

(1999) 04 MAD CK 0112

In the Madras High Court

Case No : Tax Case No. 1365 of 1987 (Reference No. 873 of 1987)

Adayar Gate Hotels Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 23-04-1999

Acts Referred:

Income Tax Act, 1961 — Section 32A, 32A(2)

Citation : (2000) 158 CTR 482 : (2000) 241 ITR 279

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : Philip George, for the Appellant; C.V. Rajan, for the Respondent

Judgement

R. Jayasimha Babu, J.—The question referred to us at the instance of the assessee which owns and operates a five star hotel at Madras is : "whether, on the correct interpretation of Section 32A of the Income Tax Act, 1961, the Appellate Tribunal was correct in law in holding that the assessee carrying on hotel business was not entitled to investment allowance ?" The assessment year is 1981-82.

2. The assessee-company was incorporated in the year 1970. It completed the construction of the. hotel building and commenced its business only during the previous year relevant to assessment year 1981-82. During that year, it functioned only for 14 days. Its return was filed on October 24, 1981, and thereafter a revised return was filed on December 13, 1983, admitting a loss of Rs. 93,69,444. The assessee-company claimed investment allowance of Rs. 46,69,663. That claim was rejected by the Assessing Officer on the ground that the assessee had failed to prove that the machinery or plant in respect of which investment allowance was claimed, satisfied the condition mentioned in Section 32A(2)(b)(iii). The rejection of that claim was upheld by the Commissioner (Appeals) as also by the Appellate Tribunal.

3. Section 32A of the Act which deals with investment allowance in Sub-section

(2)(b)(iii) thereof provides that the machinery or plant referred to in Section 32A(1) shall be any new machinery installed after March 31, 1976, in any other industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing, not being an article or thing specified in the list in the Eleventh Schedule.

4. The character of the assessee as also the purpose for which the machinery or plant is used, must answer the requirements spelt out in Sub-clause (iii) of Section 32A, namely, it must be an industrial undertaking, and the machinery or plant is used in the manufacture or production of any article or thing.

5. Before the authorities below, there was no material placed in support of the assessee's claim that it was an industrial undertaking engaged in the manufacture or production of article or thing. Reliance was placed by the assessee on the decision of the Income Tax Tribunal at Delhi in which it has been held that all food articles prepared in a canteen amounted to manufacture and therefore investment allowance was allowable. Before the Tribunal the assessee also relied on the decision of this court in the case of Commissioner of Income Tax, Tamil Nadu-III Vs. Engine Valves Ltd., , wherein the issue was whether the canteen building in a factory can be regarded as a factory building entitled to a higher rate of depreciation. The court held that such higher rate is to be allowed as, though normally goods in the process of cooking is not a process of manufacture, in a canteen where cooking and other works are carried on such place can be regarded as one where manufacture is carried on.

6. Counsel for the assessee also relied on the decision of the High Court at Gauhati in the case of Commissioner of Income Tax Vs. Hotel Belle Vue (P.) Ltd., . It was held therein that the machinery used in a hotel for preparation of food is eligible for investment allowance, as when food is prepared from materials, a new product is prepared or made and is known as different item.

7. Reliance was also placed by counsel on the decision of the Supreme Court in the case of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, . It was, inter alia, observed that the word "production" has a wider connotation than the word "manufacture". The expressions "manufacture" and "produce" are normally associated with movables--articles and goods, big and small--but they are never employed to denote construction activity of the nature involved in construction of a dam or a building.

8. Learned counsel for the Revenue, on the other hand, submitted that this court as also other High Courts have held that a hotel is not an industrial undertaking which manufactures goods or produces articles and that the assessee is not eligible for any investment allowance. He also referred to a decision of this court in the case of Commissioner of Income Tax (Central) Madras Vs. Buhari Sons Pvt. Ltd., , wherein the court held that a hotel was not an industrial company for the purpose of Section 2(7)(d) of the Finance Act, 1966, as the preparation of

eatables in a hotel does not amount to manufacture. The term "goods" in Section 2(7)(d) of the Finance Act, 1966, was used in the sense of merchandise, i.e., articles for sale, and so understood in a commercial sense, the expression "goods" will not include eatables prepared in a hotel. Further, the expression "manufacture" does not connote a trading activity and an activity carried on in a hotel can only be taken to be a trading activity and not a manufacturing activity.

