year. Thus, to claim 100% depreciation, an asset should be a plant; the actual cost of the plant should not exceed Rs. 5000/-; it should be owned by the assessee; and it should be used for the purpose of business or profession. It is not in dispute before us that shuttering and/or centering materials, when put to use, satisfy all the tests of plant. Therefore, what needs to be considered is whether every individual material/component of shuttering or centering, such as a steel plate or wooden plank, could be treated as plant and deserve 100% depreciation as claimed by the assessee in the instant appeal.

5.2 From a perusal of this provision, it appears to us that the plant contemplated by the main section would include a plant worth more than Rs. 5,000/- or less. The first proviso, however, has carved out an exception from the main section, which precedes the proviso. If the actual cost of any plant is less than Rs. 5,000/-, as provided for in the first proviso, it is clearly admissible for 100% depreciation. The question is if the cost of any plant is more than Rs. 5,000/-, whether 100% depreciation could be allowed by splitting up of the cost of such plant on the basis of cost of every individual component/ material used for the plant such as shuttering and centering. In other words, we would have to consider, whether it was intended to bring every individual component or material forming a plant under the main section and allow one rate of depreciation, and if it is divisible and less than Rs.

5,000/, allow 100% depreciation by bringing it under the proviso.

5.3 Section 43 of the Act, as it stood at the relevant time, defines certain terms, including the word plant, relevant to income from profits and gains of business or profession. The relevant portion of Section 43 of the Act reads thus:-

Section 43 : Definitions of certain terms relevant to income from profits and gains of business or profession:

Explanation 9.-

(3) plant includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession but does not include tea bushes or livestock:

5.4 It is true that where the definition of a word has not been given, it must be construed in its popular sense if it is a word of everyday use. Popular sense means the sense, which people conversant with the subject matter with which the statute is dealing, would attribute to it. The very fact that even books have been included within the definition of plant shows that the meaning intended to be given to plant is wide. The word includes is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. [see Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel (1971) 82 ITR 44 (SC)]

6. To understand the controversy and to decide the question, we deem it appropriate to make a detailed reference to the first and the second judgments. In the first judgment, the Division Bench considered the question whether on the facts and in the circumstances of the case the Tribunal was justified in directing to allow @ 100% depreciation on centering and shuttering material? In that case, the

assessee/firm had claimed 100% depreciation of Rs. 3,18,520/- towards the purchase value of centering and shuttering equipments/materials. After referring to several judgments of different High Courts and the Supreme Court, the Division Bench (in the first judgment) in the concluding paragraph observed thus:-

In all the decisions, to our mind, the Courts have applied durability and/or functional tests. If a thing itself is durable (in the sense which can be used and re-used as non-interdependent, interconnected a non- consumable thing) and has functional utility in the trade or business of the assessee to advance his business interest, such thing would be a plant. If it is durable, but cannot effectively stand alone without functional integration with other similar or dissimilar components or units, it would not qualify as a plant. As is understood in the engineering construction industry, a single unit of centering or shuttering material by itself though durable may not have functional value. Similar units form one integrated part which can be used as shuttering material. Therefore, it is not possible to accept the plea of the assessees that each similar or dissimilar component or unit, forming part of the whole integrated shuttering material, is entitled for 100 per cent depreciation as a plant. As observed by Lord Wilberforce (quoted with approval in Pathange Poultry Farm vs. CIT (supra) in IRC vs. Scottish & Newcastle Breweries Ltd. (1982) 55 Tax Cases 252 (HL). it is too much to stomach, that each one of all the hundreds and thousands of props or poles, sheets, plates and planks forming part of centering or shuttering material, would be of functional utility to the builder, contractor or the owner of the property in construction activity. As pointed out by the Supreme Court in Challapalli Sugars Limited (supra), the term plant is to be understood in the sense no commercial man would misunderstand. Applying this test, we are convinced that each item of shuttering material cannot be treated as one whole shuttering material forming one plant eligible for 100 per cent depreciation under the first proviso to Section 32(1)(ii) of the Income Tax Act. We answer the Reference accordingly.

(emphasis supplied)

6.1 It would also be relevant to reproduce the observations made by the Division Bench in the first judgment while dealing with the definition of plant. The relevant observations read thus:-

10. Plant is described with an inclusive definition. Anything, used for the purpose of business or profession is a Plant. Whether a thing, a building, a vehicle, a contrivance or a contraption is a plaintat least in Tax jurisprudence is a vexed question. The term Plant appears in many places in Sections 28 to 41 of the Act, which deal with computation Of profits and gains from business or profession. Determination of Plant is relevant in computing the chargeable income from business or profession in allowing depreciation (Section 32), investment allowance (Sections 32-A and 32-AB), development rebate (Section 33) and rehabilitation allowance to industrial undertaking in the event of damage or destruction due to calamities (Section 33B). The precedents are galore which distinguish between a building and a Plant. If the business or industrial process is carried on with something, it is a Plant and if business activity or industrial process is carried on in a place or at a place, it is a building. Ramanatha Aiyars Advanced Law Lexicon contains about 30 definitions/descriptions of the term Plant with reference to dictionaries, precedents and statutes. The best possible way is to understand the nature of the business, and the purpose of a thing in such a business. If one single individual unit itself is sufficient to carry on any business it is a Plant. But if one single individual thing or item is not, by itself, fully useful to carry on business or advance trade, it is certainly not a plant. Even if such a thing, associated with many other similar or dissimilar things, is of immense utility for the business, it is in plurality and is to be considered as Plant. In other words, the way a businessman understands the term Plant is the most relevant because it would carry natural and proper sense.

(emphasis supplied)

6.2 In short, it is clear, in the first judgment, the Division Bench held that if a thing itself is durable, but cannot

effectively stand alone without functional integration with other similar or dissimilar components or units, it would not qualify as a plant. It was further observed that a single unit of centering or shuttering material by itself - though durable may not have functional value. In this judgment, the Division Bench, among others, also referred to the judgments in CIT Vs. Sri Krishna Bottlers Pvt. Ltd.,( ).

7. In the second judgment, the Division Bench considered the question whether the shuttering material purchased by the assessee, in the Assessment Year 1995-96, qualified for 100% depreciation under Section 32 of the Act? The first judgment was placed before the said Division Bench, which dealt with the very same question in the second judgment. The Division Bench, in the second judgment, extensively referred to the judgment in Krishna Bottlers(supra) for answering the question in favour of the assessee and against the Revenue and while doing so made observations in paragraphs 9 to 13 as follows:-

9. In Raghavendra Constructions case (supra), recently this court has taken a different view. The two judgments referred to above and certain others were cited before it. However, the Bench expressed its inability to concur with them.

10. The judgment of this Court in Sri Krishna Bottlers Pvt. Ltd.s case (supra) was cited extensively before the Bench that heard Raghavendra Constructions case (supra). One of the questions that was dealt with in Sri Krishna Bottlers Pvt. Ltd.s case (supra) was whether each bottle that is used for serving a soft drink and the shells, in which they are arranged qualify for 100 per cent depreciation under Section 32 of the Act. The matter was discussed in detail, obviously because the subject was almost untouched by that time. The judgment of the Supreme Court in CIT v. Taj Mahal Hotel [(1971) 82 ITR 44(SC)] and various judgments of the courts in India and foreign countries were discussed at length to draw support for the conclusions. The purpose of almost each and every judgment that was cited before their Lordships was taken note of. As regards bottles and shells, their Lordships observed :

The bottles containing the soft drink cannot be stock-in-trade inasmuch as the bottle by itself is not the subject of sale. The customer or the retailer returns back the bottle to the assessee after the soft drink is consumed. Likewise, the shells which are sent to the customer or dealer also come back with the empty bottles and they cannot also be stock-in-trade. What is the function these bottles and shells perform in the assessees trade? Are they essentially tools in the assessees business?. In our opinion, yes. The bottles are essential tools of the trade for it is through them that the soft drink is passed on from the assessee to the customer. Without these bottles, the soft drink cannot be effectively transported, like the silos in Schofield v. R and H.Hall Ltd. [1974] 49 TC 538(CA), which are used to store grain and to empty the same, performing a trade function. As pointed out in Dixon v. Fitchs Garage Ltd. [1975] 50 TC 509 (Ch.D), the bottles and the contents are totally interdependent. So are the shells. The bottles and shells also satisfy the durability test for it is nobodys case that their life is too transitory or negligible to warrant an inference that they have no function to play in the assessees trade. They are therefore plant for the purpose of the Act.

The principle that a setting in which the trade is conducted in not attracted to the facts of the case of all. The bottles and shells have nothing to do with the building in which the trade in conducted nor with the setting in which it is conducted. Each bottle and each shell is an entity by itself and they cannot be broken down into pieces for considering whether they have any part to play in the business of the assessee. The bottles and shells are gross matter and, in fact, gross materiality is not a requirement at all for a thing to be treated as plant.

For the aforesaid reasons, we agree with the decision of the Rajasthan High Court in CIT v. Jai Drinks P.Ltd. [1988] 173 ITR 100 (Raj). That case also related to bottles and shells, the assessee being a seller of soft drinks. The learned judges, after referring to the two Supreme Court Judgments referred to above, also referred to the decision of the Delhi High Court in CIT v. National Air Products Ltd. [1980] 126 ITR 196) Delhi and of the Calcutta High Court in CIT v. Steel Rolling Mills of

Hindustan P.Ltd. [1987] 164 ITR 633 (Cal), wherein it was held that gas cylinders fall within the definition of plant. The fact that in the latter two cases, gas could not otherwise be transported especially by cylinders made for that purpose makes no difference.

11. At the end, the reference was answered in favour of the assessee and against the Department.

12. However, in Raghavendra Constructions s case(supra), another Division Bench of this Court observed as under:

Applying the above principles, this court held that the bottles and shells used by soft drinks bottling industry is plant. The Division Bench nowhere observed that each bottle or each shell would also be a plant for the purpose of Section 32(1)(ii).

13. It was proceeded as though in Sri Krishna Bottlers Pvt. Ltd.s case (supra), each bottle and shell was not treated as unit qualifying for depreciation under Section 32(1)(ii) of the Act. This does not appear to be correct. The underlined portion of the Judgment in Krishna Bottlers Pvt. Ltd.s case (supra) makes this clear.

7.1 Then, the Division Bench (in the second judgment) after referring to the judgment in Krishna Bottlers (supra) in paragraphs 15, 16 and 27 observed thus:-

15. The precedents can be treated as having been rendered sub silentio, if an otherwise binding precedent or a specific provision of law was not taken note of. Generally, we do not come across the instances of a judgment being treated as sub silentio, if the binding precedent is taken note of. However, if the ratio emerging from a binding precedent was treated as non-existing and the judgment was rendered contrary to what was decided in the precedent, a situation may arise, where the judgment so rendered almost resembles, the one done in sub silentio.

16. It has already been demonstrated that the ratio in Sri Krishna Bottlers Pvt. Ltd.s case (supra), which is to the effect that each bottle and shell deserve to be treated as

independent units and qualify for 100% depreciation was treated as nonexistent at all in Raghavendra constructions case (supra). Since both the judgments referred to above were rendered by Division Benches only, we are faced with the problem of choosing, since there is conflict of views.

27. The discussion can be further prolonged on academic lines. The effort is only to drive home the point that if a Court is placed with two precedents rendered by itself, one in conflict with the other, it has every right to choose as between the two and by doing so, it does not do any violence to the other. At the most, it may be an occasion for the superior Court to resolve the rule on ostensible conflict. Applying these principles, we prefer to follow the ratio in the judgment of this Court in Sri Krishna Bottlers Pvt. Ltd.s case (supra) than to be guided by the judgment in Raghavendra Constructions case (supra).

