आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 2349/Mum/2013

(**निर्धारण वर्ष /** Assessment Year : 2007-08)

M/s Asian Advertising, 4, Parekh Vora Chambers, 66, Nagindas Master Road, Fort,Mumbai – 400 001.	**बनाम**/ v.	ITO – 12(3)(4), Mumbai.
स्थायी लेखा सं./PAN : AAAFA1477D		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by	Shri Hemant J. Vora
Revenue by :	Shri Ganesh Bare (Sr.DR)

सुनवाई की तारीख **/Date of Hearing : 19-01-2016**

घोषणा की तारीख /**Date of Pronouncement :** 23/03/2016

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee firm, being ITA No. 2349/Mum/2013, is directed against the orders dated 31-12-2012 passed by the learned Commissioner of Income Tax (Appeals)-10,Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2007-08.

2. The grounds raised by the assessee firm in the memo of appeal filed with the Tribunal read as under:-

"1. Depreciation of the hoarding structures.

1.1 On the facts and circumstances of the case and in law, the learned CIT (A) erred in confirming disallowance of depreciation and confirming the Hoarding Structures as Building instead of Plant.

1.2 On the facts and circumstances of the case and in law, the learned CIT (A) erred in confirming the Hoarding Structures as Building (depreciation @ 10% Rs 16195) instead of Plant (depreciation @ 15% Rs 24292).

1.3 The learned CIT (A) failed to appreciate that the asset hoarding structures being in the nature of plant also meets the condition laid down under the act

2. Interest on loan

2.1 On the facts and circumstances of the case and in law, the learned CIT (A) erred in confirming addition of Rs. 34,932/- out of total interest claimed.

2.2 The learned CIT (A) failed to appreciate that interest expense was incurred wholly and exclusively for the purpose of business of the appellant as amounts receivable are outstanding on account of sales conducted by the appellant and there is direct nexus between the expenditure and business purpose.

2.3 The Learned CIT (A) ought to have held that the estimated disallowance is adhoc, arbitrary and uncalled for.

3. Hoardings Expenses

3.1 On the facts and circumstances of the case and in law, the learned CIT (A) erred in confirming treatment of Hoarding Expenses incurred in respect of Hoardings amounting to Rs. 4,94,500/- being 50% of two bills of hoarding expenses amounting to Rs 9,89,000/- as Capital Expenditure and adding Rs. 4,94,500/- to the appellants income after allowing depreciation at 10%.

3.2 The learned CIT (A) failed to appreciate that the said expenses were revenue in nature and as such allowable u/s. 31 and/or Sec. 37 of the I T Act and neither any new asset was created nor did it result in any enduring benefit as alleged."

3. The brief facts of the case are that the assessee firm is in the business of exhibiting cinema slides and short films in theatres and sole concessionaries and also in allied business related to outdoor advertising.

4. The assessee firm has received income from its hoarding sites given to its sister concern M/s Creation Publicity Private Limited and the income thereon has been shown at Rs. 54.23 lakhs. The assessee firm has claimed depreciation at the rate of 15% on its hoarding sites . As per the learned assessing officer (Hereinafter called "the AO") , it is in the nature of a physical site being a part/extension of building and entitled for depreciation @10% . The assessee firm submitted before the AO that it is carrying on the business of outdoor publicity which is done through the use of hoardings. The assessee firm takes on lease various locations on which it constructs hoarding structures. The said hoarding structures are owned and possessed by the assessee firm. The expenses incurred to erect the said hoarding structures on the said sites including the material and labour expenses is debited to the 'Investments in Hoarding Sites & Structures'. The assessee firm submitted that these hoarding structures are a depreciable asset under the category of 'plant and machinery' entitled for depreciation @ 15%. The assessee firm submitted that hoarding structures not only pass the durability test but also fulfills the condition laid down in section 32 of the Act and entitled for depreciation @ 15% under the category Plant & Machinery . In support, the assessee firm relied upon the decision of Hon'ble Supreme Court in the case of CIT v. Alps Theatre reported in (1967) 65 ITR 377(SC) wherein it was observed by Hon'ble Supreme Court that the term 'building' means structure and does not include site as there is no question of destruction of the site . The assessee also relied upon the decision in the case of Lindley LJ in Yarmouth v. France (1887) 19 QBD 647,658 for definition of 'plant' and submitted that there is no definition of 'plant' in the Act but in the ordinary sense it includes whatever apparatus is used by a businessman for carrying on his business. The assessee firm also cited the decision of the Hon'ble Supreme Court in the case of Scientific Engineering Houses P. Ltd. v. CIT, 157 ITR 89, 96 wherein it was held that plant includes any article or object

fixed or movable, live or dead, used by businessman for carrying on his business and is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business.. The A.O., however, rejected the contentions of the assessee firm and held that by no stretch of imagination can the hoarding site be considered as a 'plant' which on itself can actively or passively result in generation of a service/product to constitute a plant. The A.O. relied upon the decision of Hon'ble Apex Court in the case of CIT v. Anand Theatres [2000] 110 Taxman 338 (SC) ,wherein the Hon'ble Apex Court held that such buildings cannot constitute a plant. The word 'plant' specified in Section 43(3) of the Act nowhere mentions the word building and with effect from 1-4-2004 the provisions of the Act specifically excludes buildings, furniture and fixtures from the word plant. The AO observed that the definition of building should not be construed strictly by its literary meaning but has to be extended to any structure which has utility in the business of accommodating the activity. The A.O. in view of the above discussions held that hoarding site are in the nature of 'building' on which depreciation is allowable at 10% and accordingly determined the allowable depreciation at Rs. 16,195/- as against Rs. 24,292/- claimed by the assessee firm, vide assessment orders dated 30.11.2009 passed by the AO u/s 143(3) of the Act.

5. Aggrieved by the order of the A.O., the assessee preferred first appeal before the CIT(A) and reiterated the submission as were made before the A.O.. The CIT(A) held that hoarding structures have been let out by the assessee firm as part of the building structure and hence it cannot be held to be in the nature of a plant and the A.O.'s decision in holding hoarding structure as building was upheld by the CIT(A), vide orders dated 31.12.2012.

6.Aggrieved by the orders dated 31.12.2012 of the CIT(A), the assessee firm has preferred an appeal before the Tribunal.

7. The ld. Counsel for the assessee firm submitted that hoarding structure should be treated as 'plant and machinery' and depreciation at the rate of 15% should be allowed. But, the authorities below erred in allowing the depreciation @ 10% by treating the same as building. The ld. Counsel for the assessee firm submitted that for the assessment year 2007-08, depreciation have been allowed on hoarding structure @ 15% by the CIT(A) vide orders dated 22.08.2013 in the case of sister concern of the assessee firm , M/s Creasons , whereby the CIT(A) held as under:-

> "I have considered the AO's order as well as the appellant AR's submissions. I have also taken note of the documents filed before me in the form of paper book. Further to that, I also took note of the decision in the appellant's one group company by the order of the CIT(A)-21, Mumbai, Mumbai dated 02.03.2012 in Appeal No.CIT(A)-21/12(3)(4)IT-437/09-10 wherein the same issue was allowed by the CIT(A) depreciation @ 15% on the hoarding constituting the same as structure, which were used as an apparatus generating revenue to the appellant. Having taken note of the facts available on record and after taking note of decision cited by the appellant in the submissions, I am of the considered view that the AO's action was completely unjustified and incorrect in restricting the depreciation @ 10%. This is also a fact on record that the appellant was allowed depreciation since many years by the Department @ 15% on hoarding structure. Hence also, in my considered view, any deviation on the part of the AO on accepted norms of the Department consistently followed in the appellant's case without having any major change of facts, was not correct. Taking note of all these facts, I consider proper and appropriate direct the AO to allow the depreciation @ 15% to the appellant on such hoarding structure. Thus, this ground of appeal is allowed."

8. On the other hand, the ld. D.R. relied upon the order of the CIT(A).

9. We have considered the rival submissions and also perused the material on record. It is observed that the assessee firm has claimed depreciation @ 15% on hoarding structure's under the category of 'plant and machinery' while the Revenue authorities have allowed depreciation @ 10% being part of the building. We have observed that the assessee firm is in the business of exhibiting cinema slides and short films in theatres and sole

concessionaries and also in allied business related to outdoor advertising. The assessee firm has received income from its hoarding sites given to its sister concern M/s Creation Publicity Private Limited and the income thereon has been shown at Rs. 54.23 lakhs. The said hoarding structures are owned and possessed by the assessee firm and without the said hoardings , the assessee firm would not have generated any revenue. We have observed that depreciation u/s 32 (1)(i) of the Act is stipulated with respect to buildings, machinery, plant or furniture, being tangible assets and depreciation u/s 32(1)(ii) of the Act is stipulated with respect to know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature being intangible assets acquired on or after 01-04-1998, owned, wholly or partly by the tax-payer and used for the purposes of the business or profession.

We have observed that depreciation is specifically and separately provided for the buildings, machinery, plant or furniture u/s 32(1)(i) of the Act . The scheme of section 32 of the Act clearly envisages separate depreciation for the building, machinery and plant, furniture and fittings etc. The word 'plant' is defined u/s 43(3) of the Act which 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 or buildings or furniture and fittings. The word 'plant' is given inclusive meaning under section 43(3) of the Act which nowhere includes buildings.