9. This court again in the case of Commissioner of Wealth Tax Vs. P. Devasahayam, , held that for the purpose of claiming exemption u/s 5(l)(xxxii) of the Wealth-tax Act, the business of preparation of sweets and biscuits could not be said to be one of manufacture and cannot be said to fall within the term "industrial undertaking" as defined in Explanation appended to Section 5(l)(xxxii) of the Act. The court observed that the food stuffs prepared by the assessee were mainly intended for trading, and conversion of raw materials into the food-stuffs was only a process of trading and the production or preparation of the food-stuffs is only incidental to trading.

10. In the case of Commissioner of Income Tax Vs. Hotel Ayodya, , the Karnataka High Court held that a hotel is not an industrial undertaking and that machinery installed in a hotel is not entitled to investment allowance. The court therein referred to Section 80J wherein reference is made to industrial undertaking and the business of a hotel separately and held that was an indication that the hotel is not an industrial undertaking for the purposes of the Act. It was held that the preparation of food articles in a hotel is also incidental to rendering of service at the hotel whether it is a restaurant or a lodging house. Investment allowance, it was held by the court, could be claimed if the machinery was installed at a place which could be described as industrial undertaking, and that as the hotel was not an industrial undertaking, investment allowance cannot be claimed in respect of machinery and building.

11. In the case of Fariyas Hotels Pvt. Ltd. v. CIT [1995] 211 ITR 390, the High Court of Bombay held that the business of running a hotel is essentially a trading activity and no manufacture or production of any goods or any articles is involved in carrying out this activity. Therefore, the investment allowance u/s 32A of the Act cannot be claimed in respect of machinery or plant installed in a hotel business.

12. The Kerala High Court in the case of Commissioner of Income Tax Vs. Damodar Corporation, , held that investment allowance is not allowable in respect of a hotel.

13. The Calcutta High Court in the case of Commissioner of Income Tax Vs. S.P. Jaiswal Estates (P.) Ltd., , held that the business of a hotel is not one of manufacture or production of articles or things, and the preparation of food as also the provision of entertainment and various personal services are activities incidental or ancillary to the main business of hotel keeping and these activities do not amount to manufacturing or processing of articles or things.

14. The requirements of Section 32A(2)(b)(iii) must be concurrently met before an assessee can claim investment allowance. The machinery or plant must be owned and used by the assessee, for the manufacture or production of any article and such machinery or plant must be owned and used in any industrial undertaking.

15. Unless the hotel is capable of being regarded as an industrial undertaking, it would not be eligible for investment allowance even if the machinery installed therein can be regarded as one used in the manufacture or production of article or thing. The provision of food in the restaurant run by the assessee within the hotel premises as also the supply thereof to the rooms wherein the customers are lodged is incidental to the primary business of running a residential hotel, the main facility being the rooms provided to the customers and all other facilities being ancillary thereto.

16. Preparation of food with the aid of equipment installed in the kitchen cannot be said to amount to manufacture or production. The use of the machinery or plant for the purpose as preserving food, heating or other intermediate tasks involved in the preparation of the food-stuffs such as grinding, baking, cooking, frying, etc., cannot be regarded as machinery used in the manufacture or production of articles. Thus, neither can it be said, that the machinery is to be utilised for the purpose of manufacture or production of goods nor can it be said that the machinery is installed in an industrial undertaking.

17. Though the hotel industry is often referred to as part of the service industry, the use of the word "industrial undertaking" in the relevant statutory provisions along with the terms machinery, manufacture, goods, articles and things indicate that the industrial undertaking contemplated in Section 32A is one which is engaged in the manufacture of goods, articles or things and not the provision of service such as the one provided by the hotel to its customers. The facilities provided by a residential hotel are meant for use in the premises of the hotel. The rooms are meant for use during the period of stay of the customers, the facilities provided are for use by the resident guests and other users during their stay in the hotel premises and the charges paid for by them are for the facilities provided by the hotel. The food prepared in the hotel is meant primarily for consumption in the premises of the hotel. No article or thing which has any degree of durability is produced in the hotel. The food that is prepared is meant for the immediate consumption and is not meant to be stored for a period of time and used later by the customers who purchase the same.

18. The hotel industry is a service industry and use of the word "industry" in this context cannot result in the hotel being also regarded as a manufacturing industry which it is not. The machinery installed in a hotel therefore is not a machinery installed in an industrial undertaking for the purpose of manufacture or production of any article or thing. The installation of an air-conditioning plant in a hotel is for the comfort of those who stay in or visit the hotel. Such air-conditioning plant does not produce any article or thing. It is not a machinery

used in association with or installed with other machinery used for the manufacture or production of an article or thing.

19. We, therefore, answer the question referred to us against the assessee and in favour of the Revenue. No costs.