IT 145 - Depreciation - the meaning of plant - mobile sheds and caravans in tourist park

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TAXATION RULING NO. IT 145

DEPRECIATION - THE MEANING OF PLANT - MOBILE SHEDS AND CARAVANS IN TOURIST PARK

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
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FACTS This ruling was issued as a consequence of Advice from Head Office, following a decision of the Board of Review on the meaning of plant as related to mobile and immobile sheds. The decision is reported as 69ATC Case A43; 15 CTBR(NS) Case 21.

2. The taxpayer company claimed depreciation on various sheds which it brought to, or erected on, sites where it constructed power stations for clients. Claims were allowed in respect of those sheds which were either completely portable, conveniently portable in sections or readily sectionalised for transport and none of which were in any way affixed to the ground. These were regarded as being sufficiently similar to the portable sleeping units considered by Taylor J. in the Quarries Limited case reported as (1961) 106 CLR 310, and were thus accepted as plant for section 54 purposes. Claims in respect of other sheds were disallowed, however, on the basis that they were fixed to the ground so as to constitute buildings and were no more than the local setting for the company's construction activities in which they played no active part but merely a passive role.

3. In a unanimous decision the Board accepted the taxpayer's contention that the latter sheds were "plant" within the terms of section 54. Board member, Mr O'Neill, (with whom the other members agreed) reviewed the relevant authorities and pointed out that for section 54 purposes "plant" is capable of including permanently fixed things such as buildings.

4. Moreover, he considered that, even if it was accepted that the sheds played only a passive role in the taxpayer's construction activities, this by itself would not preclude a finding that the sheds were plant. He relied on the actual decisions in the Quarries Limited case and Jarrold and John Good and Sons Ltd 40 TC 681, and distinguished dicta of Kitto J. in the BHP case (1968) 120 CLR 240 supporting a contrary view, on the ground that his Honour was there considering buildings which were all permanent features of fixed business premises in which

business operations were carried on.

5. Mr O'Neill regarded the true test as being whether an item is merely part of the "setting" in which the operations are carried on or whether it can properly be regarded as apparatus used by the taxpayer for carrying on its business. On the facts of the present case, he thought that it was unreal to say that the sheds were mere "setting" and concluded that they had the character of "plant". Similarly, Mr Smith thought that sheds were much more that just "setting" and that they played an important part in the productive processes of the taxpayer on the respective sites.

RULING 6. As it has been decided to accept the Board's decision, it is clear that the direction in paragraph 9 of FITJ 687 is no longer tenable in so far as it purports to restrict the Quarries Limited decision to completely portable or movable equipment for use in a nomadic type of business. Consequently, depreciation claims for sheds etc. of the type considered by the Board may be allowed where they are used in connection with a nomadic type of business.

7. On the other hand, depreciation claims for such items by taxpayers not engaged in a nomadic type of business should continue to be disallowed. Mr O'Neill clearly agreed with this approach when he said:-

> 'In such a context it seems to me that he sheds have the character of "plant" rather than that of "setting" even though like structures would be "setting" if located permanently on the company's own business premises for similar uses in relation to its continuing operations at those premises.'

8. However, as a result of the decision, it has been decided to allow depreciation in one other type of business where depreciation has not been allowed in the past. In a recent case referred to the is office, depreciation was claimed on caravans rented by a company to tourists and others as temporary accommodation. Although their use was restricted to the confines of a tourist park, the caravans were maintained in a mobile condition. It was considered that previous Board of Review decisions involving immobilised caravans were distinguishable and that a Board of Review could well take the view that the caravans were "plant" for section 54 purposes. Accordingly, it was decided to settle the case by the allowance of depreciation on caravans used within the confines of the caravan park at the rate of 10% rime cost method of 15% diminishing value method. This decision may also be applied in similar cases.

COMMISSIONER OF TAXATION