The word 'Building' on the other hand has not been defined under the Act and must therefore be construed in its ordinary meaning. 'Building' means structures and does not include the site on which it is erected. The Dictionary meaning of the word "building" is "*a structure with a roof and walls"* (Concise Oxford English Dictionary). The word 'Building' has been defined by Lord Esher in Moir v. Williams , (1892) 1 QB 270 , as an enclosure

of brick or stone covered by a roof. An advertisement hoarding is a building within a restrictive covenant, Nussey v. Provincial Bill Posting Co., (1909) 1 Ch 734 ; Stevens v.Willing & Co. Ltd. , 1929 WN 53, Paddington Corporation v. Attorney-General, 1906 AC 53.(Ref. Wharton's Concise Law Dictionary-Indian Ed. 15(Concise)-2009, Page 134).

We have observed that the Income Tax Act,1961 u/s 43(3) has given a very wide definition to the word "plant" which is an inclusive definition and not an exhaustive definition, to includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession. The term 'Plant' should be given its ordinary meaning as understood by common man and has to be read in the context of particular trade or manufacturing carried on by the tax-payer. The Oxford English dictionary has defined the word 'plant' means "fixtures, implements, machinery and apparatus used in carrying on any industrial process". The dictionary meaning of plant shall not include stock-in-trade or the place where the business is carried on. It is a tool of the trade with which business is carried on.

In order to find out whether building constitute 'plant', functional test must be applied but the same test is not conclusive. It must be seen whether the building or structure or part thereof constitute an apparatus or tool of the tax-payer or whether it is merely a space where tax-payer carries on his business. If the building or structure or part thereof is, something by means of which the business activities are carried on, it would constitute plant but where the structure plays no part in carrying on of these activities but merely constitutes a place within which they are carried on, it cannot be regarded as a plant. Thus, the true test is whether it is a means of carrying on the business or the location for so doing. In order for a building or concrete structure to qualify for inclusion in the term 'plant' it must be established

that it is impossible for the equipment to function without the particular type of structure. Thus, we have observed that the intention of the legislature to give the expression plant a wide meaning and that is why articles like books and surgical instruments for carrying on its business are covered within the definition of plant.

Hon'ble Supreme Court in the case of Anand Theatres (2000) 110 Taxman 338(SC) has discussed the issue of distinction between Plant and Building in details while deciding whether building used for running hotel or cinema business is a 'plant' or 'building' , after considering the various meaning and definitions assigned to the word 'Plant' and Building by various judicial pronouncements , as under:

> *"Hence, the controversial question for consideration is - whether building used for running hotel or cinema business could be held a 'plant' as provided under section 43(3) ?*
>
> ***21.*** *We would first refer to the judgment in Barclay, Curle & Co. Ltd.'s case (supra) upon which most of the judgments of the High Courts are based for arriving at the conclusion that building which is used for running the hotel business or cinema theatre would be a plant. In the said case, the House of Lords considered whether a dry dock constructed by a company for use of shipbuilders, ship repairers and marine engineers incurring capital expenditure, which comprised the cost of excavating a specially shaped new basin, having direct access to the Clyde and floor below the level of high tide to enable ships to float in and out could be considered to be a plant for the purpose-of trade of the company within the meaning of section 279 of the Income-tax Act, 1952.*

Relevant part of section 279 as applicable, which was considered, reads thus :

> *"...where a person carrying on a trade incurs capital expenditure on the provisions of machinery or plant for the purposes of the trade, there shall be made to him, for the year of assessment in the basis period for which the expenditure is incurred, an allowance (in this Chapter referred to as 'an initial allowance') equal to three tenths of the expenditure." (p. 62)*

The matter was decided by the majority view and it was held that the dry dock was a plant. For this purpose, Lord Reid considered the definition of the word 'plant' given by Lindley L.J. in Yarmouth v. France [1887] 19 Q.B.D. 647, 658. This definition reads "in its ordinary sense, it includes whatever apparatus is used by a businessmen carrying on his business-not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business."

Thereafter it was observed as under :

> *". . . The dry dock was in our view not the mere setting or premises in which ships were repaired. It was different from a factory which housed machinery, for in the operation of the dock, the dock itself played a part in the control of water and enabled the valves, pumps and electricity generator, which were an integral part of its construction, to perform their functions. The dock was not a mere shelter or home but itself played an essential part in the operations which took place in getting a ship into the dock, holding it securely and then returning it to the river." (p. 79)*

It was further observed that 'plant' was not defined under the 1961 Act and thereafter held that "every part of this dry dock plays an essential part in getting large vessels into a position where the work on the outside of the hull can begin, and that it is wrong to regard either the concrete or any other part of the dock as a mere setting or part of the premises in which this operation takes place. The whole dock is, I think, the means by which, or the plant with which, the operation is performed." [Emphasis supplied]

22. *Lord Guest agreed with the view taken by Lord Reid. In the judgment rendered by him it was observed that in order to decide whether a particular subject is an 'apparatus' it seems obvious that an inquiry is to be made as to what operation it performs.*

23. *Lord Hudson disagreed with the above view and observed :*

> *"The dock as a complete unit contained a large amount of equipment without which the dry dock could not perform its function. This equipment admittedly qualifies for the initial allowance appropriate to expenditure on plant. It includes a dock gate and operating gear, cast iron keel blocks, electrical installation, pipe work installation, pumping installation and other subsidiary equipment, expenditure on which clearly qualifies for initial allowance as having been incurred in paying for machinery or plant."*

Further with regard to building it was observed :

> *"A building or structure is normally to be regarded in the context of this statute as something more durable than machinery or plant,*

hence the differentiation in favour of the less durable. The dock in question, it was found in the case stated, might last for 80-100 years if reasonable and timely repairs were carried out when requisite."

24. *The learned Lord disagreed with the argument based on functional test. He agreed with the reasoning given by Finlay J. in Margrett v. Lowestoft Water & Gas Co. [1887] 19 TC 481 wherein it was inter alia observed that :*

"Clearly, if one takes the case of a factory with machinery inside it, the machinery in all probability would be plant, but equally clearly the factory, the bricks and mortar, would not be plant."

25. *It was finally observed that to regard the dock as apparatus was wrong as it was something quite different from the generally accepted conception of 'plant'.*

26. *Lord Upjohn also disagreed with the majority view by observing that too much emphasis on a functional element ought not to have been given. In a modern sophisticated factory 'purpose built' for a particular manufacture without which the factory would be useless, makes the walls of a factory part of the plant and that is not intended. It was further observed that function is no more than an element for deciding whether it is a plant or a building.*

27. *We may mention at the stage that even in England House of Lords has repeatedly commented that the word 'plant' is given imprecise*

application because of the artificial meaning given to it. In Cole Bros. Ltd. v. Phillips (Inspector of Taxes) [1982] (1) WLR 1450. The House of Lords considered the question-whether expenditure incurred in electric lighting installation and conduit and cables to socket outlets, constituted expenditure on the provision of 'plant' so as to qualify for capital allowance. For the expression 'plant' Lord Hailsham observed :

> *"...that the word 'plant' in the relevant sense, although admittedly not a term of art, and therefore, part of the general English tongue, is not, in the sense, an ordinary word, but one of imprecise application, and, so far as I can see, has been applied to industrial and commercial equipment in a highly analogical and metaphorical sense, borrowed, unless I am mistaken, from the world of Botany."*

For the purpose, the Court quoted the words of Buckley L.J. in Benson v. Yard Arm Club Ltd. [1979] 1 WLR 347 :

> *"...as a man who speaks English and understands English accurately but not pedantically would interpret it in [the] context, applying it to the particular subject-matter in question in the circumstances of the particular case." (p. 351)*

The Court further observed :

> *"To this admirable precept Oliver L.J. [1981] STC 671, 682E in delivering the leading judgment in the Court of Appeal in the instant case, warily, and perhaps wearily, added the cautionary rider that "the English speaker must, I think, be assumed to have studied the authorities." These however, as he cautiously admitted in an earlier passage (p. 676) cannot be pretended to be at all easy*

to reconcile, and, as he said in a still earlier passage, at p. 675 D : "it is now beyond doubt that [the word 'plant'] is used in the relevant section in an artificial and largely judge-made sense." [Emphasis supplied]

The Court thereafter observed :

"if 'plant' is to be contrasted with the place in which the business is carried on, the line must be drawn somewhere. There must, therefore, be a criterion (or criteria) by which the courts define the frontier between the two."

But, on the special facts relating to these components carrying electricity, they held that it was an exceptional case where the Commissioners were right in taking each component separately as each was serving a 'different purpose' and held that each of them was not 'plant'.