(emphasis supplied)

7.2 The Division Bench (in the second judgment) also considered the doctrine of sub silentio and the doctrine of stare decis and noticing the distinction between ratio and dictum with reference to the same judgment, ultimately held in favour of the assessee and against the Revenue. The concluding para of the second judgment is relevant, which reads thus:-

30. On merits also, we are convinced that the irreducible minimum for the shuttering material is the individual plates, for providing support to the reinforced concrete and cement or the poles and bars that are used at the time of formation. We choose to fall in line not only with the judgment of this Court in Sri Krishna Bottlers Pvt. Ltd.s case (supra), which in turn has dorawn its conclusion based upon the judgment of the Supreme Court in Commissioner of Income Tax vs. Taj Mahal Hotel, but also the judgments rendered by the other High Courts.

8. In this backdrop, it has become imperative to make a detailed reference to the judgment in Krishna Bottlers (supra). In Krishna Bottlers (supra), this Court considered the

question whether, on the facts and in the circumstances of the case, the bottles and shells constitute plant and depreciation is admissible thereon under Section 32(1)(ii) of the Act, for the Assessment Year 1976-77? The assessee before the Court was a Private Limited Company manufacturing soft drinks and selling the same at Hyderabad and other places. The Company was claiming breakages in bottles in the respective years as a deduction. For the Assessment Year 1976-77 the Company had claimed deduction under the first proviso to Section 32(1)(ii) of the Act in respect of the bottles and shells purchased and put to use during the year. During the relevant year the Company had purchased bottles to the tune of Rs. 3,25,021/- and claimed that the same should be allowed as outright deduction. The claim was, however, rejected by the Income Tax Officer. In this backdrop, the matter reached this Court.

8.1 Honble Justice Jagannadha Rao, as he then was, speaking for the Division Bench, after considering several English judgments and so also the judgments of the Supreme Court and High Courts carved out the principles or the tests to hold whether an apparatus or thing could be treated as plant thus:-

From the aforesaid rulings, the following principles can be gathered:

(1) Plant in section 43 (3) of the Act is to be construed in the popular sense, namely, in the sense in which people conversant with the subject matter with which the section is dealing, would attribute to it. The word plaint is to be given a very wide meaning. In its ordinary sense, it includes whatever apparatus is used by a businessman for carrying on his business but it does not include his stock-in-trade which he buys or makes for sale. It, however, includes all goods and chattels, fixed or movable, live or dead which the tradesman keeps for permanent employment in his business. (2) But the building or the setting in which the business is carried on cannot be plaint. (3) The thing need not be part of apparatus used in carrying on the business but having a degree of durability. (4) Merely because the asset has a passive function in the carrying on of the business, it cannot be said

that it is not plaint. It may have a passive or an active role. (5) The subject must have a function in the traders operation and if it has, it is prima facie a plant unless there was good reason to exclude it from that category. It must be a tool in the trade of the businessman. (6) Gross materiality or tangibility is not necessary and, in fact, intangible things like ideas and designs contained in a book could be plaint. They fall under the category of intellectual storehouse. (7) In considering whether a structure is plaint or premises, one must look at the finished product and not at the bits and pieces as they arrive from the factory. The fact that a building or part of a building holds the plant in position does not, convert the building into plant. A piecemeal approach is not permissible and the entire matter must be considered as a single unit unless of course, the component parts can be treated as separate units having different purposes. (8) The functional test is a decisive test.

(emphasis supplied)

8.2 Bearing the principles/tests in view, the Division Bench in that case answered the question that fell for its consideration in favour of the assessee and against the Revenue with the following observations in the concluding paragraphs:-

Bearing these principles in mind, we shall approach the facts of the present case. The bottles containing the soft drink cannot be stock-in-trade inasmuch as the bottle by itself is not the subject of sale. The customer or the retailer returns back the bottle to the assessee after the soft drink is consumed. Likewise, the shells which are sent to the customer or dealer also come back with the empty bottles and they cannot also be stock-in-trade. What is the function these bottles and shells perform in the assessees trade? Are they essentially tools in the assessees business? In our opinion, yes. The bottles are essential tools of the trade for it is through them that the soft drink is passed on from the assessee to the customer. Without these bottles, the soft drink cannot be effectively transported, like the silos in Schofield v. R. and H. Hall LTd. [1974] 49 TC 538 (CA), which are used to store grain and to empty the same, performing a

trade function. As pointed out in Dixon v. Fitchs Garage Ltd. [1975] 50 Tc 509 (Ch D), the bottles and the contents are totally interdependent. So are the shells, The bottles and shells also satisfy the durability test for it is nobodys case that their life is too transitory or negligible to warrant an interference that they have no function to play in the assessees trade. They are therefore plant for the purposes of the Act.

The principle that a setting in which the trade is conducted is not attracted to the facts of the case at all. The bottles and shells have nothing to do with the building in which the trade is conducted nor with the setting in which it is conducted. Each bottle and each shell is an entity by itself and they cannot be broken down into pieces for considering whether they have any part to play in the business of the assessee. The bottles and shells are gross matter and, in fact, gross materiality is not a requirement at all for a thing to be treated as plant.

For the aforesaid reasons, we agree with the decision of the Rajasthan High Court in CIT V. Jai Drinks (P) Ltd. [1988] 173 ITR 100. That case also related to bottles and shells, the assessee being a seller of soft drinks. The learned judges, after referring to the two Supreme Court judgments referred to above, also referred to the decision of the Delhi High Court in CIT v. National Air Products Ltd. [1980] 126 ITR 196 and of the Calcutta High Court in CIT v. Steel Rolling Mills of Hindusthan (P.) Ltd. [1987] 164 ITR 633, wherein it was held that in the latter two cases, gas could not otherwise be transported especially by cylinders made for that purpose makes no difference. The cylinders are not stock-in-trade and are returned back to the trader as are the bottles and shells in the present case. They too satisfy the functional test and answer the definition plant.

(emphasis supplied)

8.3 The observations of the Division Bench that each bottle and each shell is an entity by itself should be understood in the context by reading the whole sentence. Their Lordships were of the opinion that they cannot be broken down further

for considering their part of play in the business but did not express their view that in case of material which can be broken down further, whether it entails for higher depreciation. That issue did not arise for consideration in that case.

8.4 Thus, in Krishna Bottlers (supra) after considering several English judgments and also the judgments of this Court and other High Courts, laid down the tests/principles to hold any particular article as plant. As per the principles laid down in that judgment, one of the tests is that an article must have a function in the traders operation and if it has, it is prima facie a plant, unless there is good reason to exclude it from that category. It must be a tool in the trade of the businessman. It further laid down that for considering whether an article is plant, one must look at the finished product and not at the bits and pieces as they arrive from the factory. Functional test was held to be a decisive test.

8.5 It may be noticed that the question before the quoted in the second judgment in para.10, viz., whether each bottle that is used for serving a soft drink and the shells, in which they are arranged, qualify for 100% depreciation under Section 32 of the Act. The only question in Krishna Bottlers (supra) was, at the cost of repetition, whether on the facts and in the circumstances of the case, bottles and shells constitute plant and depreciation is admissible thereon under Section 32(1)(ii) of the Income Tax Act, 1961 for the Assessment Year 1976-77?

9. An identical question as in Krishna Bottlers (supra) came up for consideration before another Division Bench in The Commissioner of Income Tax, Central, Hyderabad v. M/s. Margadarsi Chit Fund (P) Ltd.,( ) which was decided on 13.03.1997. The questions of law that were considered by the Division Bench were as follows:

1. Whether on the facts and in the circumstances of the case, the ITAT is correct in law in holding that the assessee is entitled for 100% depreciation on bottles and crates treating them as plant in the business carried on by the assessee

2. Whether on the facts and in the circumstances of the case, the ITAT is correct in law in holding that the assessee company is entitled for 100% depreciation on bottles and crates in the assessees business of leasing them out on hire?

9.1 It is an appeal filed by the Revenue. The learned counsel for the Revenue submitted that even if for the purpose of the business of the respondent, the bottles are treated as plant within the meaning of Section 32 (1), yet the deduction is leviable only when the purchase is enblock and cannot be allowed in respect of single bottles which would obviously be priced less than Rs. 5,000/-. The Division Bench followed the view of Krishna Bottlers (supra) and held that bottles constitute plant for the purpose of business or profession of the respondent. It further held as follows:

Once such a ground applies and indeed the fact is conceded by Mr.S.R.Ashok, in view of the decision in KRISHNA BOTTLERS CASE, the further question raised by the learned counsel does not arises. There is no distinction that the purchase on which the depreciation would be allowed must be bulk purchase of a large number and that it would be disallowed if the purchase is of single items. There is no evidence that the bottles in respect of which depreciation was claimed were not subject of bulk purchase. Even apart from it, a bulk purchase is merely individualized purchase made collectively and we do not find any distinction in the provisions of Section 32(1) or the proviso distinction possible to be drawn in the manner suggested. The Only test is whether the article in respect of which depreciation is claimed is plant for the purpose of the business or profession. Individual items of purchase would also be plant if it is integrally involved in the carrying out of the profession or business and deprecation could be claimed in respect of that.

and accordingly dismissed the case filed by the Revenue.

9.2 In our view, the observations made by the said Division Bench that there is no distinction that the purchase on which the depreciation would be allowed must be bulk purchase of a large number and that it would be disallowed if the purchase is of single items and individual items of purchase

would also be plant if it is integrally involved in the carrying out of the profession or business and depreciation could be claimed in respect of that, is obiter in nature. The said issue did not arise for consideration nor elaborate arguments were advanced on the said point before the Division Bench. Hence, in our opinion, the observations in Margadarsi (supra) cannot be construed as laying down a ratio.

10. We would also like to make a brief reference to the judgments relied upon by the learned counsel for the parties in support of their contentions. In Commissioner of Income Tax Vs. Prem Nath Monga Bottles(P) Ltd.,( ), the Delhi High Court considered almost identical question in respect of Bottles and after referring to Krishna Bottlers (supra) answered the question in favour of the assessee and against the Revenue. In yet another judgment of the Delhi High Court in Joint Commissioner of Income Tax Vs. Anatronics General Co.(P) Ltd.,( ) similar view was taken while dealing with the question as regards the rate of depreciation on the bottles given on lease to another concern. Though ultimately, the Delhi High Court held that no question of law much less substantial question of law arose out of the order of the Tribunal in view of the settled position of law, made specific reference to the definition of plant and observed thus:-

The definition of plant given by Lindley L. J. in Yarmouth v. France [1887] 19 QBD 647 has become locus classicus. He said (page 658):

There is no definition of plant in the Act : but, in its ordinary sense, it 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 of movable, live or dead, which he keeps for permanent employment in his business. It is of relevance to note that section 43 (3) of the act defines plant by way of an inclusive definition; thereby intending to enlarge the meaning of the expression. In Scientific Engineering House P. Ltd v. CIT [1986] 157 ITR 86 (SC), it was observed that in order to qualify as plant, the article must have some degree of durability the test to be applied for such determination is does the article fulfil the function of a plant in the assessees

trading activity? Is it a tool of his trade with which he carries on his business? If the answer is in the affirmative, it will be a plant. Judged in the above background the Tribunals conclusions are on terra firma.

(emphasis supplied)

10.1 One would have to bear in mind that the word plant had not been defined in the relevant Act when the Yarmouth v. France( )was decided. But we are dealing with the case when definition of the word plant is available in the Act and, therefore, we would have to consider the question in the light of the intent of Legislature.

11. The Allahabad High Court in Harijan Evam Nirbal Varg Avas Nigam Ltd., Vs. Commissioner of Income Tax( ) considered the question whether, on the facts and in the circumstances of the case, the Tribunal was, in law, justified in holding that depreciation of shuttering material is allowable? While dealing with the question, the Division Bench observed thus:-

Shuttering is normally used to support the roof when concrete is being laid on it. These are not items of consumable stores, for they are retrieved after the roof has been laid, and used again elsewhere. It is like any other tool with the help of which construction is done, say, Karni, Tasla, Kudel or Spade. It is not, therefore, correct to hold that shuttering material is not plant or machinery. In our opinion, with which the Karigars and masons work would be. The assessee is, therefore, entitled to depreciation on shuttering material and the same be allowed to it.

