

(1978) 01 MAD CK 0035

In the Madras High Court

Case No : Tax Case No. 384 of 1974 (Reference No. 197 of 1974)

Additional Commissioner of Income Tax

APPELLANT

Vs

Rambal (P.) Ltd.

RESPONDENT

Date of Decision : 30-01-1978

Acts Referred:

Income Tax Act, 1961 — Section 33(1)(B)

Citation : (1980) 123 ITR 130

Hon'ble Judges : P. Govindan Nair, C.J.;Sethurman, J

Bench : Division Bench

Advocate : Nalini Chidambaram, for the Appellant; T.V. Balakrishnan, for C.V. Mahalingam, S. Mathrubutheswaran, K.J. Rebello and R. Santhanakrishnan, for the Respondent

Judgement

Govindan Nair, C.J.—The Income Tax Appellate Tribunal, Madras Bench, has referred the following question for our answer:

"Whether, in the assessment for the assessment year 1969-70, the assessee could be allowed development rebate at 35% on Rs. 2,30,840 being the cost of the machinery installed during the relevant previous year, despite the fact that they were used not merely for the manufacture of nuts, bolts and screws for automobiles, but also for the manufacture of such articles for other machinery ? "

2. The year of assessment, as is evident from the question, is 1969-70, and the corresponding accounting period ended with 30th June, 1968. The machinery was acquired for a sum of Rs. 2,30,840 admittedly for the business of the assessee and it is not disputed before us that it was used wholly for the purpose of its business.

3. Section 33(1)(a) and (b), with which we are concerned, insists on machinery being acquired by the assessee and being wholly used for the purpose of the business carried on by the assessee, and in order to get the 35 per cent. development rebate, u/s 33(1)(B)(i)(a) of the I.T. Act, the assessee will also

have to establish that the machinery was installed for the purpose of manufacture of any one or more of the articles or things specified in the list in the Fifth Schedule. Item 20 in the Fifth Schedule is " automobile ancillaries ". The assessee had installed a special machinery for manufacturing nuts and bolts for automobiles and the Tribunal has found that the question whether the machinery in respect of which development rebate is claimed has been installed during the relevant previous year for the manufacture of articles mentioned in the Fifth Schedule will have to be answered in the affirmative because the machinery has been installed for the manufacture of " automobile ancillaries " which is one of the items mentioned in the said Schedule. In view of this categorical finding and in view of what we have stated that the machinery had been wholly used for the purpose of the business of the assessee, the only further question will be whether the section insists that the machinery so installed must also be exclusively used for the purpose of manufacture of those items mentioned in the Schedule. The wording of the section does not warrant such an interpretation. The machinery so installed, no doubt, will have to be wholly used for the purpose of the business of the assessee. The machinery installed for the purpose of the manufacture of one of the items mentioned in the Fifth Schedule need not necessarily be used exclusively for the manufacture of these items or any of the items in the schedule.

4. The decisions to which our attention was drawn by the counsel on behalf of the revenue related to cases where the income derived was by using the machinery for purposes other than the business of the assessee. Those decisions will, therefore, have no application to the case before us. On the basis of the findings rendered by the Tribunal, we answer the question referred to us in the affirmative, that is, in favour of the assessee and against the revenue. The assessee will be entitled to its costs of this reference including counsel's fee of Rs. 500. A copy of this judgment with the seal of this court and under the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Madras Bench.