**(2005) 02 AHC CK 0008**

**In the Allahabad High Court**

**Case No :** IT Reference No. 250 Of 1991 2 February 2005

Commissioner of Income Tax APPELLANT

Vs

Allied Constructions Co. RESPONDENT

**Date of Decision :** 02-02-2005

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

**Citation :** (2005) 146 TAXMAN 734

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

**Bench :** Full Bench

**Advocate :** A.N. Mahajan, for the Appellant;

## Judgement

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

"Whether, on the facts and in the circumstances of the case, the Tribunal was, in law, justified in holding that the assessee is an industrial undertaking'' within the meaning of section 32A of the Income Tax Act, 1961 and therefore investment allowance was allowable to the assessee?"

2. The Reference relates to the assessment year 1982-83.

Briefly stated the facts giving rise to the present Reference are that the respondent derived income from execution of one contract job and claimed deduction of investment allowance u/s 32A of the Act. However, the assessing officer did not allow any investment allowance as he was of the view that the respondent is not an industrial undertaking as per the provisions of the Act. The CIT(A) had allowed the claim of the assessee for investment allowance which order has been confirmed by the Tribunal.

3. We have heard Sri A.K. Mahajan, learned Standing counsel appearing for the revenue. Nobody has appeared for the respondent-assessee.

4. The question raised in the present Reference has been settled by the Apex Court in the case of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, . The Apex Court has held that the activity of civil construction does not amount to manufacture nor any article is produced in it, therefore, it is not an industrial undertaking and the respondent is not entitled for investment allowance u/s 32A of the Act.

5. Respectfully following the aforesaid decision, we answer the question 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.

 