Under section 43 of the Act, plant includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession but does not include tea bushes or livestock. The word plant has come up for interpretation before various courts on numerous occasions in the context of different statutes and the catena of judicial decisions shows that it is word of wide and varied import, susceptible of diverse meanings of depending upon its setting in the scheme of the statute. The word plant in its

ordinary meaning is a word of wide import and it must be broadly construed having regard to the fact that articles like books and surgical equipment are expressly included in the definition of plant in section 43 (3) of the Act. It includes any article or object, fixed or movable, live or dead, used by the businessman for carrying on his business. It is not necessarily confined to an apparatus which is used for mechanical operation or processing or is employed in mechanical or industrial business. It, however, does not cover the stock-in-trade or an article which is merely a part of the premises in which business is carried on.

To reach a correct conclusion whether a given item is plant or not the inquiry must be made is as to what operation the apparatus performs in the assessees business. The relevant test to be applied is: Does it fulfill the function of plant in the assessees trading activities? Is it the tool of the taxpayers trade? If it is, then it is plant. No matter that it is not very long lasting or does not contain working parts such as a machine does and plays merely a passive role in the accomplishment of the trading purpose. So the main test is whether a given item is such without which business cannot be carried on.

The assessee being engaged, inter alia, in the activity of building construction, it can be said with certainty that without shuttering no building can be erected and, therefore, the shuttering material is an essential part for carrying on the construction work by the assessee.

We, therefore, fully agree with the conclusion reached by the Appellate Tribunal that the shuttering material being plant, the depreciation will be allowable to the assessee on that material.

(emphasis supplied)

12. In Commissioner of Income Tax Vs. Akal Constructions and Engineering Company( ), the High Court of Punjab and Haryana while dealing with a similar question in respect of shuttering materials observed that the assessee had purchased various items for being used in the construction work and since each item was below Rs. 5000/-, the Tribunal

had rightly accepted the assessees claim for 100% depreciation inconformity with the provisions of Section 32(1)(ii) of the Act.

13. The Madras High Court in Commissioner of Income Tax Vs. Alagendran Finance Limited( ) dealt with the question pertaining to centering sheets and held that the assessee was entitled to 100% depreciation on centering sheets as per the proviso to Section 32(1)(ii) of the Act, because they are individual plant and machinery. The Madras High Court in this judgment, for taking such a view, placed reliance upon the judgment of the same High Court in First Leasing Co. of India Ltd (supra), which dealt with the similar question pertaining to bottles.

14. In Commissioner of Income Tax Vs. Mohta Constructions Co.( ), the Rajasthan High Court also took similar view while dealing with a use of shuttering materials relying upon the judgment of Allahabad High Court in Harijan Evam Nirbal Varg Avas Nigam Ltd(supra).

15. In Express Newspapers Ltd., Vs. Deputy Commissioner of Income Tax( ), the Madras High Court while dealing with the similar question in respect of scaffolding material, relying upon, among the other, the judgment in Harijan Evam Nirbal Varg Avas Nigam Ltd (supra) took similar view.

16 The High Court of Delhi in Commissioner of Income Tax Vs. Ansal Housing Finance and Leasing Company( ) dealt with the question of 100% depreciation on shuttering and scaffolding materials and relying upon several judgments including the judgment of the Allahabad High Court in Harijan Evam Nirbal Varg Avas Nigam Ltd(supra) answered the question in favour of the assessee. For taking this view, the Delhi High Court also placed reliance upon its Judgment in Anatronics General Company (supra) and the judgment of the Rajasthan High Court in Mohata Constructions Company (supra).

17. In Commissioner of Income Tax Vs. Singhania Enterprises( ), the Madhya Pradesh High Court, however, while dealing with a similar question pertaining to centering

material directed the Tribunal to examine the case in the light of observations made in the judgment on the factual aspect to determine whether each plate of the centering material can constitute a plant or not.

18. In yet another judgment of this Court in Vinod Bhargava Vs. Commissioner of Income Tax( ) took similar view as taken in the second judgment.

19. The Madras High Court in Mysore Dasaprakash Vs. Commissioner of Income Tax( ) considered the question whether on the facts and in the circumstances of the case, the Tribunal was right in its view that the items like, switch boards, verandah lights, distribution boards etc., making up of electricity system and the sanitary pipelines and fittings have to be considered as one integrated whole and not as an independent plant. The assessees claim in that case, for depreciation under the proviso to Section 32(1)(ii) of the Act, at the rate of 100%, on electrical switch boards, distribution boards, sanitary pipeline installations, etc. in respect of certain new constructions in the existing building was rejected on the ground that the installations should be considered as an integrated unit and depreciation allowed only at 10%. Holding that it was not proper to work out separately the cost of individual items used to ascertain whether the cost did not exceed Rs. 750/-, it was held that the electrical switch boards, distribution boards and the fittings formed constituent parts of the entire electricity supply system as a whole and there was no scope for cutting up the aggregate expenditure into several parts room-wise, as claimed by the assessee. The benefit arising out of the installation of electricity switch boards, distribution boards, etc. was not confined to any particular room but was intended to regulate, distribute and make available electricity to all the rooms. To break up this expenditure in relation to the electrical system room-wise would be unreal and wholly artificial. Accordingly, considering the electricity system as an integrated whole, the expenditure incurred on it had to be treated as such and there was no scope for dissecting the electrical system into different component parts for each room and working out depreciation under the proviso to section 32(1)(ii) of the Act. Similarly, as sanitary pipelines

and fittings (with the exception of commodes, seat covers, etc., in each room for which depreciation at 100% had been allowed) were intended to serve all rooms as a whole and not any particular room, they had to be regarded as an integrated unit and hence there was no possibility of apportioning the expenditure relating to that with reference to each room.

Thus, it was held that the Tribunal was right in its view that the allowable depreciation on electrical system and sanitary pipelines and fittings had to be restricted to 10 per cent.

20. In Assistant Commissioner of Income Tax Vs. Ravi Construction( ), the Gujarat High Court had an occasion to consider the question: is centering material to be viewed as block of assets for the purpose of allowing deduction in respect of depreciation under Section 32(1)(ii) of the Act? and further is depreciation allowable at 100% on the centering material as against normal rate of depreciation at 33.1/3 % for plant and machinery?. Gujarat High Court dismissed the appeals filed by the Revenue answering both the questions infavour of the assessee.

21. The High Court of Karnataka in Pathange Poultry Farm Vs. Commissioner of Income Tax [1994 ITR 210 (668)] considered the question whether each cage was a plant by itself and, therefore, entitled to depreciation at 100 per cent under Section 32 (1) (ii) of the Act. The assessee had claimed 100 per cent depreciation on the cost of cages purchased on the ground that each cage was a separate plant whose value being less than Rs. 750/-. The assessees claim was, however, disallowed holding that the cages were not separate but one continuous fabricated unit in which the partitions are made for a number of birds to be enclosed in each compartment. In this backdrop, the matter reached the High Court. The Division Bench (S.B.Majmudar and T.S.Thakur, JJ) after considering several judgments of different High Courts and also English judgments observed that the position of smaller cages is no better than the components of an engine which in a knocked down condition do not perform any function but when assembled together make a vital contribution towards the functioning of the engine. It was further observed that just as the components of an engine cannot be treated as

plant in themselves, so also these cages cannot be termed as plant to individually qualify for the depreciation allowance claimed by the assessee. It was further observed that for any article or thing, component or object to be termed plant itself so as to qualify for depreciation allowance at 100 per cent of the cost incurred on the purchase or fabrication thereof, the article or component, as the case may be, must be used by the assessee, as a self-contained unit and not as a part or attachment of a bigger unit as in the case of cages. This, however, does not mean that the article or object would cease to be plant for the purpose of depreciation, as a part of the bigger unit. All that it would mean that while it may qualify for depreciation as a part or extension of the bigger plant of which it becomes a part, it would not be entitled to be termed plant in itself to qualify for the allowance in its own right.

22. The Supreme Court in Commissioner of Income Tax, Madras Vs. Mir Mohammad Ali( ) considered the question whether extra depreciation is admissible under the provisions of Section 10(2)(via) of the Income Tax Act, 1922 (for short 1922 Act) in respect of a diesel oil engine fitted to a motor vehicle in replacement of the existing engine? While dealing with this question, the Supreme Court extensively quoted and considered the provisions contained in all clauses of Section 10(2) of the 1922 Act. The Supreme Court also considered the word machinery used in all the clauses of Section 10(2) and observed that if a machine is machinery for purposes of giving an allowance in respect of insurance or for repairs or in respect of normal depreciation or for the purpose of paragraph one of Clause (vi), it must also be machinery for the purpose of the second paragraph of Clause (vi) and Clause (via). Then after considering the scheme of paragraph two of Clause(vi) and Clause (via), observed that it is different from that of paragraph one of Clause (vi) inasmuch as before it can qualify for extra depreciation, the machinery must be new and must be installed, and the rate of depreciation is provided in the Act itself. Keeping in view this scheme, it was urged before the Supreme Court that the word machinery must be given a restricted meaning in paragraph two of Clause(vi) and Clause (via), and the meaning suggested is that it must be a self contained unit capable of being put to use in the business, profession or vocation for the benefit of

which it was installed. While dealing with this contention, the Supreme Court observed as follows:-

First, we do not think that there is anything in the scheme of the second paragraph of clause (vi) and clause (via) that throws any light on the construction of the word machinery in these clauses. It is true that the machinery must be new and it must be installed and the rate of allowance is prescribed in the Act itself. But the requirement that the machinery must be new does not tell us what is machinery. Assuming for the present that a diesel engine is machinery, if an assessee buys and installs a second hand diesel engine, he will not be given the extra allowance under the second paragraph of clause (vi), and the ground would be that the engine is not new and not that because it is second hand it is not machinery. Similarly, if it is purchased but not installed, the ground of refusal would be that it has not been installed and not that because it has not been installed it has ceased to be machinery. Suppose a new machinery is purchased but not installed, it would not qualify for extra depreciation on the ground that it has not been installed and not because it has ceased to be machinery due to its non-installation. The fact that the rate of depreciation is provided for in the Act has also no bearing on the question of the construction of the word machinery. This fact only indicates that the legislature had made up its mind as to the extent of encouragement to be given to industry and, therefore, it did not consider it necessary to delegate this to the rule- making authority.

22.1 The Supreme Court then considered the judgment of Privy Council in the case of Corporation of Calcutta Vs. Chairman, Cossipore and Chitpore Municipality( ) and reproduced the definition of machinery in the judgment. The Privy Council in that case hazarded the definition of machinery to mean, some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and inter- dependent operation of their respective parts generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result. It was then observed that when the assessee purchased the diesel engines, they were not plant or part of a

plant: because they had not been installed in any vehicle. They were, according to the definition given by the Privy Council, machinery. They were not yet part of a plant, and, according to the Act, 20% of the cost thereof was allowable to the assessee. It was further observed that all the conditions required by the Act satisfied. If we look at the point of time of purchase and installation, what was purchased and installed was machinery. Ultimately, the majority judges in this case (Mir Mohammad Ali) answered the question in the affirmative.