28. *In IRC v. Scottish & Newcastle Breweries Ltd. [1982] 1 WLR 322 the question was whether the moneys spent on electrical rewiring, installation of new electric light fittings and of various categories of decor and murals in the hotel was on the provision of 'plant'. Lord Wilberforce observed that:*

"The word 'plant' has frequently been used in fiscal and other legislation. It is one of a fairly large category of words as to which no statutory definition is provided ('trade', office', even 'income' are others), so that it is left to the court to interpret them. It naturally happens that as case follows case, and one extension leads to another, the meaning of the word gradually diverges from its natural or dictionary meaning. This is certainly true of 'plant.' No

ordinary man, literate or semiliterate, would think that a horse, a swimming pool, movable partitions, or even a dry dock was plant—yet each of these has been held to be so: so why not such equally improbable items as murals, or tapestries, or chandeliers ?" [Emphasis supplied]

29. *The House of Lords observed that even the 'functional' test was inconclusive. Therefore, the Court suggested that each case must be resolved by considering carefully the nature of the particular trade being carried on, and the relation of the expenditure to the promotion of the trade. Applying that test the Court held : "I do not find it impossible to attribute to Parliament an intention to encourage by fiscal inducement the improvement of hotel amenity."*

30. *In the said case, Lord Lowry also considered the case of Benson (supra) in which ship, or floating hulk, used as a restaurant was held not to be plant and observed : "the Crown relied on the case because of the fact that the ship was used to create a 'shipboard feeling', in other words, a certain kind of atmosphere, among the patrons. But the distinction is that the ship, although a chattel, was the place in which the trade was carried on and was therefore the equivalent of the various premises in which the present taxpayer company carry on their trade and not of the apparatus used as an adjunct of the trade carried on in those premises." It was further observed that "the dry dock in Barclay Curle & Co. Ltd. (supra) was a structure as well as plant."*

RELEVANT PROVISIONS UNDER THE ACT FOR GRANT OF DEPRECIATION

31. *Before dealing with the rival contentions, we would refer to the relevant parts of sections 32 and 43(3) :*

> *"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)in the case of ships other than ships ordinarily playing on inland waters, such percentage on the actual cost thereof to the assessee as may, in any case or class of cases or in respect of any period or periods, be prescribed :*
>
> *Provided that different percentages may be prescribed for different periods having regard to the date of acquisition of the ship;*
>
> *(ii)in the case of buildings, machinery, plant or furniture, other than ships covered by clause (i), such percentage on the written down value thereof as may in any case or class of cases be prescribed :*
>
> *Provided that where the actual cost of any machinery or plant does not exceed seven hundred and fifty 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 :*
>
> *Provided further that no deduction shall be allowed under this clause or clause (iii) in respect of any motor-car manufactured outside India, where such motor-car is acquired by the assessee after the 28th day of February, 1975, and is used otherwise than in a business of running it on hire for tourists;*
>
> *(iia)in the case of any new machinery or plant (other than ships and aircraft) which has been installed after the 31st day of March,*

1980, but before the 1st day of April, 1985, a further sum equal to one-half of the amount admissible under clause (ii) (exclusive of extra allowance for double or multiple shift working of the machinery or plant and the extra allowance in respect of machinery or plant installed in any premises used as a hotel) in respect of the previous year in which such machinery or plant is installed or, if the machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year :

Provided that no deduction shall be allowed under this clause in respect of—

(a)any machinery or plant installed in any office premises or any residential accommodation;

(b)any office appliances or road transport vehicles; and

(c)any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation of otherwise) in computing the income chargeable under the head 'profits and gains of business or profession' of any one previous year.

Explanation - For the purpose of this clause,—

(a)'new machinery or plant' shall have the meaning assigned to it in clause (2) of t he Explanation below clause (vi) of this sub-section;

(b)'residential accommodation' includes accommodation in the nature of a guest house but does not include premises used as a hotel;

(iii)in the case of any building, machinery, plant or furniture which is sold, discarded, demolished or destroyed in the previous year (other

than the previous year in which it is first brought into use), the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, fall short of the written down value thereof:

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*Explanation - (i) to (iii) ******

(iv)in the case of any building which has been newly erected after the 31st day of March, 1961, where the building is used solely for the purpose of residence of persons employed in the business and the income of each such person chargeable under the head 'Salaries' is ten thousand rupees or less, or where the building is used solely or mainly for the welfare of such persons as a hospital, creche, school, canteen, library, recreational centre, shelter, rest-room or lunch-room, a sum equal to forty per cent of the actual cost of the building to the assessee in respect of the previous year of erection of the building; but any such sum shall not be deductible in determining the written down value for the purposes of clause (ii) of sub-section (1);

(v)in the case of any new building, the erection of which is completed after the 31st day of March, 1967, where the building is owned by an Indian company and used by such company as a hotel and such hotel is for the time being approved in this behalf by the Central Government, a sum equal to twenty-five per cent of the actual cost of erection of the building to the assessee, in respect of the previous year in which the erection of the building is completed or, if such building is first brought into use as a hotel in the immediately succeeding previous year, then in respect of that previous year; but any such sum shall not be deductible in determining the written down value for the purposes of clause (ii);

(vi)in the case of a new ship or a new aircraft acquired after the 31st day of May, 1974, by an assessee engaged in the business of operation of ships or aircraft or in the case of new machinery or plant (other than office appliances or road transport vehicles) installed after that date for the purposes of business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in items 1 to 24 (both inclusive) in the list in the Ninth Schedule or in the case of new machinery or plant (other than office appliances or road transport vehicles) installed after that date in a small-scale industrial undertaking for the purposes of business of manufacture or production of any other articles or things, a sum equal to twenty per cent of the actual cost of the ship, aircraft, machinery or plant to the assessee, in respect of the previous year in which the ship or aircraft is acquired or the machinery or plant is installed, or if the ship, aircraft, machinery of plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year; but any such sum shall not be deductible in determining the written down value for the purposes of clause (ii):

Provided ******

Provided further that no deduction shall be allowed under this clause in respect of—

(a)any machinery or plant installed in any office promises or any residential accommodation, including any accommodation in the nature of a guest-house,

******

(1A) Where the business or profession is carried on in a building not owned by the assessee but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is

incurred by the assessee for the purposes of the business or profession after the 31st day of March, 1970, on the construction of any structure or doing of any work in or in relation to, and by way of renovation or extension of, or improvement to, the building, then, in respect of depreciation of such structure or work, the following deductions shall, subject to the provisions of section 34, be allowed—

(i)such percentage on the written down value of the structure or work as may in any case or class of cases be prescribed;" [Emphasis supplied]

"43—Definitions of certain terms relevant to income from profits and gains of business or profession. - In sections 28 to 41 and in this section, unless the context otherwise requires—

*(1) and (2) *******

(3) 'Plant' includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession."

32. *Rule 5 of the Income-tax Rules, 1962 provides for calculation of depreciation at the percentages specified in second column of the Table in Part I of Appendix I to the Rules. Appendix I to rule 5 is as under :*

PART I

(See rule 5]

TABLE OF RATES AT WHICH DEPRECIATION IS ADMISSIBLE

Class of asset	*Depreciation allowance as % age of- (i) actual cost in the case of*	*Remarks*	
			ships;

	ocean-going (ii) written-down value in the case of any other asset.		
1	*2*		*3*
I. Buildings-			
1. General rate		*5*	*Buildings include roads, bridges, culverts, wells and tube-wells*
2. Special rate in respect of factory building (excluding offices, godowns, officers' and employees' quarters, roads, bridges, culverts, wells and tube-wells		*10*	
3. Purely temporary erections such as woodeh structure.		*100*	
4. In respect of any structure of work in or in relation to a building referred to in sub-section (1A) of section 32,-			
(a) Where such			*The percentage*

structure is constructed or such work is done by way of renovation or improvement to any such building.			*specified against sub-Items 1, 2 or 3, as may be appropriate to the class of building in or in relation to which the renovation or improvement is effected ;*
(b) Where the structure is constructed or work is done by way of extension to any such building			*The percentage specified against sub-items 1, 2 or 3 as would be appropriate if the structure of work constituted a separate building.*
II. Furniture and fittings			
1. General rate		*10*	
2. Rate for furniture and fittings used in hotels, restaurants and boarding houses;...Cinema-houses; theatres and...		*15*	

1		*2*	*3*
III. Machinery and plant			

(not being a ship) -			
(i) General rate applicable to machinery and plant (not being a ship) for which no special rate has been prescribed under Item (ii) herein below.			
(ii) Special rates:		*15*	
** ** **			
C (I) Cinematograph films—Machinery used in the production and exhibition of cinematograph films (N.E.S.A.)			
(a)Recording equipment, reproducing equipment, developing machines, printing machines, editing machines, synchronisers and studio lights except bulbs.		*20*	
(b) Projecting equipment of film exhibiting concerns			
** ** **			
D (1) Aeroplanes—Aircraft, Aerial photographic Apparatus (N.E.S.A.)		*30*	
** ** **			
E (1) Aeroplanes—Aero-engines [N.E.S.A.]		*40*	

** ** **			
(2) Cinematograph films—Bulbs of studio lights.		*100*	
** ** **			
IV. Ships			
1. Ocean : going ships—			
(i) Fishing vessels with wooden hull		*10*	*To be calculated on the*
(ii) Dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purpose.		*7*	*actual cost*
(iii) Other Ships		*5*	
2. Vessels ordinarily operating on Inland waters-			
peed boats		*20*	
ther vessels		*10*	

Aforesaid clauses of the section 32 deal with depreciation allowance in respect of assets of the specified description used for the purpose of business or profession. From a careful scrutiny thereof what emerges is:

(1)The scheme of section 32 is to provide different rates of depreciation for building, machinery, plant or furniture, ships, buildings used for hotels, aeroplanes and other items mentioned therein. Clause (ii) of section 32(i) specifically provides for grant of depreciation for building, machinery, plant or furniture at prescribed percentage on the written down value thereof. The rates are prescribed under the Income-tax Rules.

(2)Under clause (iia) of section 32(1) specific provision is made for new machinery or plant which has been installed and it provides for additional sum equal to one-half of the amount admissible as depreciation under clause (ii) if the conditions mentioned therein are fulfilled. Further, the proviso carves out an exception to the effect that no deduction shall be allowed in respect of any machinery or plant installed 'in office premises or any residential accommodation'. That means the Legislature has divided building into different categories, namely, (i) buildings used for office premises or (ii) for residential accommodation; or (iii) premises used for other purposes. Meaning to the phrase 'residential accommodation' is also given under the Explanation which includes accommodation in the nature of a guest house and it specifically excludes 'premises used as a hotel'. So, the Legislature has not considered hotel building by itself as a plant. The phrase is 'premises used as a hotel' where machinery or plant is installed.

