(2004) 09 AHC CK 0298

In the Allahabad High Court

Case No : IT Reference No. 12 of 1986 30 September 2004

Commissioner of Income Tax — APPELLANT

Vs

Agra Construction Corpn. — RESPONDENT

Date of Decision : 30-09-2004

Acts Referred:
Income Tax Act, 1961 — Section 256, 32A, 80I

Citation : (2005) 146 TAXMAN 31

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Full Bench

Judgement

1. The Income Tax Appellate Tribunal, New Delhi has referred the following questions of law u/s 256(1) of the Income Tax Act, 1961,(hereinafter referred to as ''the Act''), for opinion to this Court.

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that deduction u/s 80I was to be allowed to the assessee by holding that the assessee was manufacturing or producing articles or things?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that investment allowance u/s 32A was to be allowed on the machinery used in the business of the assessee?"

Heard Sri A.N. Mahajan, the learned standing counsel appearing for the revenue.

2. The present reference relates to assessment year 1982-83. The respondent-assessee is carrying on contract business for construction of tubular trusses, beams, girders and other structural, rolling shutters and other civil works. The activities undertaken by the respondent-assessee do not amount to manufacture of articles or things as held by the Apex Court in the case of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, wherein the Apex Court has held that construction activities are not exigible for investment allowance u/s 32A of the Act or section 80I of the Act.

3. Respectfully following the view taken in the aforesaid case we answer the questions of law referred to us in the negative i.e., in favour of the revenue and against the assessee. However, there shall be no order as to costs.