23. In Taj Mahal (supra) the Supreme Court considered the question whether sanitary and pipeline fittings in a building, which is run as a hotel would fall within the meaning of the word plant in Section 10 (2) (vi-b) of the 1922 Act. Section 10(5) of the 1922 Act defines the word plant, which includes vehicles, books, scientific apparatus and surgical equipment purchased for the purpose of the business, profession or vocation. In paragraph 11 the Supreme Court observed thus:-

11. It cannot be denied that the business of hotelier is carried on by adapting a building or premises in a suitable way to be used as a residential hotel where visitors come and stay and where there is arrangement for meals and other amenities are provided for their comfort and convenience. To have sanitary fittings etc. in a bath-room is one of the essential amenities or conveniences which are normally provided in any good hotel, in the present times. If tine partitions in Jarrolds case (supra) could be treated as having been used for the purpose of the business of the trader, it is incomprehensible how sanitary fittings can be said to have no connection with the business of the hotelier. He can reasonably expect to get more custom and earn larger profit by charging higher rates for the use of rooms if the bath-rooms have sanitary fittings and similar amenities. We are unable to see how the sanitary fittings in the bath-rooms in a hotel will not be plant within Section 10 (2) (vi-b) read with Section 10 (5) when it is quite clear that the intention of the Legislature was to give it a wide meaning and that is why, articles like books and surgical instruments were expressly included in the definition of plant. In decided cases, the High Courts have rightly understood the meaning

of the term plant in a wide sense. (See Commissioner of Income-tax, U.P. v. Indian Turpentine and Rosin Co. Ltd.). MANU/UP/0144/1969 : [1970] 75 ITR 533 (All)]

23.1 Then the Supreme Court observed that the High Court was right in not accepting the reasoning of the Tribunal based on the rates relating to depreciation under Section 10(2)(vi) and the assessee having claimed that the sanitary and pipe-line fittings fell within the meaning of furniture and fittings in Rule 8(2) of the Rules. It has been rightly observed that the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect. If the assessee had claimed higher depreciation allowance that would not detract from meaning of the word plant in Clause (vi-b) of Section 10(2) of the 1922 Act and thus dismissed the appeal filed by the Revenue.

23.2 It is necessary to notice that in Taj Mahal (supra) the judgment in J.Lyons and Company Limited Vs. Attorney General( ) was relied upon by the Revenue and while dealing with the submission based on these judgments, the Supreme Court observed that it is distinguishable and it hardly supports the contention of the Revenue. In that case, it was held that electric lamps and fittings in a tea shop were not part of the apparatus used for carrying on the business but were part of the setting in which the business was carried on and, therefore, were not plant, within the meaning of certain provisions of the War Damage Act, 1943. It was further observed if these articles are plant, it can only be by reason that they are found on premises exclusively devoted to trade purposes. Trade plant alone need be considered.

24. In St. Johns School (Mountford and Another) Vs. Ward( ) the High Court of Justice (Chancery Division), the question that was considered was whether the expenditure incurred in the accounting years ended on 31-01-1968 and 03-01-1969 respectively of structures for use in trade were in whole or part expenditure on the provisions of machinery or plant within the meaning of Sections 18 & 19 of the Capital Allowances Act, 1968. Templeman, J speaking for the Bench after considering the observations made in Yarmouth (supra)

as to what is plant, proceeded to consider the judgment in Commissioners of Inland Revenue Vs. Guthrie( ). That case concerned a motor car and the question was whether the taxpayer was entitled to an initial allowance in respect of the expenditure, which he paid for that Car in order that it might be used for business purposes. He had the misfortune to pay his money and never get the motor car owing to default of the company from which it had been ordered. It was held that the purchase price was paid for the provision of plant i.e., the motor car and the relief was granted accordingly.

24.1 The Supreme Court in Taj Mahal (supra) though held that sanitary and pipeline fittings in a building which is run as a hotel would fall within the meaning of the word plant, distinguished the case J.Lyons and Company Limited (supra) and held that electric lamps and fittings in a tea shop were not part of the apparatus used for carrying on the business and they were the part of setting in which the business was carried on and, therefore, were not plant. Thus, the functional test assumes importance. One can use the car for his business and not spare parts. Even if spare parts are held to be plant, but if they are not used for his business independently, they cannot be treated as plant. The light and pipeline fittings in a hotel building are plant but the light and pipeline fittings cannot be treated as plant if they are not used for business independently as seen from the judgment of the Supreme Court in Taj Mahal (supra). Shuttering/ centering is undoubtedly a plant, but its components which cannot be put to use in the business independently, cannot be treated as plant.

25. The Bombay High Court in Commissioner of Income Tax, Bombay Vs. Tata Hydro Electric Power Supply Company Limited( )considered the question whether on the facts and in the circumstances of the case, it was rightly held that the assessee was entitled to development rebate on the expenditure incurred by the assessee for the Assessment Year 1962-63 and 1963-64 on anchoring Walawhan Dam and cement grouting of Shirawata Dam. The question was answered in the affirmative after considering several judgments including the judgment of the Supreme Court in

Taj Mahal (supra). The relevant observations in the judgment read thus:-

It should not be overlooked that Walawhan Dam and Shirawata Dam were constructed in the years 1911 and 1916. At that time, the modern technique for construction of dams was not so much advanced. In the two years, with which we are concerned, lakhs of rupees have been spent in anchoring Walawhan Dam and Shirawata Dam. It is undoubtedly true that by incurring this expenditure no independent asset has come into existence but in order to entitle an assessee to claim development rebate creation of an independent asset is not essential. If by incurring this expenditure the existing dams have been so strengthened as to prolong their lives for a sufficiently long duration, then by incurring this expenditure a new plant can be said to have been installed so as to entitle the assessee to claim development rebate. Instead of demolishing the old dams and constructing new ones in their place, what has been done by the assessee by modern scientific technique is that huge expenditure has been incurred as a result of which the lives of the existing dams will be prolonged for a sufficiently long period. This will result in a new plant being installed within the meaning of s.33 of the Act, even though by the incurring of the expenditure, the dams are not having any independent existence apart from the old dams themselves. Thus, by adopting the Coyne method of anchoring the two dams the new plant can be said to have been installed within the meaning of s.33 of the Act, and the Tribunal was right in allowing the claim of the assessee for development rebate.

25.1 Then the Bombay High Court referred to the judgment of the Gujarat High Court in CIT Vs. Elecon Engineering Company Limited( ) wherein it was held that the drawings and patterns, which constitute know-how and are fundamental to the assessees manufacturing business, are plants. It is further observed that it is well settled in view of the judicial pronouncements that neither the word plant nor the word machinery is confined to a self-contained unit plant includes part of a plant, e.g., the engine of a vehicle; machinery includes part of a machinery, and building includes part of a building.

25.2 With respect to the Honble Judges for making such observations, we did not find any judgment so far holding that the plant includes part of a plant. To support we would like to state that a Car is a plant or engine of the vehicle is a machinery but in any case spare parts of the car or of the machinery cannot be treated as a plant because the same cannot be used in the business/profession of the assessee independently. Similarly, every single component/unit forming a shuttering or centering cannot be used independently in the business of construction. In other words, unless every component/unit of shuttering is combined with one or more similar or dissimilar components/units, it cannot put to use in shuttering which is the plant in itself.

26. The Karnataka High Court in Pathange Poultry Farm (supra) took similar view that any article or thing, component or object to be termed plant itself so as to qualify for depreciation allowance at 100 per cent of the cost incurred on the purchase or fabrication thereof, the article or component, as the case may be, must be used by the assessee, as a self-contained unit and not as a part or attachment of a bigger unit. In a given case a component/article being used as a shuttering/centering material could be treated as plant, but it cannot be treated as a plant if it is part of shuttering, which is a plant in itself. In other words, a component/article being used for shuttering, which is a plant in itself, would not qualify for depreciation under proviso to Section 32 (1) (ii) of the Act as a part or extension of the bigger plant of which it becomes a part and it would not be entitled to be termed as a plant in itself to qualify for the allowance in its own right.

27. In this backdrop, it would be relevant to know what does the words centering and shuttering exactly mean, or how they are understood in common parlance or in civil engineering, and what exactly centering or shuttering materials mean. This is necessary, since in the present case what falls for our consideration is whether materials or components collectively or individually, used for centering or shuttering could also be treated as plant.

At the out set, in our opinion, as observed earlier, shuttering-which is a supporting structure, used to shape and support the concrete until it attains strength, is a plant within the meaning of section 43 of the Act. The question, however, is whether every unit/component (thing) used for forming shuttering or centering could be treated as plant. The words centering or shuttering are not defined in any enactment or elsewhere, and therefore, it would be necessary to find out how they are understood in civil engineering.

27.1 Dictionary meaning of the word centering is a temporary frame used to support an arch, dome etc., while under construction and the word shuttering means a temporary structure of wood/steel used to hold concrete during setting. Shuttering or centering is also known as formwork. It is a temporary structure to confine and support the concrete till it gains strength for self- supporting. As fresh concrete is in a plastic state when it is placed for construction purposes, it becomes necessary to provide some temporary structure. A complete study of formwork or shuttering can be divided into several sub- heads, such as, requirements of formwork; economy in formwork; materials and sizes for forms; types of formwork and removal of formwork. The materials used for shuttering/formwork, most commonly used, are timber, plywood, steel and aluminum. For erecting temporary structure, apart from timber, plywood, steel sheets and aluminum, several other articles/components are also used namely steel or wooden poles or bamboo sticks, cleats, braces, yokes, bevel strip boalts, ribbon, ledgers, wooden joists, hanger, wedges etc. All these articles are used to support and join timber plank, plywood, steel sheets, etc. For instance, formwork for stairs consists of plank sheeting (to receive concrete), risers (to give height to the steps), stiffer risers (to keep risers in position), wooden boards on wall side and stingers on the open side of stair.

27.2 In construction activity, the vertical formwork is usually called shuttering, whereas horizontal formwork is called centering. The components or units (things) put to use for shuttering and centering are similar or common. Generally, there are two main types of shuttering, namely steel and wooden plank/plywood shuttering. Apart from steel and

wood, plastics and biboglass are also used in formwork. Thus, the shuttering could be classified as a structure, erected temporarily, designed to cast fresh fluid concrete of the required shape and dimensions, and support it until it becomes self supporting. After the cement concrete is set or gets hardened, the formwork is removed and it is known as stripping. Stripped formwork can be reused. A good formwork should satisfy the following requirements: i) it should be strong enough to withstand all types of dead and live loads; ii) it should be rigidly constructed and efficiently propped and braced both horizontally and vertically, so as to retain its shape; and iii) it should permit removal of various parts in desired sequences without damage to the concrete. Steel sheets and/or timber/wood planks can also be used as shuttering material. They can be fabricated in large number in any desired modular shapes and sizes. Steel forms are used in large number of projects and in situation where large numbers of reuse of the shuttering is possible. Steel forms are stronger, durable and have longer life than the timber formwork. They can be installed and dismantled with greater ease and speed. Steel plates/wooden planks used as shuttering material need support of wooden poles or steel rods or bamboo sticks, with braces or batten to keep it in its place till they are stripped after setting off or hardening off cement concrete. Without support with the poles/rods or braces or batten, they cannot be used independently. Even for joining more than one shuttering sheet/wooden planks, they required to be efficiently braced both horizontally and vertically so as to retain its shape. In short, the shuttering sheets can be used with the support of one or more other units/components such as poles, braces, yokes, ledgers, bevel strip boalts, ribbons, etc.. The shuttering materials would not mean a single unit or component, which can be put to use and make it functional. No single unit or component of the shuttering/centering materials can be used and make function and that it has to be used only with the support of other components (things). It is true that individual plates or planks used for providing support for slab or for providing support to the beam or pillars, can be treated as individual units or components of shuttering material, but it can be put to use and make it functional only

with the support of other units/components such as poles/rods, braces, battens, etc.