(3)Under clause (v) of sub-section (1) of section 32 specific provision is made for a 'new building', the erection of which is completed after 31-3-1967, which is 'used as a hotel'. If the conditions mentioned therein are satisfied then for a building which is used for a hotel, a sum equivalent to 25 per cent of the actual cost of the erection of the building is granted as depreciation. Further, the Legislature has considered building as separate from the hotel business and building is not considered as a plant for running the hotel. Therefore, building and the use of such building as a hotel are considered distinct.

(4)All throughout section 32 for building it is specifically mentioned that 'whenever it is erected', while for machinery and plant, the words used are 'whenever it is installed' and there is no question of installing

building. Section 32(1)(iia) uses the phrase 'machinery' or 'plant' installed in any premises used as a hotel and section 33(1)(b)(B)(ii) provides "in case of 'machinery' or 'plant' is installed for the purposes of business or construction etc. which indicates that 'plant' is to be installed and there is no question of erection."

(5)Under the Rules as qouted above, separate rates are prescribed under the Heading (I) Buildings, and (II) Furniture and fittings, (III) Machinery and plant and (IV) Ships. These headings have been further sub-divided providing different rates. Like, Building is divided into (i) building generally, (ii) special rate in respect of factory building and (iii) temporary erections such as wooden structures. In the remarks column (3) it is stated that buildings include roads, bridges, culverts, wells and tube-wells. Furniture and fittings is also divided into (i) general rate and (ii) rate for furniture and fittings used in hotels, restaurants and boarding houses, cinema house theatres etc. Similarly, ***Machinery and Plant*** *are under one heading and are divided into two parts-(i) general rate applicable to machinery and plant and (ii) special rates, which includes machinery and plant for cinematograph films, recording equipments, reproducing equipments, developing machinery, printing machines, synchronisers and studio lights and projecting equipments of film exhibiting concerns. Further, special rates are provided for machinery used in production and exhibition of cinematograph films begin (a) recording equipment, reproducing equipment, developing machines, printing machines, editing machines, synchronisers and studio lights except bulbs and (b) projecting equipment of film exhibiting concerns. Further different rates have been provided for machinery for cinematograph films that includes studio lights except bulbs under the heading C(1)(b) and for bulbs of studio lights under the heading F(2).*

From the aforesaid discussion, it is apparent that for a building used as a hotel there is a specific provision for granting depreciation allowance at specified rates depending upon fulfilment of the conditions mentioned therein. Hence, there is no question of referring to dictionary meaning of the word 'plant' which may or may not include building, for arriving at a conclusion that building which is specifically designed and constructed as a hotel building would be a 'plant'.

Further, in context of legislative scheme under section 32 stated above, which provides depreciation at different rates for building, machinery and plant, furniture and fixtures, ships, building used for hospital, aeroplanes, cinematograph films, machinery used in the production and exhibition of cinematograph films, recording equipment, reproducing equipment, developing machines, printing machines, synchronisers and studio lights except bulbs, projecting equipment of film exhibiting concerns, even though the word 'plant' may include building or structure in certain set of circumstances as per the dictionary meaning, but to say that building used for running the business of hotel or a cinema would be 'plant' under the Act appears, on the face of it, to be inconsistent with the aforesaid provisions. Such meaning would be clearly against the legislative intent.

33. *While interpreting the words 'consumption', 'raw material' and 'utilised' in clause (c) of the Import Control Policy formulated by the Government of India this Court in the case of Dy. Chief Controller of Imports & Exports v. K.T. Kosalram 1970 (3) SCC 82 observed thus :*

> *"In our opinion dictionary meanings, however helpful in understudying the general sense of the words cannot control where the scheme of the statute or the instrument considered as a whole clearly conveys a*

somewhat different shade of meaning. It is not always a safe way to construe a statute or a contract by dividing it by a process of etymological dissection and after separating words from their context to give each word some particular definition given by lexicographers and then to reconstruct the instrument upon the basis of these definitions. What particular meaning should be attached to words and phrases in a given instrument is usually to be gathered from the context, the nature of the subject matter, the purpose or the intention of the author and the effect of giving to them one or the other permissible meaning on the object to be achieved. Words are after all used merely as a vehicle to convey the idea of the speaker or the writer and the words have naturally, therefore, to be so construed as to fit in with the idea which emerges on a consideration of the entire context." (Emphasis supplied)

34. *Applying the said test, we have to gather the meaning of words 'building' and 'plant' in context of Scheme of section 32 and it is not necessary that we should adopt a judge sense meaning, which is artificial and imprecise in application, given to the word 'plant' in context of different statutory provisions. The Scheme of section 32 unequivocally leads to the conclusion that 'building' and 'plant' are treated separately for the purpose of grant of depreciation. Higher rate of depreciation is granted to 'machinery' and 'plant' as against the 'building' which has more durability.*

35. *In CIT v. Mir Mohammad Ali [1964] 53 ITR 165 this Court considered the meaning of the word 'machinery' and observed that the word 'machinery' is an ordinary and not a technical word and unless there is something in the context in the Act, the ordinary meaning would prevail. Thereafter, the Court observed:*

"According to the above definition, a diesel engine is clearly 'machinery'. indeed, rule 8 of the Income-tax Rules treats aero-engines separately from aircraft. It is true that this rule cannot be used to interpret the clauses in the Act but it does show that components of an aircraft, which are machinery, can be treated separately." [Emphasis supplied] (P. 172)

For the words 'plant' and 'installed' the court held :

"Further, 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 per cent of the cost thereof was allowable to the assessee. All the conditions required by the Act are satisfied. If we look at the point of time of purchase and installation, what was purchased and installed was machinery." (p. 172)

Thereafter, the Court considered the meaning of the expression 'install' and held that when an engine is fixed in a vehicle it is installed within the meaning of sections 10(2)(vi) and 10(2)(via) of the 1922 Act. Similarly, in the present case, the word 'plant' is given meaning under section 43(3) to include ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession, but this would not mean that it includes building which is treated separately from machinery and plant. Wider meaning to word 'plant' is given by including specified items mentioned above, that is, it includes ships, vehicles, books, etc.

36. *In Taj Mahal Hotel's case (supra) this Court specifically observed that it is well-settled that where the definition of the word has not been given it must be construed in its popular sense if it is a word of every day use. The Court also observed that even books have been included in the word 'plant', therefore, wider meaning should be given so as to include those things which the interpretation clause declares that they shall include. Further, it is to be stated that section 43 itself provides that 'unless the context otherwise requires' the word 'plant' is to be given wider meaning as stated therein. This wider meaning does not include building. But in any case even for the time being presuming that the judge-made meaning of the word 'plant' includes building in certain set of circumstances, in context of section 32 such wider meaning cannot be given and plant would not include building in which hotel business is run or a theatre building in which cinema business is carried on. Further, the Court specifically observed that :*

"...the business of a 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...." (p. 48)

37. *These observations clearly indicate that business of a hotelier is carried on in a building or a premises and building is not an apparatus for running such business. It is a shelter or a home for conduct of such business.*

The learned counsel also pointed out the decision of the Madras High Court in. CIT v. N. Sathyanathan & Sons (P.) Ltd. [2000] 242 ITR 514 wherein the Court observed that in the case of Taj Mahal Hotel (supra) even after noticing the fact that the dictionary definition of 'plant' includes buildings, the Court did not proceed to hold that the building in which the hotel was run, and wherein the sanitary fittings were used was 'itself plant', and on that ground sanitary

fittings used in the hotel were part of the plant and emphasised that section specifically provides buildings used as hotel would indicate hotel building cannot be construed as a 'plant'. We agree with this view of the Madras High Court.

38. *Next, it is to be stated that the judgment in the case of Barclay, Curle & Co. Ltd. (supra) would be of no assistance for holding that a building used for the purpose of a hotel or the theatre used for carrying the business of cinema will be a 'plant' because in the said case majority view was that the dry dock was not the mere 'setting' or the premises in which ships were repaired. It was not mere shelter or home but 'itself' played an essential part in the operations which took place in getting a ship into the dock, holding it securely and then returning it to the river. It was a complete unit by itself, therefore, it was a 'plant'. Against that, for a hotel premises, under the Act, building is not considered to be an apparatus for running the hotel business but is merely a shelter or home or setting in which business is carried out. In our view, same would be the position with regard to a theatre in which cinema business is carried on. Webster Comprehensive Dictionary (International Edition) gives meaning to the word 'theatre' that: "(1) A building especially adapted to dramatic, operatic, or spectacular representations; playhouse; (2) The theatrical world and everything relating to it; (3) A room or hall arranged with seats that rise as they recede from a platform, especially adapted to lectures, surgical demonstrations, etc.; (4) Any place of semi-circular form with seats rising by easy gradations; (5) Any place or region that is the scene of events: a theatre of operations in war." This would mean that cinema business can be run in a premises adapted for that purpose which may or may not be specially designed. Further, on the basis of test laid down in the case of Barclay, Curle & Co. Ltd. (supra) such building or premises would be the place in which operation of carrying on of business takes place and not that they are means by which the operation is performed. Even the*

House of Lords in the case of Benson (supra) arrived at the conclusion that a ship or a floating hulks used as a restaurant was not a plant, even though the ship was used to create a shipboard feeling and certain kind of atmosphere among the patrons. In our view such buildings cannot be termed as tools for running business but are mere shelter for carrying on such business activities. Therefore, even functional test, which is followed and which according to us would not be conclusive in all cases, is also not satisfied.

