(2010) 08 DEL CK 0193

In the Delhi High Court

Case No : IT Ref. No. 241 of 1992 & IT Reference No. 241 of 1992

Commissioner of Income Tax APPELLANT

Vs

Ansal Prop. and Indus. Overseas Projects RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:
Income Tax Act, 1961 — Section 32, 32(1)

Citation : (2011) 198 TAXMAN 169

Hon'ble Judges : Reva Khetrapal, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Sanjeev Sabarwal and Utpal Saha, for the Appellant; Satyen Sethi and Arta Trana Panda, for the Respondent

Judgement

1. Following questions are referred by the Tribunal for our opinion:

2. In upholding the order of the CIT(A) allowing Assessees claim of depreciation at the rate of 100 per cent on steel plates and scaffolding by ignoring the material fact that Steel plates and scaffolding cannot be termed as Plant and Machinery and also that each plate and scaffolding are not an independently a simple complete unit?

3. In upholding the order of CIT(A) allowing Assessee claim of investment allowance by ignoring the material facts that Assessee is engaged in building construction activities and is not an industrial undertaking as defined under the Act?

2. Insofar as second question is concerned, it is conceded by Mr. Satyen Sethi, learned Counsel appearing for the Assessee that this question is now finally determined by the Supreme Court in the case of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, holding that the construction of building does not amount to producing an article or thing. Thus, it clearly follows that the Assessee who is engaged in the building construction activity would not be treated as industrial undertaking and is not entitled to

investment allowance. This question is, therefore, answered against the Assessee.

3. To determine the first question we take note of following facts which appear on record:

5. The Assessee claimed 100 per cent depreciation in respect of steel shuttering plates and scaffolding of the value of Rs. 1,55,556 on the basis that each shuttering plate and scaffolding constituted in itself a plant the value of which was below the value of the plant on which 100 per cent depreciation was allowable. The Assessing Officer was of the view that the life of the material used in scaffolding was more than 5 years, besides each shuttering plate did not constitute plant in itself and, therefore, did not grant depreciation at 100 per cent. In appeal before the CIT(A), the Assessees claim was accepted on the basis of an order passed by the 1st Appellate Authority in the case of an associate concern where on similar facts, identical controversy was considered. This order was upheld by the Tribunal.

4. Following its own order the Tribunal granted 100 per cent depreciation on the said steel plates and scaffolding.

5. The primary question which needs to be decided is as to whether each steel plate and scaffolding is treated as an independent unit. This very aspect relating to steel plates and scaffolding itself came up for consideration in the Madras High Court in The Commissioner of Income Tax Vs. Alagendran Finance Limited, . After referring to various case laws in its detailed judgment rendered by the Court, the Court formed the opinion that each steel plate and scaffolding was to be treated as complete unit. It was primarily because of the reason that single individual centering sheet could be sufficient for a particular work in the process of construction of a building and on that basis the Court opined that it would constitute a plant and if the value thereof was less than Rs. 5,000, 100 per cent depreciation was allowed as per proviso to Section 32(1)(ii) of the Act. Identical view was taken by the Rajasthan High Court in Commissioner of Income Tax Vs. Mohta Construction Company, which case was also concerned with plates and scaffolding used in construction work.

6. This Court in the case of Joint CIT v. Anatroncis General Co. (P.) Ltd. (2001) 247 ITR 253 had the occasion to deal with similar issue, albeit in the context of bottles which the Assessee company in the case used to supply to other concerns and the question was whether each bottle would be treated as plant and would be eligible for 100 per cent deduction. The question was answered in the affirmative.

7. Be that as it may, since we have two decisions of Madras High Court and Rajasthan High Court relating to claim of depreciation u/s 32 in respect of plates and scaffolding itself, following the aforesaid two decisions we answer the reference in favour of the Assessee and against the revenue.