28. Having so understood the meaning of the word shuttering or centering, which is also known as formwork, we would now like to have a glance at the definition of the word plant, as defined under Section 43 of the Act. The word plant is described with an inclusive definition. It includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of business or profession but does not include tea bushes or live stock. The word plant in its ordinary meaning is a word of wide import and it must be broadly construed having regard to the fact that articles like books and surgical instruments are expressly included in the definition of plant in Section 43(3) of the Act. It includes any article or object, fixed or movable, live or dead, used by a businessman for carrying on his business. An article to qualify as plant must have some degree of durability and that which is quickly consumed or worn out in the course of a few operations or within a short time cannot properly be called plant. The size or value or quantity of an article, used in carrying on business, would not have any effect on calling it a plant. The relevant test to be applied is whether it fulfils the function of plant in the assessees business/trading activity? Is it a tool of the assessees business/trade? If it is, then it is plant, no matter that it is not very long lasting or does not contain working parts such as a machine does and plays a merely passive role in the accomplishment of the trading purposes. In other words, the test would be does the article fulfill the function of a plant in the assessees trading activity? Is it a tool of his trade with which he carries on his business? If the answer to these questions is in the affirmative, it would be a plant. We have no doubt that centering and shuttering fulfill the function of a plant, which the assessee use it as a tool for carrying on his business and hence it is a plant.

29. In this backdrop, it is necessary to consider whether each article/unit/component used in shuttering or centering could also be treated/termed as a plant. The best possible way is to understand the nature of the business and the purpose of such article/unit/component in such a business. It is also necessary to find out whether any single

article/unit/component can be put to use as shuttering material and if the answer is in the negative, in our opinion, a single article/unit/component cannot be treated as a plant or it would not fall within the meaning of the word plant as defined under Section 43(3) of the Act. The test is if one single article/unit/component itself is sufficient to fulfill the functioning of shuttering, it could be called or treated as a plant but if not it is certainly not a plant. We do not wish even indirectly to suggest that shuttering materials when put to use for laying cement concrete, is not a plant. When shuttering materials or units/components/articles are put to use together which are dependent on each other, it is considered as a plant. Thus, in our opinion, the functional test is the test, apart from the other tests, if applied, no individual article/unit/component could be considered as a plant. Merely because these articles are durable, they cannot effectively stand alone without functional integration with other similar or dissimilar article/unit/component so as to qualify as plant. Functional utility of each article/ unit/ component of the shuttering material to a Builder or Contractor in construction activity is the relevant test so as to consider it a plant and as observed earlier none of the article/unit/component of the shuttering material could be put to use without support of other similar or dissimilar article/unit/component. To test, what we are holding is correct, we may add that a car is a plant but not its spare parts, a book is a plant but not its pages, a ship is a plant but not its parts.

30. From bare reading of the definition of plant under Section 43(3) of the Act, it is clear that each of the items/articles mentioned therein is an independent article/item, which fits-in the functional test for the use. None of the articles/ items mentioned in the definition or even for that matter a bottle is dependent on any other article or they need not be put to use with other similar or dissimilar items/articles so as to make it functional. Having so observed, in our opinion, the judgment of Krishna Bottlers (supra) would not come in our way to hold that shuttering materials though is a plant every individual article/unit/component of the shuttering materials cannot be treated as plant. The benefit arising out of every individual article/ unit/ component of the shuttering

material is not confined to any particular part of the construction activity. Temporary structure, used for moulding cement concrete may be for a very small portion of construction activity, is also not confined to the use of any particular article/unit/component of shuttering material. In other words, in any case unless two or more articles/ units/ components, similar or dissimilar, are put to use together, it cannot be made functional and no cement concrete can be laid in the process of construction activity.

31. We also need to understand what does apparatus means. The Judicial Dictionary by Justice L.P.Singh and Justice P.K.Majumdar, third edition, reprint 2012 with reference to a judgment of Kerala High Court in K.N.Achuthan Pillai v. Union of India( ) described the word apparatus to include a telephone receiver. It further states if any extension is taken from such a receiver, it becomes an appliance or part of that apparatus.

31.1 As stated in the New Oxford Dictionary of English edited by Judy Pearsall the word apparatus means the equipment needed for a particular activity or purpose. The other meaning of the word given in the dictionary is a complex structure within an organization or system: the apparatus of Government. The third meaning in the dictionary is collection of notes, variant readings and other matter accompanying a printed text.

31.2 The Supreme Court in Words and Phrases by Justice M.L.Singhal with reference to a Commissioner of Customs v. C-Net communication(I) Pvt.Ltd., [2007 (11) JT 329] stated the word apparatus would mean the compound instrument or chain of series of instruments designed to carry out specific function or for a particular use.

31.3 The Chambers Dictionary, 10th Edition, described the word apparatus to mean things prepared or provided, material; a set of instruments, tools, natural organs, etc; a machine or piece of equipment with a particular purpose; materials for the critical study of a document; an organization or system that enables something to function.

31.4 Thus, from the meaning of the word apparatus given in different dictionaries would, in our opinion, definitely not mean only a single piece of some instrument but it would also include compound instrument or chain of series of instruments designed to carry out specific function or for a particular use.

32. Our line of thinking is also supported by the interpretative process of enquiry. One has to determine whether each item of heterogeneous material comes under the definition of Plant mentioned in Sec.32 (1) or not. Then, if it is a plant one has to go to proviso to see whether any item of such Plant utilized by the assessee for the purpose of his business or profession falls therein. In this case the centering and shuttering material is a homogenous qualitative material, though it is divisible. In such a case, one should not allow the assessee to claim higher rate of depreciation by application of proviso to such homogenous material. For example, the Supreme Court was considering in Appropriate Authority and Commissioner, Income Tax v. Smt. Varshaben Bharatbhai Shah( ) a case of pre-emptive purchase of immovable property by Central Government. It was held that the application of provisions to pre-emptive purchase cannot be avoided by taking technical view of agreement that share received by each co-owner was less than the prescribed value, as the apparent consideration stated in the agreement exceeded the value prescribed for applicability of provision of pre-emptive purchase. It was held that the subject-matter of transfer and its apparent consideration has to be decided by taking realistic view and not in technical manner. The judgments of Madras, Karnataka, Delhi and Calcutta High Court were overruled and the view taken by Bombay High Court in Jodhram Daulatram Arora v. M.B.Kodnani( ) was upheld.

33. In Commissioner of Income Tax v. Vijaya Enterprises( ), it was wrongly quoted that they were dealing with the proviso to Section 32 (1) (ii), but in fact, it is a proviso to Section 32 (1) only. In Krishna Bottlers (supra), the proviso was not considered and what was considered was whether the bottles and shells constitute plant and depreciation is admissible thereon under Section 32 (1) (ii) of the Act. The decisions of

English law which dealt with plant are of no avail for interpreting the section. Thus, it is clear that where the actual cost of any plant does not exceed Rs. 5000/-, the assessee is entitled to claim 100% depreciation. Merely because cost of every single item is less than Rs. 5000/-, if we hold that every single item used for shuttering can be treated as plant perhaps that will create a very strange situation. For instance, a Car is a plant within the meaning of Section 43 of the Act, however the owner of the Car is not entitled to claim 100% depreciation on its spare parts since the cost of the Car is more than Rs. 5000/-. Therefore, if we ask question to ourselves whether all spare parts of the Car including tyres costing less than Rs. 5000/- individually or separately by the assessee, whether he is entitled to claim 100% depreciation on those items, our answer to this question is in the negative. Similarly, centering/shuttering, erected temporarily, even it is assessed costing less than Rs. 5000/-, in a given case, perhaps the Contractor may be able to claim 100% depreciation but cannot claim that every single unit/ article/ component used for shuttering is costing less than Rs. 5000/- and is, therefore, entitled to claim 100% depreciation. In the circumstances, the question referred to must be answered in the negative.

JUDGMENT (per Honble Sri Justice M.S.Ramachandra Rao) :

34. I have seen the opinion of the Honble the Acting Chief Justice for himself and my brother Justice A.Ramalingeswara Rao, but for the following reasons, I regret to defer from their opinion:

I. THE BRIEF FACTS OF THE CASE :

35. The assessee is the proprietor of a concern by name M/s Vijaya Nirman Co. which is engaged in the business of Civil Contracts. It had filed a return of income on 4.11.1991 admitting a taxable income of Rs. 9,87,690/-. It had claimed 100% depreciation on centring and shuttering equipment worth Rs. 13,19,434/- invoking the first proviso to Sec.32(1)(ii) of the Income Tax Act, 1961 (for short the Act). It was not disputed by the Revenue that if the said proviso is not attracted, the assessee would still be entitled to claim 33

1/3 % depreciation on the centering and shuttering equipment under Sec.32(1) of the Act.

36. By order date 31.3.1994, the Dy. Commissioner of Income Tax held that the assessee cannot claim 100% depreciation on centering and shuttering equipment and he is entitled to only 33 1/3 % depreciation thereon. He held that, unlike in the case of certain single equipments like bottle, centering and shuttering equipment/materials are usable only collectively, and therefore the question of allowing depreciation on such materials with reference to cost of one or two such material/s cannot arise. He rejected the assessees submissions that he is entitled to depreciation thereon at 100% by taking purchase value of each unit thereof into account. He also rejected the assessees plea that although sometimes centering and shuttering equipment/ materials might be used in whole lots, at other times a few of these materials or even a single one could be put to use. He also held that depreciation can be allowed on centering and shuttering equipment/materials, not on entire amount of Rs. 13,19,434/ claimed by assessee, but only on Rs. 11,46,124/.

37. The assessee filed an appeal to the Commissioner of Income Tax. By order dt. 25.11.1994, the Commissioner partly allowed the appeal of the assessee and following his earlier order dt. 2.8.1994 in the case of one M/s Bharti Builders, Vishakhapatnam (wherein he had taken a view that centering and shuttering equipment/materials acquired by assessee each costing less than Rs. 5000/- were used individually or under various combinations in construction work), he held that the assessing officer should allow 100% depreciation to the assessee.

38. The Revenue filed a further appeal to the Income Tax Appellate Tribunal. The Tribunal, by order dt. 14.02.2001 dismissed the appeal of the Revenue relying upon its order dt. 13.11.1998 in ITA. No. 435/HYD/1997 in the case of M/s. Raghavendra Constructions, Visakhapatnam vs. ACIT, Circle-II, Visakhapatnam in which, on similar facts, it had allowed depreciation at 100% on shuttering and centering materials.

39. This is questioned by the Revenue in the present appeal.

40. This appeal was admitted in 2001 to consider the following substantial questions of law :

(A) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the assessee is entitled to claim 100% depreciation on the shuttering/centring materials ?

(B) Whether on the facts and in the circumstances of the case, the order of the ITAT suffers from perversity by reason of there being no material placed before the Appellate Tribunal to hold that each of the shuttering plate was used independently and individually by the assessee on the basis of functional test ?

41. When the appeal came up for consideration on 14.02.2015 before a Division Bench of this Court, the said Division Bench had opined that there was a conflict between two Division Bench judgments of this court, the first, in Commissioner of Income Tax v. Raghavendra Constructions( ) and the second, in The Commissioner of Income Tax v. Live Well Home Finance (P) Ltd( ) and the matter was required to be decided by a larger Bench.

42. The Honble Chief Justice then constituted this Full Bench to consider the following question of law:

Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in holding that the assessee is entitled to claim 100% depreciation on the centring/ shuttering materials?

II. THE APPLICABLE PROVISIONS OF LAW :

43. In both the above decisions first proviso to Sec.32(1)(ii) of the Act thereto as it existed in assessment year 1991-92 was considered. As it stood then, the said provision stated as under:

32. Depreciation : -- (1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of Section 34, be allowed.

(i) Omitted by TL (Amend Misc. Provisions) Act, 1986, w.e.f. 01.04.88;

(ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed:

Provided that where the actual cost of any machinery or plant does not exceed five thousand rupees, the actual cost thereof shall be allowed as a deduction in respect of the previous year in which such machinery or plant is first put to use by the assessee for the purposes of his business or profession.