39. *In England also, there are conflicting decisions involving the question whether structure would be a plant or not and it is stated that each case is required to be decided on facts of that case in Scottish & Newcastle Breweries Ltd.'s case (supra) (decided by the House of Lords) the Court of Appeal observed that though there is no statutory definition of 'plant' for the purpose of section 41 of the Finance Act, 1971, from a series of cases decided, following principles emerge to be settled law.*

> *"(i)Something which is properly to be regarded as part of the setting in which a business is carried on and not as part of the apparatus used for carrying on the business is not plant: See J Lyons and Co. Ltd. v. Attorney-General {[1944] Ch 287}.*
>
> *(ii)Something which forms part of the setting of a trade may nevertheless be plant if it is more a part of the apparatus than part of the setting {Jarrold v. John Good & Sons Ltd. [1963] 1 WLR 214 : 40 TC 681]}.*
>
> *(iii)The term 'plant' is not apt to cover the permanent structure of a building in which a business is carried on [John Good & Sons Ltd.'s case].*

(iv)Something which is a structure or part of a structure may nevertheless be plant, if it fulfils the function of plant in the trader's operations. {Commissioners of Inland Revenue v. Barclay, Curle & Co. Ltd. [1969 SC (HL) 30 : 45 TC 221]}.

(v)Apparatus which has no functional purpose in the commercial process, even if it serves to attract custom, is not plant - Dixon v. Fitch's Garge Ltd. [(1976) 1 WLR 215 : 50 TC 509, in this case the apparatus in question was a canopy constructed over the pumps of a petrol filling station to provide shelter while the commercial process of delivering fuel was carried on}."

In the said case, Lord Scott adopted the distinction made by Shaw L.J. in Benson's case (supra) and relied upon following observation :

"A characteristic of plant appears to me to be that it is an adjunct to the carrying on of a business and not the essential site or core of the business itself." (p. 358)

Applying the aforesaid characteristic of 'plant', in our view, building for hotel or cinema cannot be stated to be adjunct, that is to say, (as per the dictionary meaning of the word 'adjunct') something added to another, or it is in a subordinate, auxiliary or dependent position.

Further, in Wimpy International Ltd. v. Warland & Associated Restaurants Ltd. 61 Tax Cases 51], the court of Appeal dealt with a case where the appellants owned and operated fast food restaurants and expended money on improving and modernising their restaurants, i.e., by spending on shop fronts,

floor and wall tiles, wall finishes and other non-decorative items which was held by the Special Commissioners as part of 'setting' or premises in which trades were carried on. The appellants contended that all the items were installed to improve the ambience of the restaurant and to attract customers and were thus plant. The Court held that they were not plants. The Court took up each and every item of decoration separately for analysing whether it constituted a plant or not. Like for shop fronts or doors, the Court agreed with the observations of the Chancery Division that none of the shop fronts or doors qualifies as plant by holding that their principal function is to form a necessary part of the premises and doors are needed for ingress and egress. None of the floor or wall tiles can be classed as plants. They are chosen so as to create an attractive setting in which customers will be pleased to sit for the short time required to consume a fast food meal, but their function in the trade does not go beyond that. Considering the facts of this case and various decisions Fox L.J. observed:

"In the light of the authorities the position appears to me to be this. There is a well-established distinction, in general terms, between the premises in which the business is carried on and the plant with which the business is carried on. The premises are not plant. In its simplest form that is illustrated by Lord Lowry's example of the creation of atmosphere in a hotel by beautiful buildings and gardens on the one hand and fine china, glass and other tableware on the other. The latter are plant; the former are not. The former are simply the premises in which the business is conducted.

The distinction, however, needs to be elaborated, for present purposes, by reference to Lord Lowry's further formulation, namely that the fact that different things may perform the same function of creating atmosphere is not relevant: one thing may function as part of the premises and the other as part of the plant. Thus, "something which becomes part of the premises instead of merely

embellishing them is not plant except in the rare case where the premises are themselves plant".

I do not think that what Oliver L.J. was saying in Cole Brothers is at variance with Lord Lowry's approach. It is proper to consider the function of the item in dispute. But the question is what does it function as? If it functions as part of the premises it is not plant. The fact that the building in which a business is carried on is, by its construction particularly well-suited to the business, or indeed was specially built for that business, does not make it plant. Its suitability is simply the reason why the business is carried on there. But it remains the place in which the business is carried on and is not something with which the business is carried on."

Similarly, Lord Hoffmann J. (Chancery Division) observed: "...the question is whether it would be more appropriate to describe the item as part of the premises rather than as having retained a separate identity. It seems to me that items such as fixed floor tiles and shop fronts are more naturally to be regarded as part of the "housing" of the business than as mere embellishments having a separate identity."

In Carr (H.M. Inspector of Taxes) v. Sayer 65 Tax Cases 15, the Chancery Division considered a case where the taxpayers carried on business of providing quarantine kennels and transport services for dogs and cats brought into the United Kingdom from abroad. Quarantine kennels were constructed at their premises. Some of the kennels were movable. The permanent kennels comprised a flat-roofed structure which consisted principally of a series of pens divided from each other by walls and with bars and metal mesh across the front. The Court held that those kennels were not plant; they were purpose-build permanent buildings or structures, used as such, and were the premises in

which business was conducted; while they were specifically designed for quarantine purposes, the particular roof and walls were building design features and no more, which did not result in structures being characterised as anything other than buildings or lead to the end result having the character of equipment or apparatus. For this purpose, the Court referred to various principles in context of section 41(i) of the Finance Act, 1971, which is applicable to 'machinery or plant'. In the context of that section, the Court observed that plant carries with it a connotation of equipment or apparatus, either fixed or unfixed. It does not convey a meaning wide enough to include buildings in general. The Court pertinently observed that building would not normally be regarded as a plant, do not cease to be buildings and become plant simply because they are purpose-built for a particular trading activity. Such a distinction would make no sense. Thus, the stables of a racehorse trainer are properly to be regarded as buildings and not plant. A hotel building remains a building even when constructed to a luxury specification. Similarly with a hospital for infectious diseases. This might require special layout and other features, but this does not convert the buildings into plant. A purpose-built building, as much as one which is not purpose-built, prima facie is no more than the premises on which the business is conducted.

41. *In Gray v. Seymour Garden Centre 67 Tax cases 401, the Court of Appeal dealt with a case where assessee expended on the construction of planetaria which was a fix structure designed to maintain plants of many different kinds moved from nurseries, in an environment in which they would remain in good condition until sale. It was designed so that an appropriate mini-climate could be provided in different parts of the planteria suitable for different varieties of plant, and so as to be open to the public who could walk around it and choose from the plants on offer. The Court of Appeal held that the true and only reasonable conclusion from the facts found was that planteria was part of the premises in*

which the business was carried on. It was a structure to which plants were brought which required special treatment. However, the fact that planteria provided the function of nurturing and preserving the plants while they were there could not transform it into something other than part of the premises in which business was carried on; the highest it could be put was that it functioned as a purpose-built structure, but that was not enough to make the structure plant.

Hence, to rely upon Barclay Curle & Co. Ltd.'s case (supra) (dealing with dry dock yard) and to hold that hotel building or theatre would be a plant on functional test would be unjustified and unreasonable in the context of section 32 which deals with grant of depreciation allowance on building, machinery, plant or furniture and also for extra allowance in case of new machinery or plant installed in premises other than the premises used as office or any residential accommodation and also for new building erected and used as a hotel. As against that, the aforesaid decisions by Courts in England are based upon section 41 of the Finance Act, which provide for allowance for capital expenditure incurred on the provisions of machinery or plant for the purposes of the trade and the Courts were only dealing with general meaning of the word 'plant'. Even there, as quoted above, Courts have specifically held that creation of atmosphere in a hotel by beautiful buildings and gardens would not make such buildings as plants. Suitability of such building is simply the reason why the business is carried on there which may flourish, but the premises remains as premises where business is carried on and is not some thing with which business is carried on. In Carry (H.M. Inspector of Taxes)'s case (supra), the Court observed that a hotel building remains a building even when constructed to a luxury specification and also a hospital building for infectious diseases which might require special layout and other features was not held to be a plant

by observing that a purpose-built building is no more than the premises on which the business is conducted.

Further, there are hotels of all kinds and hotel business can be carried on in all kinds of buildings, may be pucca or kacha constructions. A building intended to be used or in fact used earlier either as a residential accommodation or business purpose can be converted for running hotel business. Section 32 itself contemplates, hotel business being carried on in residential accommodation including an accommodation which is in the nature of guest house. On occasions hotel buildings may be constructed with a special design and features so as to attract and accommodate certain class of tourists. Similarly with regard to cinema business, it can be carried on in a specially designed and constructed building and also in other buildings. Still, however, it would be difficult to draw a distinction and differentiate by holding that a building which is specially designed and constructed for running a hotel or cinema would be covered by a 'plant' and other buildings used for the same purpose would not get depreciation as 'plant', even though such business is carried on in such premises. In our view, the Delhi High Court has in the case of R.C. Chemical Industry (supra) rightly observed that mere fact that manufacture of saccharine would be better carried on in a building having atmospheric controls would not convert the building from 'the setting' to 'the means' for carrying the business. Similarly, Rajasthan High Court also in Lake Palace Hotels & Motels (P.) Ltd.'s case (supra) rightly observed that simply because some special fittings or controlling equipments are attached for the purpose of carrying on hotel business, it will not take it out of the category of building and make it a plant. In our view special fittings or equipments to control atmospheric effects would be plant, but not the building which house such equipments.