44. It appears that Sub-section (1) of Sec.32 was substituted by Finance (no.2) Act, 1998 w.e.f 1.4.1999 and the proviso thereto was deleted. However we are not concerned with the substituted provision.

45. Sec.43 (3) of the Act as it stood in 1991-92 assessment year stated:

Sec.43. Definitions of certain terms relevant to income from profits and gains of business or profession :

In Sec. 28 to 41 and in this section, unless the context otherwise requires---

(3) Plant includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession but does not include tea bushes or live stock;

III. DICTIONARY MEANING OF SHUTERING/CENTRING

46. The Concise Oxford Dictionary (9th Edition) defines centering as a temporary frame used to support an arch,

dome, etc., while under construction. It defines shuttering as a temporary structure, usually of wood, used to hold concrete during setting.

IV. MOST OF THE HIGH COURTS IN INDIA HAVE ACCEPTED THAT SHUTTERING/ CENTERING MATERIAL IS PLANT :

47. That centering and shuttering material would come within the definition of plant as defined in Section 43 (3) of the Act has been accepted by Madras High Court in Commissioner of Income Tax v. Alagendran Finance Ltd.( ) and in Express Newspapers Ltd. v. Dy. Commissioner of Income Tax( ), by the Allahabad High Court in Harijan Evam Nirbal Varg Avas Nigam Ltd. v. C.I.T.( ), by the High Court of Punjab and Haryana in C.I.T. v. Akal Construction and Engineering Company( ), by the Rajasthan High Court in C.I.T. v. Mohta Construction Company( ), by the Delhi High Court in C.I.T. v. Ansal Housing Finance and Leasing Company Ltd( )., by the Madhya Pradesh High Court in C.I.T. vs. Singhania Enterprises( ), and by the Gujarat High Court in Assistant Commissioner of Income Tax v. Ravi Construction( ).

V. THE VIEW IN RAGHAVENDRA CONSTRUCTIONS:

48. Contrary to the consistent view of the above High Courts, in Raghavendra Constructions (29 supra), the Division Bench had taken the view that shuttering is not an integrated component forming a plant; that it consists of metal and non-metal props, pipes, right angles, sewer clamps, fixed base plates, wooden poles, wooden planks, plates, steel and aluminum boxes, wooden chairs and anything which can be used to support a suspended wall, reinforced cement concrete stand, an arch, a sunshade, a cantilever cement structure as support when such structures are being built with cement concrete; the purpose of shuttering is only till the setting of the cement concrete or cement material and the moment the cement concrete achieves the required setting, the shuttering material is removed and used or re-used in other constructions. It held that in the very nature of things, and as understood in the construction industry, a single

metal or wooden pole or supporting material is never understood as forming shuttering material and that it is understood only as an integrated unit consisting of more than a few metal or wooden poles, planks and other props used to support the cement construction stage of a building. It held that the Courts in India had applied the durability and/ or functional tests; if a thing itself is durable (in the sense it can be used and re-used as non-interdependent, interconnected a non-consumable thing) and has functional utility in the trade or business of the assessee to advance his business interest, such a thing would be a plant; if it is durable, but cannot effectively stand alone without functional integration with other similar or dissimilar components or unit, it would not qualify as a plant. It held that a single unit of centering or shuttering material by itself though durable may not have functional value; similar units form one integrated part which can be used as shuttering material; and therefore, it is not possible to accept the plea of the assessees that each similar or dissimilar component or unit, forming part of the whole integrated shuttering material, is entitled for 100% depreciation as a plant. It held that each item of shuttering material cannot be treated as one whole shuttering material forming one plant eligible for 100% depreciation under the proviso to Section 32 (1) (ii) of the Act.

VI. THE OPPOSITE VIEW IN M/S LIVE WELL HOME FINANCE (P) LTD

49. On the other hand, in Live Well Home Finance (P) Ltd. (30 supra) another Division Bench disagreed with the above view in Raghavendra Constructions (29 supra). It held that in the context of availing the benefit under Section 32(1)(ii) of the Act, identification of a unit of plant becomes essential and though the Act and the precedents on the subject are silent about this, the safest way is to identify the irreducible minimum of the plant or machinery, which in turn can be put to independent use. It held that mere fact that number of such units can be clubbed together to achieve the result in a greater magnitude by itself does not result in the merger into the larger one or loss of their identity. It held that individual plates of sizes of about 3 ft x 3 ft. for providing support for slab or 10 ft. x 3 ft. or 2 ft. for providing support to the beams

or pillars can safely be treated as units. It held that the irreducible minimum for the shuttering material is the individual plates, for providing support to the reinforced concrete and cement or the poles and bars that are used at the time of formation.

VII. THE RIVAL CONTENTIONS

50. While the Revenue contends that this view in Live Well Home Finance (P) Ltd. (30 supra) is not the correct view and that the view in Raghavendra Constructions (29 supra) is the correct view, the assessee contends to the contra.

51. The contention of the Revenue is that it was not the intention of Parliament while enacting the proviso to Section 32 (1) (ii) to permit 100% depreciation on the primary tools used by the assessee in the course of his trading activity and that since individual shuttering/centering material cannot function on stand alone basis without functional integration with other similar items, they would not qualify as plant.

52. The Revenue does not seriously dispute that the assessee would be entitled to 33 1/3 % depreciation on the shuttering/centring material. In fact, neither before the assessing officer, the Commissioner of Income Tax or before the Income Tax Appellate Tribunal, was it the plea of the Revenue that shuttering/centering material is not entitled to be treated as a plant at all.

53. Its contention is that since each of the centring/ shuttering material cannot be used on stand alone basis, the assessee cannot claim 100% depreciation. According to it, the Division Bench in Raghavendra Constructions (29 supra) has rightly applied stand alone test and came to the conclusion that individual components of centering/ shuttering material would not be eligible for 100% depreciation even though they are of value less than Rs. 5,000/-.

VIII. THE INTERPRETATION OF THE TERM PLANT BY THE SUPREME COURT

54. Section 43 (3) defines a plant as including ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession. This being an inclusive definition, it indicates that the definition of the term plant is intended to be extensive.

55. First in 1972, the Supreme Court while construing the said definition in CIT, A.P. v. Tajmahal Hotel, Secunderabad( ) held that sanitary and pipeline fittings in a building which is run as a hotel fall within the word plant in Section 10 (2) (vi-b) of the Income Tax Act, 1922 (which is in pari materia with Section 43 (3) of the Income Tax Act, 1961) for grant of depreciation allowance and observed :

9. Now it is well settled that where the definition of, a word has not been given, it must be construed in its popular sense if it is a word of every day use. Popular sense means that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it. In the present case, Section 10(5) enlarges the definition of the word plant by including in it the words which have already been mentioned before. The very fact that even books have been included shows that the meaning intended to be given to plant is wide. The word includes is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include.

10. The meaning of plant as given in Yarmouth v. France( ) was accepted as correct. According to that meaning plant includes whatever apparatus or instruments are used by a businessman in carrying on his business.

11. We are unable to see how the sanitary fittings in the bath-rooms in a hotel will not be plant within Section 10(2)(vi-b) read with Section 10(5) when it is quite clear that the intention of the Legislature was to give it a wide meaning and that is why, articles like books and surgical instruments

were expressly included in the definition of plant. In decided cases, the High Courts have rightly understood the meaning of the term plant in a wide sense. (See Commissioner of Income-tax, U.P. v. Indian Turpentine and Rosin Co. Ltd.) MANU/UP/0144/1969 : [1970] 751 ITR 533 (All)...

56. In the year 1986, in Scientific Engineering House P. Ltd. v CIT, A.P.( ), the Supreme Court considered Section 43 (3) of the Act and declared that technical know-how in the shape of drawings, designs, charts, plans, processing data and other literature falls within the definition of plant and is therefore, a depreciable asset. It declared that the term plant would include any article or object fixed, movable, live or dead, used by a business for carrying on his business and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. It held that in order to qualify as plant, the article must have some degree of durability and held that the test would be :

Does the article fulfill the function of a plant in the assessees trading activity ? Is it a tool of his trade with which he carries on his business ? If the answer is in the affirmative, it will be a plant.

IX. THE SUPREME COURT DEALING WITH THE WORD MACHINERY HELD SOME MECHANICAL CONTRIVANCES EITHER BY THEMSELVES OR IN COMBINATION WITH ONE OR MORE OTHER MECHANICAL CONTRIVANCES COULD BE MACHINERY

57. Coming to the point in issue in this case, in Commissioner of Income Tax v Mir Mohd Ali( ), the Supreme Court was considering the claim by an assessee, a bus owner and a transport operator, who had replaced petrol engines in two of his buses by new diesel engines for not only normal depreciation under first proviso of clause (vi) of Section 10 (2) of the Income Tax Act, 1922 but also depreciation under the second para of clause (vi) and clause (via) of the said Act. The I.T.O. allowed only 25% depreciation under the first para of clause (vi). The assessee appealed to the Assistant Commissioner and also to the I.T.A.T. Both of whom rejected

his claims for further depreciation. The Tribunal held that he is not entitled to extra depreciation under clause 10 (2) (vi) or 10 (2) (via) on the ground that even if an engine is important for running a motor, it is after all part of an equipment and cannot itself be machinery for claiming extra depreciation as envisaged in those sub sections. It referred the matter to the High Court which held in favour of the assessee. While dealing with the question whether a new diesel engine in a Bus amounts to machinery, Sikri, J of the Supreme Court (speaking for himself and Justice Subba Rao), posed the question

What then is the test for determining whether a mechanical contrivance is machinery for the purposes of second para of cl.(vi) and (via) 9of sec.10(2)) ?

The Court then quoted with approval, the following passage from the judgment of the Privy Council in Corporation of Calcutta v Chairman v Chairman, Cossipore and Chitpore Municipality( ):

The word machinery, when used in ordinary language prima-facie, means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and inter dependent operation of their respective parts generate power, or evoke, modify, apply, or direct natural forces with the object in each case of effecting so definite and specific a result.

(emphasis supplied)

It upheld the contention of the assessee and affirmed the decision of the Madras High Court that the assessee is entitled to extra depreciation admissible under Section 10 (2) (vi) and 10 (2) (via) of the Act.

X. THE SUPREME COURTS ABOVE INTERPRETATION W.R.T. MACHINERY APPLIED TO PLANT BY HIGH COURTS.

58. The above interpretation regarding single contrivances in a machinery has been applied by the Madras High Court in

Sundaram Motors Pvt. Ltd., v CIT( ), to the meaning of the word plant also to say that contrivance can be a plant if it is used by itself or along with other contrivances. The Madras High Court held that the word plant also should be given the same popular meaning as machinery and held:

if a plant in combination with other appliances in the business effectuate and perpetuate the trade or commerce in question, then such induction or introduction of such plant to be deemed to be such that they are placed in a position for service or use in business.

It held that the assessees by introduction of apparatus or appliances such as electric fans, bicycles, motorcycles, office cars, jeeps, tractors, type writer and office appliances etc in their business as dealers in motor cars, trucks, jeeps, motor parts and accessories, tractors etc. are entitled to claim development rebate under Section 10 (2) (vib) of the Income Tax Act, 1922.

59. The judgment in Sundaram Motors (44 supra) was followed by the same High Court in Express Newspapers Limited (32 supra). There the Court while holding that scaffolding materials are entitled to 100% depreciation, held:

Under the scheme of the statutory provision, each apparatus conforming to the definition of machinery or plant, as the case may be, has to be taken individually for the purpose of considering the computation of depreciation and not the organization or the unit as a whole by treating each and every apparatus necessary for the function of the factory as forming an integral part of the factory vide CIT v. Kiran Crimpers( ). In Cripps v. Judge( ), scaffolding has been held to be a plant.

XI. THE A.P. HIGH COURT DECISIONS

60. In 1989, the decision in Scientific Engineering House P. Ltd (41 supra) was followed in Commissioner of Income-Tax v. Sri Krishna Bottlers Pvt. Ltd( ). In that case, the Division Bench was considering the case of an assessee who was manufacturing and selling soft drinks. The assessee had

claimed for the assessment year 1976-77 deduction under the 1st proviso to Section 32 (1) (ii) of the Act in respect of bottles and shells purchased and put to use during the year. The Income Tax Officer deducted the claim for outright deduction on the ground that bottles cannot be treated as plant on which depreciation can be claimed; bottle and cool drinks therein put together form stock-in-trade and cannot be separated from the drink for the purpose of sale and that the assessee, having manufactured the cool drinks supplied them along with the bottles. On appeal, the Commissioner accepted the assessees claim that the bottles constitute plant and therefore held that the entire cost of purchase of glass bottles should be allowed as deduction under proviso to Section 32 (1) (ii) and the same would also be the position in respect of the shells which were simple wooden equipment for carrying the bottles. The Tribunal confirmed the same. Questioning the same, the Revenue appealed to the High Court. The Bench reviewed a number of cases of Courts in India as well as England and held as under:

31. From the aforesaid rulings, the following principles can be gathered; (1) "Plant" in section 43(3) of the Act is to be construed in the popular sense, namely, in the sense in which people conversant with the subject-matter with which the section is dealing, would attribute to it. The word "plant" is to be given a "very wide" meaning. In its ordinary sense, it includes whatever "apparatus" is used by a businessman for carrying on his business but it does not include his stock-in-trade which he buys or makes for sale. It, however, includes all goods and chattels, fixed or movable, live or dead which the tradesman keeps for permanent employment in his business. (2) But the building or the "setting" in which the business is carried on cannot be plant. (3) The thing need not be part of the machine used in the manufacturing process but could be merely an apparatus used in carrying on the business but having a "degree of durability". (4) Merely because the asset has a passive function in the carrying on of the business, it cannot be said that it is not plant. It may have a passive operation and if it has, it is prima facie a plant unless there was good reason to exclude it from that category. It must be a "tool in the trade" of the businessman. (6) Gross materiality or tangibility is not necessary and, in fact,

intangible things like ideas and designs contained in a book could be "plant". They fall under the category of "intellectual storehouse". (7) In considering whether a structure is plant or premises, one must look at the finished product and not at the bits and pieces as they arrive from the factory. The fact that a building is part of a building holds the plant in position does not, convert the building into plant. A piecemeal approach is not permissible and the entire matter must be considered as a single unit unless of course, the component parts can be treated as separate units having different purposes. (8) The functional test is a decisive test.

32. Bearing these principles in mind, we shall approach the facts of the present case. The bottles containing the soft drink cannot be stock-in-trade inasmuch as the bottle by itself is not the subject of sale. The customer or the retailer returns back the bottle to the assessee after the soft drink is consumed. Likewise, the shells which are sent to the customer or dealer also come back with the empty bottles and they cannot also be stock-in-trade. What is the function these bottles and shells perform in the assessee's trade ? Are they essentially tools in the assessee's business ? In our opinion, yes. The bottles are essential tools of the trade for it is through them that the soft drink is passed on from the assessee to the customer. Without these bottles, the soft drink cannot be effectively transported, like the silos in Schofield v. R. and H. Hall Ltd. [1974] 49 TC 538 , which are used to store grain and to empty the same, performing a trade function. As pointed out in Dixon v. Fitch's Garage Ltd. [1975] 50 TC 509 , the bottles and the contents are "totally interdependent." So are the shells. The bottles and shells also satisfy the durability test for it is nobody's case that their life is too transitory or negligible to warrant an inference that they have no function to play in the assessee's trade. They are therefore "plant" for the purposes of the Act.

33. The principle that a "setting" in which the trade is conducted in not attracted to the facts of the case of all. The bottles and shells have nothing to do with the building in which the trade in conducted nor with the "setting" in which it is conducted. Each bottle and each shell is an entity by itself and they cannot be broken down into pieces for

considering whether they have any part to play in the business of the assessee. The bottles and shells are gross matter and, in fact, gross materiality is not a requirement at all for a thing to be treated as plant. (emphasis supplied) In CIT V. Anand Theatres( ) , the Supreme Court approved this decision and observed that this Court had exhaustively considered the decisions.

61. In C.I.T. v. Margadarsi Chit Fund (P) Ltd.( ), the Revenue had specifically raised the contention that even if for the purpose of business of the assessee (who purchased bottles for the purpose of leasing them), bottles are treated as plant within the meaning of Sec.32(1), yet the deduction is leviable only when the purchase is enblock and cannot be allowed in respect of a single bottles which are priced less than Rs. 5,000/-. Rejecting the said contention and following the decision in Sri Krishna Bottlers (47 supra), the Bench held:

There is no distinction that the purchase on which the depreciation would be allowed must be bulk purchase of a large number and that it would be disallowed if the purchase is of single items. There is no evidence that the bottles in respect of which depreciation was claimed were not subject of bulk purchase. Even apart from it, a bulk purchase is merely individualized purchase made collectively and we do not find any distinction in the provisions of Section 32 (1) or the proviso of a distinction possible to be drawn in the manner suggested. The only test is whether the article in respect of which depreciation is claimed is plant for the purpose of the business or profession. Individual items of purchase would also be plant if it is integrally involved in the carrying out of the profession or business and depreciation could be claimed in respect of that.

(emphasis supplied)

62. Coming back to Raghavendra Constructions (29 supra), I may state that it referred to the Sri Krishna Bottlers (P) Ltd. (47 supra), and distinguished it on the ground that the Division Bench therein nowhere observed that each bottle or shell would also be a plant for the purpose of Section 32 (1)(ii) of the Act, erroneously. In fact, in Sri Krishna Bottlers (P) Ltd.

(47 supra), the Division Bench had categorically held that each bottle and each shell is an entity by itself. Further, going deeply into the facts of that case, the issue in Sri Krishna Bottlers (P) Ltd. (47 supra) was not about whether a group of bottles are a plant but in fact, whether each bottle was a plant. Therefore, it is clear that by oversight the Bench in Raghavendra Constructions (29 supra) overlooked this passage and the facts in the judgment in Sri Krishna Bottlers(P) Ltd. (47 supra).

63. Further, in Raghavendra Constructions (29 supra), the Division Bench did not notice the judgment in Margadarsi Chit Fund (P) Ltd (49 supra) at all. The decision in Margadarsi Chit Fund (P) Ltd (49 supra), particularly the observations set out supra, are binding on the Bench which decided Raghavendra Constructions (29 supra) and the view taken therein is diametrically opposite to the view expressed in Margadarsi Chit Fund (P) Ltd (49 supra). The Bench which decided Raghavendra Constructions (29 supra) could not have taken a view different from that in Margadarsi Chit Fund (P) Ltd (49 supra) and only a larger bench could have over ruled it. Therefore, in my opinion, the decision in Raghavendra Constructions (29 supra) can be said to be per in curiam.

64. In Live Well Home Finance (P) Ltd. (30 supra), the Division Bench held that as between the two Division Bench decisions in Raghavendra Constructions (29 supra) and in Sri Krishna Bottlers (P) Ltd. (47 supra), it would choose to follow the decision of the latter Division Bench in preference to the former.

65. More clinchingly, Raghavendra Constructions (29 supra) did not refer to the judgment of the Supreme Court in Mir Mohd Ali (42 supra) where the Supreme Court followed observations of the Privy Council that a contrivance can be a machinery either by itself or along with other contrivances and that the said principle has been applied by the Madras High Court for interpretation of the word plant. Thus Mir Mohd Ali (42 supra) had accepted in principle that an apparatus by itself or in combination with other, if used in the business of an assessee, would qualify as plant.

Raghavendra Constructions (29 supra) therefore runs counter to the judgment in Mir Mohd Ali (42 supra) in so far as it took the view that only if an apparatus fulfils the stand alone use test, it is a plant and it would not be a plant if it is used in combination with others.

XII. WHETHER A SINGLE PIECE OF SHUTTERING/ CENTRING MATERIAL CAN BE A PLANT WHETHER USED BY ITSELF OR IN COMBINATION WITH OTHERS ?

66. It is pertinent to note that both Sec.32(1) and proviso thereto use the words plant and machinery. It is not disputed that if the plant is valued more than Rs. 5000/- , the main provision i.e Sec. 32(1) applies and the assessee would get only 33 1/3 % depreciation only. But if its value is less than Rs. 5,000/-, then the assessee can claim 100% depreciation.

67. As stated in the beginning, it is not disputed by the Revenue that if the said proviso is not attracted, the assessee would still be entitled to claim 33 1/3 % on the centering and shuttering equipment under Sec.32(1) of the Act.

68. Once it is accepted that for claiming depreciation under Sec.32(1), centring and shuttering material would constitute a plant, it is difficult to agree with the Revenues plea that for purpose of 1st proviso to Sec.32 (1), each piece of the centring and shuttering material will not be a plant on the mere ground that they cannot be used on a stand alone basis but only in combination with other items thereof.

69. As stated above in Mir Mohd. Ali (42 supra), the Court while dealing with the question whether a new diesel engine in a Bus amounts to machinery, posed the question:

What then is the test for determining whether a mechanical contrivance is machinery for the purposes of second para of cl.(vi) and (via) 9of sec.10(2)) ?

The Court then quoted with approval, the following passage from the judgment of the Privy Council in Corporation of Calcutta (43 supra):

The word machinery, when used in ordinary language prima-facie, means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and inter dependent operation of their respective parts generate power, or evoke, modify, apply, or direct natural forces with the object in each case of effecting so definite and specific a result.

(emphasis supplied)

70. I have already stated that this interpretation of term machinery has been applied by the Madras High Court to the word plant in Sundaram Motors (44 supra) which was followed in Express Newspapers Limited (32 supra). I completely agree with the view therein that the word plant also should be interpreted in a like manner as was done by the Supreme Court in Mir Mohd. Ali (42 supra) with regard to the word machinery.

71. The Madras High Court in Alagendran (31 supra) held while dealing with centring material that the benefit of the proviso to Section 32 (1) (ii) of the Act is not confined only to units in bulk; that it does not refer to the number of units, but refers to the value of individual units; and if the individual unit is regarded as plant and if it is valued below Rs. 5,000/-, it would qualify for 100% depreciation. It held that there is no question of how many units are normally used for the business and the test is as to whether one centering sheet can be identified as a plant or machinery. It observed that while erecting scaffoldings for a building, centering sheets are usually arranged in different shapes and sizes and a single sheet also is used for a particular work.

72. The Rajasthan High Court in Mohta Construction Company (35 supra) held that without shuttering, construction work cannot be executed and since shuttering is a necessary component for construction of the building, it is a plant; each shuttering itself is an independent unit; and since each shuttering costs less than Rs. 5,000/-, it is entitled for 100% depreciation.

73. The Delhi High Court in Ansal Housing Finance and Leasing Co. Ltd. (36 supra) has held that 100% depreciation can be claimed in respect of parts of scaffolding and shuttering and followed its earlier decision dt. 16.08.2010 in ITR No. 241 / 1992 and also the decisions in Mohta Construction Co. (35 supra) and Alagendran Finance Ltd. (31 supra).

XIII. THE STAND ALONE USE TEST IS NOT THE ONLY TEST FOR A CONTRIVANCE TO BE A PLANT AND SUCH A VIEW IS CONTRARY TO THE JUDGMENTS OF THE SUPREME COURT

74. As previously mentioned, the Supreme Court in Tajmahal Hotel (39 supra) has held that the word plant as defined in Section 43 (3) would include any article or object fixed, moveable, live or dead, used by a businessman for carrying on his business. It held that sanitary fittings in the bathrooms in a hotel would be plant and they cannot be said to have no connection with the business of hotelier.