Further for running almost all industries or for carrying on any trade or business building is required on occasions building may be designed and constructed to suite the requirement of a particular industry, trade or business. But that would not make such building a plant. It only shelters running of such business. For each and every business, trade or industry, building is required to carry on such activity. That means building plays some role and in other words, its function is to shelter the business, but it has no other function except in some rare cases such as dry dock where it plays an essential part in the operations which take place in getting a ship into the dock, holding it squarely and then returning it to the river. Building is more durable. If contention of the assessee is accepted, virtually all such buildings would be considered to be a plant and distinction which the Legislature has made between the 'building' and 'machinery' or 'plant' would be obliterated.

42. *The learned counsel for the assessee submitted that the words 'plant' and 'building' are not mutually exclusive. 'Plant' may include building in certain set of circumstances and, therefore, applying the functional tests assessee would be entitled to depreciation under the head 'it is more beneficial to it'. He submitted that in the modern era, theatre building and hotel building are integral part of operation for carrying out such business and, therefore, such building should be considered as a 'plant'.*

43. *As discussed above, the aforesaid contention cannot be accepted. Firstly, it would be difficult to draw a line between a building which is specifically constructed for the aforesaid purposes and buildings which are used for the aforesaid purposes by converting a residential accommodation or industrial premises for such purposes. Secondly, the depreciation as a general principle represents the diminution in value of capital asset when applied to the purpose of making profit or gain. The object is to get true picture of real income of the*

business. Hence, it can be inferred that the Legislature never intended to give such benefit of depreciation to a 'building' which is usually more durable than 'machinery' or 'plant'. In CIT v. Alps Theatre AIR 1967 SC 1437, the Court considered the question - whether the cost of land is entitled to depreciation under the Schedule to the Income-tax Act along with the cost of the building standing thereon? The Court observed thus :—

"(6) It would be noticed that the word used is 'depreciation' and 'depreciation' means :

'a decrease in value of property through wear, deterioration, or obsolescence; the allowance made for this in book-keeping, accounting, etc.' (Webster's New Word Dictionary).

In that sense land cannot depreciate. The other words to notice are 'such buildings'. We have noticed that in sub-clause (iv) and (v), 'building' clearly means structures and does not include site" (p. 1439)

The Court also held that :-

"(7) One other consideration is important. The whole object of section 10 is to arrive at the assessable income of a business after allowing necessary expenditure and deductions.

(8) Depreciation is allowable as a deduction both according to accountancy principles and according to the Indian Income-tax Act. Why? Because otherwise one would not have a true picture of the real income of the business. But land

does not depreciate, and if depreciation was allowed it would give a wrong picture of the true income." (p. 1439)

44. *Under the 1961 Act also for the building and machinery or plant depreciation is allowed probably after taking into consideration its life and decrease in the value of the property through wear and tear.*

45. *The learned counsel for the assessee vehemently submitted that even though the line between the building and the plant in some cases is absolutely thin yet the Legislature or the CBDT (Revenue Board) has not clarified the same at any point of time inspite of conflicting judgments of the High Courts on the subject. The learned counsel for the assessee further submitted that even though the Legislature was alive to the issue and amended section 43(3) of the Act by the Finance Act, 1995 by excluding tea bushes and livestock with retrospective effect from 1962, it has not excluded the buildings which are used for running hotel or cinema business. It has not clarified or carried out any amendment in the provision and, therefore, it should be held that interpretation given by the High Courts was accepted by the revenue and the Legislature. We do not know that the Revenue Board was alive to the said controversy. If that was so, it would have clarified either way and litigations could have been avoided. But that is no ground for accepting interpretation suggested by the learned counsel for the assessees which would be inconsistent with scheme of section 32.*

46. *In the result, it is held that the building used for running of a hotel or carrying on cinema business cannot be held to be a plant because :*

(1)The scheme of section 32, as discussed above, clearly envisages separate depreciation for a building, machinery and plant. furniture and fittings etc. The

word 'plant is given inclusive meaning under section 43(3) which nowhere includes buildings. The rules prescribing the rates of depreciation specifically provide grant of depreciation on buildings, furniture and fittings, machinery and plant and ships. Machinery and plant includes cinematograph films and other items and the building is further given meaning to include roads, bridges, culverts, wells and tube-wells.

(2)In the case of Taj Mahal Hotel (supra), this Court has observed that business of a hotelier is carried on by adopting building or premises in suitable way. Meaning thereby building for a hotel is not apparatus or adjunct for running of a hotel. The Court did not proceed to hold that a building in which the hotel was run was itself a plant, otherwise the Court would not have gone into the question whether the sanitary fittings used in bath room was plant.

(3)For a building used for a hotel, specific provision is made granting additional depreciation under section 32(1)(v).

(4) Barclay, Curle & Co. Ltd.'s case (supra) decided by the House of Lords pertains to a dry dock yard which itself was functioning as a plant that is to say, structure for the plant was constructed so that dry dock can operate. It operated as an essential part in the operations which took place in getting a ship into the dock, holding it securely and then returning it to the river. The dock as a complete unit contained a large amount of equipment without which the dry dock could not perform its function.

(5)Even in England, Courts have repeatedly held that the meaning to the word 'plant' given in various decisions is artificial and imprecise in application, that is to use the words of Lord Buckley, "it is now beyond doubt that the word

'plant' is used in the relevant section in an artificial and largely judge-made sense." Lord Wilber- force commented by stating that "no ordinary man, literate or semi- literate, would think that a horse, a swimming pool, movable partitions, or even a dry-dock was plant."

(6)For the hotel building and hospital in the case of Carr (H.M. Inspector of Taxes) (supra), it has been observed that a hotel building remains a building even when constructed to a luxury specification and similarly, a hospital building for infectious diseases which might require a special layout and other features also remains a premises and is not plant.

It is to be added that all these decisions are based upon the interpretation of the phrase 'machinery or plant' under section 41 of the Finance Act, 1971, which was applicable and there appears no such distinction for grant of allowance on different heads as provided under section 32 of the Income-tax Act.

(7)To differentiate a building for grant of additional depreciation by holding it to be a 'plant' in one case where the building is specially designed and constructed with some special features to attract the customers and a building not so constructed but used for the same purpose, namely, as a hotel or theatre would be unreasonable.

Hence, the question is answered in favour of the revenue and against the assessee by holding that building which is used as a hotel or a cinema theatre cannot be given depreciation as plant."

If we now analyze the 'Hoarding Structures' constructed and erected by the assessee in context of the above definitions and meaning assigned to the word 'Plant' vis-à-

vis 'Building' as elaborated above, it could be seen that the 'hoarding structures' constructed and erected by the assessee firm are permanent structure embedded in the building having foundation. The assessee firm give these 'Hoarding Structures' which are constructed and erected by the assessee firm being permanent structures embedded in the building having foundation for the purposes of advertisement to sister concern Creation Publicity Private Limited , who in-turn allows the entities desirous of advertising their products and services to place and put their advertisements in these hoarding structures. The said Creation Publicity Private Limited has paid revenue of Rs. 54.23 lacs to the assessee firm for the use of these hoarding structures during the impugned assessment year. Thus, in our considered view, these hoarding structures which are permanent structures embedded in the building having foundation, which were constructed and erected by the assessee firm do not satisfy functional test and it cannot be said that these hoarding structures are tools or apparatus with which the assessee firm is carrying on the business rather these hoarding structures are building simplicitor which are constructed and erected by the assessee firm and which has been given for advertisement by the assessee firm to Creation Publicity Private Limited who in turn has given these hoarding structures to the entities for putting their advertisements on these hoarding structures. Thus, it cannot be said that these hoarding structures play any operative role as apparatus or tool in the carrying of the trade by the assessee firm or in the functioning of the assessee firm's business but rather these hoarding structures constructed and erected by the assessee firm are building simplicitor constructed and erected for entities to put their advertisements and erected by the assessee firm for entities to put their advertisment. Thus, functional test also is not satisfied in the case of these hoarding structures and it cannot be treated as 'Plant' and are merely a 'Building' constructed and erected by the assessee firm which are given on commercial terms and conditions for ultimate user as a space by the entities who are desirous of putting their advertisement of products and / or services on these hoarding structures. These hoarding structures do not satisfy the test's of being called 'Plant' but rather are merely permanent

structures embedded in the building having foundation being constructed and erected by the assessee firm and are used for the purposes of advertisements by the entities desirous of advertising their products and/or services on these hoarding structures . Our view is fortified by the decision of Hon'ble Supreme Court in the case of CIT v. Anand Theaters (supra).Thus, in our considered view, these advertising hoarding structures which are permanent structures embedded in the building having foundation being erected and constructed by the assessee firm are in-fact 'Building' and the assessee firm is entitled for depreciation @ 10%. We order accordingly.

10 The second ground is with respect to the claim of interest by the assessee firm. The assessee firm has for the year claimed interest expenses of Rs.6,98,075/- . The A.O. observed from the details of business activity during the year that the entire receivables is from its group concerns includes M/s Creations Publicity P. Ltd. It was also noticed by the A.O. from the P&L A/c and Balance sheet of earlier years that the major activities were with its group concerns and a major amount of its receivables from the said parties is still shown as outstanding. The total amount of debtors as per Balance Sheet is Rs. 111 lakhs which includes amount due from group concerns in earlier years which is substantial as compared to the turnover of around of Rs 54.23 lacs annually for the last many years. The fund flow statement from Balance sheet indicates that the partners capital and current account at the beginning of the year was Rs. 10.23 lakhs and at the end of 10.71 lakhs i.e. average fund of Rs.10.47 lakhs. Besides there are sundry creditors outstanding at the beginning of the year of Rs. 71.72 lakhs and at the end of the year of Rs. 68.50 lakhs i.e. an average of Rs. 70.11 lakhs. In addition there were temporary funds available by way of provisions created of an average of Rs. 2.63 lakhs. Further there are unsecured loans of Rs. 59.72 lakhs on which the assessee firm is paying interest @ 12% which has been claimed as an expense. The assessee firm has average non-interest bearing funds available

of Rs. 83.21 lakhs out of total average funds available of Rs. 142.93 lakhs and the major portion has been utilized for processing balances recoverable from debtors which is Rs. 126.91 lakhs at the beginning of the year and Rs. 111.20 at the end of the year i.e. average of Rs. 119.05 lakhs. It was observed by the A.O. that the portion of interest bearing funds has been utilized for processing the debtors. Considering the said facts that the entire receivables are from group concerns and the debit balances are outstanding since long and there was no business constraint to provide for such substantial credits especially considering that the total turnover is only Rs. 54.23 lakhs. The assessee firm in reply to the query by the A.O. that the turnover of the assessee firm is entirely related to the Creation Publicity P. Ltd. submitted that the transaction is done purely on commercial basis keeping in view the prevailing market rate. It was further stated that the said Creation Publicity Private Limited has total turnover of Rs. 26.24 crores , out of which there were debtors outstanding of Rs. 20.59 crores which is nearly 78.46%, hence, there was no option but to allow credit to the said company. The A.O. rejected the contention of the assessee firm and held that these are colorable devices adopted by the assessee firm. He observed that there was no business exigency for such long term credits offered to its group concern especially when it is operating on substantial borrowed funds. He further noted that the parties from whom loans are stated to have been taken are entitles of small means whose income invariably falls below the taxable limit or attracts nominal tax. The payments of interest have been made mostly without deduction of tax at source and only an amount of Rs. 90,000/- was subjected to deduction of taxes at source. The A.O. relied upon the judgment of Hon'ble Supreme Court in the case of Mcdowell & Co. Ltd. v. CTO reported in 154 ITR 148 and held that the entire interest cannot be attributed to the business requirement of the assessee firm and in the interest of natural justice , only 25% of the interest expense claimed i.e. Rs. 1,74,519/- was

disallowed by the A.O. , vide assessment order dated 30-11-2009 passed u/s 143(3) of the Act.

11.Aggrieved by the assessment orders dated 30-11-2009 passed by the AO u/s 143(3) of the Act, the assessee firm preferred an appeal before the CIT(A).

12. Before the CIT(A), the assessee firm submitted that the assessee firm has utilized the borrowed funds in the assessee's business, interest paid on such borrowings have to be allowed in full and granting of credit to the sister concern constitutes a part of its business activity, it cannot be held that the assessee firm has utilized its business funds for non-business purposes. The CIT(A) rejected the contentions of the assessee firm and held that during the previous year, the entire sales of the assessee firm is only to its sister concern of Rs.54.23 lakhs , whereas the sundry debtors outstanding at the end of the year is Rs.111 lakhs and thus sundry debtors outstanding are equivalent to two years' turnover of the assessee firm, hence, it cannot be said that the credit given by the assessee firm to its sister concern is reasonable. Therefore, in principle, the addition made by the AO is correct and there is utilization of interest bearing funds for advancing the sister concern credit period over unreasonable periods of time. However, the CIT(A) held that the disallowance made by the AO on an estimated basis is not correct. It was found by the CIT(A) that the total interest cost of the assessee firm is Rs.6,98,075/- and the total funds employed in the business is Rs.141.61 lakhs, thus the average cost of the funds to the assessee firm is Rs.6.98Iakhs / Rs.141.61 lakhs, which comes to 4.92%. On the other hand, the sundry debtors of Rs. 111 lakhs is on the higher side as the entire turnover during the previous year is only Rs.54.23 lacs. As submitted by the assessee firm, during the course of appellate proceedings that in the case of its sister concern the sales are made to 3rd parties and even in that situation, the sundry debtors were 74% of the sister concerns total sales. This information (i.e. sundry debtors being 74% of

annual sales) in the case of sister concern shows that while the sister concern itself realizes the amount from 3rd parties in 9 months time, while it pays the amounts to the assessee firm only in 24 months time and hence enjoys credit at assessee firm's cost. Thus the CIT(A) held that the benchmark of 75% (Debtors/sales ratio) can be used to determine the excess credit advanced by the assessee firm to its sister concern. The CIT(A) held that even if the same percentage is applied , then the reasonable sundry debtors at the end of the year would only be Rs. 40 lakhs being 74% of Rs. 54.23 lakhs being the annual turnover while remaining Rs. 71 lakhs on account of sundry debtors is in the nature of interest free credit advanced by the assessee firm to its group concern. As the average cost of funds by the assessee firm is 4.92%, the same has been applied on Rs. 71 lakhs and worked out to Rs. 34,932/-. Thus out of the addition made by the A.O., a sum of Rs. 34,932/- was sustained as interest cost incurred for advancing excessive credit to the sister concern and treated as not for the purpose of business and the balance addition was deleted by the ld. CIT(A) vide orders dated 31.12.2012.

13Aggrieved by the orders dated 31.12.2012 of the CIT(A), the assessee firm is in appeal before the Tribunal.

14. The ld. Counsel for the assessee firm submitted that in the case of group concern of the assessee firm i.e. M/s Creasons, identical matter came before the Mumbai-Tribunal in ITA No. 6846/Mum/2013 for the assessment year 2007-08 and the Mumbai-Tribunal vide orders dated 27.5.2014 held as under:-

> "8. I have carefully considered the submissions of learned Departmental Representative and perused the record. It is not in dispute that the assessee has obtained loan for business purpose and utilised the same for the purpose of business. Interest paid by the assessee on such loan was allowed as deduction from year to year. Therefore there is no dispute with regard to the fact that the

> expenditure is wholly and exclusively incurred for the purpose of business. The assessee is at liberty to arrange its affairs in such a way which would strengthen business relations and the Assessing Officer cannot put himself in the shoes of the businessman to decide as to what would be the course of action that needs to be taken in a given situation. In the instant case the assessee explained the reasons for permitting group concerns long term credits. Merely because the Assessing Officer views its otherwise, expenditure incurred for the purpose of business cannot be disallowed, particularly in the light of the decision of Hon'ble Apex Court in the case of S.A.Builders Ltd. (supra).
>
> 9. Having regard to overall circumstances of the case, I am of the firm view that the tax authorities have not made out any case for disallowance of 25% of the total claim. The assessing Officer is directed to allow the claim in its entirety."

The ld. Counsel submitted that the funds are borrowed for the purpose of business and are deployed for business keeping in view the commercial expediency, the same needs to be allowed as deduction relying on decision of Hon'ble Supreme Court in the case of S A Builders Limited in 288 ITR 1(SC). The ld. Counsel submitted that Mumbai-Tribunal in the case of M/s Creasons (supra) has allowed the claim of the assessee on identical situation. In the case of another group concern M/s Empress Advertising for the assessment year 2007-08 whereby the CIT(A) vide order dated 2-3-2012 also allowed the ground raised by the said Empress Advertising on identical facts had allowed the claim of the interest expenditure based on commercial expediency, copy of the CIT(A)'s order is placed on record vide page No. 71 to 81. Thus, the ld counsel for the assessee firm submitted that the claim of the assessee firm for interest expenditure as disallowed by the CIT(A) should be allowed in its entirety.

15. On the other hand, the ld. D.R. relied on the orders of authorities below.

16. We have considered the rival contention and also perused the material available on record. We have observed that the assessee firm has borrowed funds which were utilized for the purpose of its business. The assessee has made turnover of Rs. 54.23 lacs which was with respect to transactions with M/s Creations Publicity P. Ltd., assessee's group concern and this is the only sale made by the assessee firm during the assessment year . The assessee firm stated that the said sale has been made based on commercial expediency. We have observed that identical matter of allowability of claim of interest expenditure was decided by the Mumbai-Tribunal in ITA No. 6846/Mum/2013 for the assessment year 2007-08 vide orders dated 27.5.2014 in the case of group concern of the assessee firm i.e. M/s Creasons and the issue was decided in favour of the said concern M/s Creasons as under:

> "8. I have carefully considered the submissions of learned Departmental Representative and perused the record. It is not in dispute that the assessee has obtained loan for business purpose and utilised the same for the purpose of business. Interest paid by the assessee on such loan was allowed as deduction from year to year. Therefore there is no dispute with regard to the fact that the expenditure is wholly and exclusively incurred for the purpose of business. The assessee is at liberty to arrange its affairs in such a way which would strengthen business relations and the Assessing Officer cannot put himself in the shoes of the businessman to decide as to what would be the course of action that needs to be taken in a given situation. In the instant case the assessee explained the reasons for permitting group concerns long term credits. Merely because the Assessing Officer views its otherwise, expenditure incurred for the purpose of business cannot be disallowed, particularly in the light of the decision of Hon'ble Apex Court in the case of S.A.Builders Ltd. (supra).
>
> 9. Having regard to overall circumstances of the case, I am of the firm view that the tax authorities have not made out any case for disallowance of 25% of the total claim. The assessing Officer is directed to allow the claim in its entirety."