75. Similarly, in Scientific Engineering House P. Ltd. (41 supra) the Supreme Court has reiterated this and further held that in order to qualify as a plant an article is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business, but it must have some degree of durability. It approved the functional test laid down in IRC v. Barclay, Curle and Co. Ltd( ). wherein Lord Guest held that in order to decide whether a particular subject is an apparatus, enquiry has to be made as to what operation it performs. The Supreme Court held that the test would be : Does the article fulfill the function of a plant in the assessees trading activity ? Is it a tool of his trade with which he carries on his business ? If the answer is in the affirmative, it will be a plant. In that case, the Supreme Court held that drawings, designs, charts, plans, processing data and other literature comprised in the documentation service would constitute a book and would fall within the definition of plant.

76. The Supreme Court has no where indicated in both the above decisions, that to qualify as plant, the article in

question used by the businessman for carrying on his business should be capable of being put to use only on a stand alone basis. Thus the view taken in Raghavendra Construction (29 supra) goes beyond the test laid down by the Supreme Court and super-adds a new requirement that the article in question should also be capable of being used only on a stand alone basis. Thus, in my opinion, the Bench did not follow the law laid down by the Supreme Court as to interpretation of the term plant as defined in Section 43 (3) of the Act. In my opinion, in view of the judgment of the Supreme Court in Mir Mohd Ali (42 supra), a single contrivance can be a plant by itself or in combination with other contrivances. This judgment is binding on this Court.

77. In my opinion, the Supreme Court judgments referred to above should be understood as referring to functional test as function of the article in question qua the business of the assessee. They do not refer to the function of the article as such whether it is used by itself or in combination with others. Since the Bench in Raghavendra Construction (29 supra), instead of looking at the function of the shuttering/centering material qua the business of the assessee, had looked at the function of the shuttering/ centering material en bloc or solo (the stand alone use test), it does not lay down the correct law.

78. Further as pointed out above, the Madras High Court in Algendran (31 supra), the Rajasthan High Court in Mohta Constructions (35 supra) and the Delhi High Court in Ansal Housing (36 supra) have granted 100% depreciation even in respect of a single unit of stuttering material.

XIV. WHY SINGLE CENTRING/SHUTTERING MATERIALS SHOULD BE TREATED AS PLANT

79. In my opinion, individual components of shuttering/ centering material do not lose their individuality merely because they are used in combination with other similar or dissimilar units in the construction activity of the assessee. They can be and are normally dis-assembled after their use in combination and revert back to their individual status. Since they are durable and have a function in the assessees

business, merely because they are not capable of being used individually on a stand alone basis and have to be used in combination with other units thereof, they do not cease to be a plant.

80. In Munby v. Furlong Munby( ) , the tax- payer, a barrister started to practice at a Bar in 1972. During the following year, he bought textbooks and law reports for the purpose of his practice. In making assessments for income tax, the Inspector of Taxes refused to allow the taxpayer deductions in respect of the expenditure which he had incurred in buying the books. The taxpayer appealed against the assessments on the ground that the books were plant qualifying for capital allowances in Chapter I of Part III of the Finance Act, 1971. The appeal was dismissed and was upheld by a single Judge of the High Court but the tax payer succeeded before the Court of Appeal. The Court of Appeal declared that in the context of a profession, the provision of plant should be so interpreted that a lawyers books his set of law reports and his text books are plant. It held that the word plant had acquired special meaning and in the interests of fairness, it extends virtually to a mans tools of trade and to the things which he uses day by day in the exercise of his profession; that the said term should not be confined to things which are used physically by a barrister like a typewriter but should be extended also to the intellectual storehouse which a barrister or a solicitor or any other professional man has in the course of carrying on his profession. This decision was approved and followed in Sri Krishna Bottlers (47 supra).

81. Therefore an apposite example to our case would be law books in an Advocates office which though each individually may not by themselves contribute to the Advocates performance in a legal profession, yet collectively, without losing their individuality, make a very important contribution in his career and have rightly been held to be a plant.

82. Therefore, I hold that it is possible for the assessee to claim depreciation on individual items thereof under the proviso to Section 32 (1) (ii) of the Act and that it is not

necessary for him to prove that each such individual item is capable of being used on a stand alone basis.

83. It is only necessary for the assessee to establish that the unit of shuttering/centering material performs an operation in his business and trading activities and that it is a tool in his trade. He has to show that it is such that without it, he cannot carry on business.

84. I would approve of the view in Margadarsi Chit Fund (P) Ltd (49 supra) that there is no distinction that the purchase on which depreciation would be allowed must be a bulk purchase of a large number and it would be disallowed if the purchase is of single items; and that individual items of purchase would also be plant if it is integrally involved in the carrying out of the profession or business and depreciation could be claimed in respect of that.

85. I also agree with the view in Alagendran Finance Ltd. (31 supra) insofar as it was held therein that a single sheet of centering or scaffolding is also useful to an assessee; the benefit of the proviso to Section 32 (1)(ii) of the Act is not confined only to units in bulk; that it does not refer to the number of units, but refers to the value of individual units; and if the individual unit is regarded as a plant, and if it is valued below Rs. 5,000/-, it would qualify for 100% depreciation. There is no question of how many units are normally used for the business and the test is as to whether one centering/ shuttering material is a tool of the assessees trade with which he carries on business.

86. No doubt, in Pathange Poultry Farm v. Commissioner of Income-Tax( ), a Division Bench of the Karnataka High Court, while dealing with a case of an assessee engaged in poultry business who claimed 100% depreciation on the cost of individual cages (which were then fabricated in such a manner to form a bigger unit) disallowed such a claim. But, the basis of such disallowance was that once the smaller cages are integrated into a bigger unit, they lose their individuality; and that they become a part of the bigger plant and cease to either perform or remain capable of performing any function independent of what is performed by the entire

unit as one complete plant or machine. It is this judgment which was followed in Raghavendra Constructions 29 supra), by the Division Bench therein to come to the conclusion that in the engineering construction industry, a single unit of centering or shuttering material by itself, though durable, may not have functional value; that it must also effectively stand alone without functional integration with other similar or dissimilar components or units, in order to qualify as a plant.

87. In my opinion, the Division Bench in Raghavendra Constructions (29 supra) appears to have overlooked the fact that unlike in the case of individual cages which have been fabricated into one bigger unit and thereafter lose their individuality, individual components of shuttering/ centering material do not lose their individual identity merely because they are used in combination with other similar or dissimilar units in the construction activity of the assessee. They will be dis-assembled after each use and reused again as such in combination with same or different units thereof. Thus the decision in Pathange Poultry Farm (52 supra) cannot be applied to the present case.

88. The principle that each of the assets owned by the assessee for the purpose of his business is to be taken individually and independent of each other [for considering a claim of depreciation under first proviso to Sec.32(1)], though one may be necessary for the functioning of the other, has one exception.

89. As explained in Kiran Crimpers (45 supra) by the Gujarat High Court (which was followed in Express Newspapers (32 supra)), this principle would not apply if it is an integral part of another asset as such. Once an apparatus becomes an integral part of another asset as such, it loses its identity as an asset and the asset of which it becomes an integral part is only to be considered as an asset. For example, when the assessee owns a motor car for the purposes of his business, necessarily it includes all the parts which go into the making of the car and necessary for its running. Notwithstanding the fact that individually taken some of the parts by themselves may be treated as machine or plant if used independently,

once it is fitted in another, it loses its identity as a machine independent of the machine in which it is fitted.

90. However as held by me in para 79 supra individual components of shuttering/centering material do not lose their individuality merely because they are used in combination with other similar or dissimilar units in the construction activity of the assessee. They can be and are normally dis-assembled after their use in combination and revert back to their individual status. They are then reused in different combinations. Unlike parts of a motor car, the shuttering/ centring material do not lose their identity. Parts of a motor car once integrated are not dis-assembled after each use of the car like shuttering/centring material. So centring/shuttering material stand on a truly different position from parts of a motor car.

91. In fact in Commissioner of Income Tax v. Indian Turpentine and Rosin Co. Ltd( ), which was approved and followed by the Supreme Court in Taj Mahal Hotel (39 supra), poles, cables, conductors and switch boards used by a Company engaged in manufacturing and selling rosin and turpentine to change over power from D.C to A.C, have been held to be a plant. The court held:

The Tribunal described the change over from D.C. system to A.C. system thus :

" This involved new installations of poles, cables, conductors, switchboards for distribution to various feeders."

8. In Commissioner of Income Tax v. Mir Mohammad Ali, the Supreme Court explained that the expression "installed" in the second paragraph of Clause (vi) and Clause (via), did not necessarily mean "fixed in position" but was also used in the sense of induct or introduce or placing an apparatus in position for service or use. Where an engine was fixed in a vehicle it was installed within the meaning of the expression in Clauses (vi) and (via) of Section 10(2) of the Act. The word "installed" must carry the same sense in Clause (vib) of Section 10(2) of the Act.

9. The word "plant" as used in Sub-section (2) of Section 10 of the Act has been defined in Sub-section (5) of Section 10 :

"Plant includes vehicles, books, scientific apparatus and surgical equipment purchased for the purposes of the business, profession or vocation."

10. The definition of plant contained in Sub- section (5) of Section 10 is very wide. The term "plant" includes such articles as books and scientific apparatus. There should, therefore, be no difficulty in treating poles, cables, conductors and switch-boards for distribution of electricity as plant within the meaning of Clause (vib) of Section 10(2) of the Act.

11. It is significant that the Income Tax Officer allowed normal depreciation on these very articles under Clause (vi) of Section 10(2) of the Act. He must have allowed depreciation on the footing that these articles constitute machinery or plant within the meaning of Clause (vi) of Section 10(2) of the Act. If the poles, cables, conductors and switch-boards constituted "machinery or plant" within the meaning of Clause (vi), there is no reason why they should not constitute "machinery or plant" within the meaning of Clause (vib) of Section 10(2) of the Act. Even if there is some difficulty in looking upon poles, cables, conductors and switch- boards as machinery, there is no difficulty in accepting the assessee's case that these articles constitute a plant within the meaning of Clause (vib) of Section 10(2) of the Act. The Tribunal was, therefore, right in holding that the assessee is entitled to development rebate under Clause (vib) of Section 10(2) of the Act. We answered the question referred to this court as follows :

" On the facts and in the circumstances of the case, the electrical installations installed by the assessee- company as a result of a change over from D.C. to A.C. system constitute plant. Consequently, development rebate was admissible in respect of expenditure incurred in connection therewith."

92. Thus electric poles used in an industry for change of power from D.C to A.C would constitute a plant. It cannot be

disputed that poles support the shuttering/centring material used by the assessee. On the same parity of reasoning, poles used in shuttering/ centring work would also be plant no matter that they cannot be used on a stand alone basis.

93. I, therefore, answer the reference in favour of the assessee that the Appellate Tribunal was justified in law in holding that the assessee is entitled to claim 100% depreciation on the centering/shuttering materials. I also hold that the decision of the Division Bench of this Court in Sri Raghavendra Constructions (29 supra) is not correctly decided in so far as it held that individual units of centring/ shuttering material would not be plant are not entitled to 100% depreciation under the first proviso to Sec.32 (1) since they cannot be used on a stand alone basis. It is accordingly overruled. I hold that the view taken in Live Well Home Finance (P) Ltd (30 supra) is the correct one for the reasons above given.

94. In the result, we answer the question in the negative. The Registry is directed to place the appeal before the Bench which is assigned to hear such Appeals for its decision on the basis of the majority opinion expressed in this judgment.

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DILIP B.BHOSALE, ACJ

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M.S.RAMACHANDRA RAO, J

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A.RAMALINGESWARA RAO, J
5th June, 2015.