Respectfully following the afore-said orders of the co-ordinate Bench of the Tribunal as detailed above which was on identical issue, we allow the claim of interest expenditure of Rs.34,932/- of the assessee company which was disallowed by the CIT(A) vide orders dated 31.12.2012. We order accordingly.

17. In its last ground, the assessee firm challenged the action of the A.O. in treating the hoarding expenses incurred by the assessee company as being treated as capital expenditure. The assessee firm, in its profit and loss A/c claimed hoarding expenses of Rs.14.05 lakhs. The assessee firm was required to produce copy of supporting documents for service rendered by Vikrant Enterprises, Raj Enterprises and Sai enterprises aggregating to Rs.14.05 lacs with respect to extensive heavy repairs of the existing permanent foundation and structure embedded in the building and to clarify the allowability of the same. The A.O. on perusal of the party wise details of hoarding repairs and maintenance noted that the major expenses of Rs. 4,05,000/- with respect to M/s Vikrant Enterprises was the labour charges for painting the permanent steel structure after scraping the aforesaid existing structure and applying red oxide colour to prevent corrosion/ decay thereon due to rain and-weather effect. With respect to M/s. Raj Enterprises and M/s Sai Enterprises the major expense of Rs. 4,94,000/- and Rs.4,95,000/- was due to extensive/heavy repairing of the existing permanent cement foundations and painting the structures embedded in the building on the hoarding sites. The charges and expense of materials like cement, sand, metal, water proof powder were also added. The cost was also inclusive of thick cement plaster on all sides of the foundation and also the boundary/parapet wall and applying white wash and red oxide colour to prevent corrosion/decay thereon due to rain and weather effect. The A.O. observed that from the supporting's maintained that the expenses have been incurred for capital purpose giving enduring benefit and cannot be classified as current repairs u/s 30 & 31 of the Act as the same are not in the nature of current repairs. The assessee

firm has not been able to substantiate as to how the same is in the nature of current repairs allowable as a revenue expense. It was also observed by the A.O. that the amount on repairs are stated to be of Rs. 14.05 lakhs which is substantial when compared to the depreciated cost of the asset at the beginning of the year which was only Rs. 1,61,949/-. The assessee firm relied on the decision in the case of Balimal Naval Kishore and Another v. CIT, 224 ITR 414. The A.O. noted that the assessee firm has made new cement foundation and supporting for the hoarding, the structure of the hoardings consists of frames which were made up of metal reinforced by cement foundation and applied red oxide and other treatments to prevent corrosion and weathering. The AO also issued notice u/s 133(6) of the Act to the parties but they were returned back un-served due to unavailability of parties. Accordingly, the A.O. treated the said expense of Rs. 14.05 lacs as capital expenditure and added to the income of the assessee firm and eligible depreciation @ 10% i.e. Rs. 1.41 lakhs was allowed on account of depreciation by the AO vide assessment orders dated 30-11-2009 passed u/s 143(3) of the Act.

18. Aggrieved by the assessment orders dated 30-11-2009 passed by the A.O. u/s 143(3) of the Act, the assessee firm preferred an appeal before the CIT(A).

19. Before the CIT(A), the assessee firm reiterated the submission what was made before the A.O. which are not repeated for the sake of brevity. The CIT (A) observed from the copies of three bills raised by the parties in favour of the assessee firm on account of the hoarding expenses and the 1st bill was dated 15th December 2006 and a sum of Rs. 4,05,000/- has been paid as labour charges for painting the steel structure in respect of various hoardings at three sites belonging to the assessee firm. The CIT(A) observed from the bill that the entire expenses are on account of painting of the hoarding steel structure and therefore, it cannot be said that any asset of enduring nature

has been created by incurring the expenses. Painting is required as a part of the maintenance of the structure and hence in respect of this amount, no addition is warranted. With respect to the 2nd bill that is dated 21st October 2006 for a sum of Rs. 4,94,000/- which was on account of heavy and extensive repairing to the existing structure consisting of laying of cement foundation and erecting other permanent structure embedded in the building at two sites. The cost includes cost of cement and plaster for the foundation as also the parapet wall at the site. The work also includes some amount of painting and considering the nature of work undertaken, the CIT (A) held that 50% of the same is in the nature of capital expenditure as the foundation and other structure has been erected. The remaining 50% is estimated on account of revenue account mainly towards painting. Therefore, the addition to the extent of Rs. 2,47,000/- on account of this bill is sustained. With respect to the 3rd bill, it shows that on account of labour charges for heavy and extensive repairing of the parapets wall cement, foundation and steel structure in respect of two other sites aggregating to Rs. 4,95,000/-. The description in this bill is almost identical and it is seen that the expenses were on account of labour and material cost such as cement, metal etc for the foundation, water proofing and other expenses on account of painting etc. Considering the nature of expenses, the CIT(A) held that 50% of the same is on account of capital expenditure being the cost of laying the foundation and erection of iron structure of the hoarding. The balance is on account of revenue account. The CIT(A) accordingly sustained the additions made by the AO to the extent of Rs. 2,47,500/-. Thus, the total addition on account of hoarding expenses is sustained to the extent of Rs. 5,94,500/- , vide orders dated 31.12.2012.

20.Aggrieved by the orders dated 31.12.2012 of the CIT(A), the assessee firm is in appeal before the tribunal.

21. The ld. Counsel for the assessee firm submitted that these are major hoarding expenses which the assessee firm has incurred for the purpose of its business of outdoor advertising business. The repairs to the permanent structure have been undertaken and it was not extensive repair of permanent structure. The A.O. treated the expenses as capital expenditure while the CIT(A) granted relief to the tune of 50% with respect to two bills of Raj Enterprises and Sai Enterprises respectively which are the subject matter of appeal before the Tribunal .The ld. Counsel drew our attention to paper book page No. 104, 105 & 106 whereby the details of all these expenses are mentioned and the invoices are placed on record. The ld. Counsel submitted that the issue is covered and these expenses be treated as normal repair expenses as the identical issue has come before the Tribunal in the case of the sister concern of the assessee firm, M/s Empress Advertising v. ITO in ITA No. 4184/Mum/2012 for the assessment year 2007-08 whereby Mumbai tribunal vide its order dated 31-07-2014(copy of the order placed in paper book at page 108-111) held as under:-

> "3. We have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the ld. Counsel for the assessee, the assessee was having 15 hoardings installed in the city during the course of its business of outdoor advertisement and total income of about Rs. 88 lacs was generated from this activity giving a net profit of about Rs. 18 lacs as shown by the assessee in the P&L account. These hoardings were required to be maintained by the assessee and in order to avoid corrosion of the structure and other adverse weathering effects, application of red oxide and painting was regularly required to be done. Similarly, cementing and plastering of foundation was also required to be done regularly in order to maintain the hoarding structures. Keeping in view the nature of business activity carried on by the assessee, we are of the view that the expenditure incurred by the assessee to maintain the structures used for hoardings is of revenue in nature especially when the quantum of expenditure incurred is considered in the light of the fact that there were 15 hoardings which were exposed to climate. It is also relevant to note that such expenditure is a

> recurring expenditure which is required to be incurred by the assessee regularly and the same therefore cannot be said to have given any enduring benefit to the assessee in capital field. Moreover, even if the hoarding expenditure claimed by the assessee is inclusive of replacement of M.S. Angles etc., as noted by the A.O., the same is in the nature of replacement of parts of the hoarding structure which cannot be treated as capital expenditure. As such, considering all the facts of the case, we are of the view that the assessee is entitled to deduction on account of hoarding expenditure being in the nature of revenue expenditure. In that view of the matter, we delete the disallowance made by the A.O. and confirmed by the ld. CIT(A) on this issue and allow the appeal of the assessee."

22. The ld. D.R., on the other hand, supported the orders of authorities below.

23. We have considered the rival submission and also perused the material available on record including the orders of the Tribunal. The assessee firm has undertaken repairs of the hoarding structures with respect to the existing structure. We find that the issue has already been decided in favour of the tax-payer by the co-ordinate Bench of this Tribunal in the case of Empress Advertising (supra) being sister concern of the assessee firm on identical facts and issue's in the appeal, M/s Empress Advertising v. ITO in ITA No. 4184/Mum/2012 for the assessment year 2007-08 whereby Mumbai Tribunal vide its order dated 31-07-2014(copy of the order placed in paper book at page 108-111) held as under:-

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Respectfully following the afore-stated decision of the Mumbai Tribunal in the case of Empress Advertising(supra) as the facts and issues involved are identical , we allow this ground of appeal raised by the assessee firm in favour of the assessee firm. We order accordingly.

24. In the result, the appeal filed by the assessee firm in ITA N0. 2349/Mum/2013 for the assessment year 2007-08 is partly allowed.

Order pronounced in the open court on 23rd March, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांकः 23-03-2016 को की गई ।

Sd/-	sd/-
(AMIT SHUKLA)	(RAMIT KOCHAR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated **23-03-2016**

I

व.नि.स./ *R.K.*, Ex. Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "A" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**