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In the Madras High Court

Case No : Tax Case No. 935 of 1992 (Reference No. 481 of 1992)

Commissioner of Income Tax APPELLANT

Vs

Comp-Help Services P. Ltd. RESPONDENT

Date of Decision : 13-10-1998

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

Citation : (2000) 246 ITR 722

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : Chitra Venkataraman, for the Appellant; None, for the Respondent

Judgement

R. Jayasimha Babu, J.—At the instance of the Revenue, the following" question of law has been referred to us for consideration :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in granting the benefit of Section 32A on the ground that the assessee is an industrial company engaged in the production of article or things, in spite of specific prohibition u/s 32A(1)(a) against the deduction in respect of the plant and machinery installed in office premises ?"

2. The assessment year is 1985-86 :

The assessee is engaged in the business of processing" data with computers and the preparation of balance-sheets and financial accounts, etc., for its customers. Investment allowance was claimed by the assessee for the computers installed for the purpose of its business. That claim was disallowed by the Income Tax Officer on the ground that a computer is only a processor and no manufacture or production of article or thing is involved when that process is performed by the computers. The Commissioner rejected the assessee''s appeal. The Tribunal having allowed further appeal of the assessee, this reference has been made at the instance of the Revenue.

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3. When data is processed with the aid of computers and the processing involves complicated steps which can only be performed with speed in a computer and the end-product is the analysis and presentation of data in the desired format such as balance-sheet, it can be said in broad terms that there is production. It was pointed out by the Supreme Court in the case of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, that the word "production" has a wider connotation than the word "manufacture". While every manufacture can be regarded as production, every production need not amount to manufacture. It was further observed by the court that the word "production" or "produce", when used in juxtaposition with the word "manufacture" takes in bringing into existence new goods by a process which may or may not amount to manufacture and that it takes in all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods. It was also held by the court that 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.

4. The word "production" in Section 32A(2) therefore comprehends processing" activity and the word "article" in that provision includes movables. The data processing computers involve processing and therefore capable of being regarded as part of the process or production. The balance-sheets, sales analysis, statements, etc., obtained as a result of processing are movables and are different from the data that was initially fed into the computer though based upon the data so fed in. The use to which the end-product is put is different from the one to which the raw data is put at the time it is fed into a computer. The end-products obtained as a result of data processing such as balance-sheets, etc., are therefore capable of being regarded as new articles.

5. The data processing activity is an organised activity. The machines have to be operated by employing persons trained for that purpose. The employee and employer relationship in running a data processing company inevitably exists as between those who operate the system and the company which runs the business. The term "industry" is not defined in Section 32A of the Act, and is, therefore, required to be understood in the sense in which the word is ordinarily understood. The term "industry" is a term of wide amplitude. "Industry" as used in Section 32A refers to the industries which are engaged in the manufacture or production of goods or articles or things. The balance-sheets and other documents obtained as a result of the operation of the data processing system being articles which are obtained by processing, amounts to production. The data processing company must be held to be an industrial company engaged in the production of articles.

6. In the case of Commissioner of Income Tax, Bombay City-I Vs. I.B.M. World Trade Corporation, , the Bombay High Court elaborately examined as to what a computer is and what it does, for the purpose of deciding as to whether it is

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merely an office machine or something more. The court held that in view of the varied functions which the computer "system" is capable of performing, data processing machines cannot be classified as "office appliances" and are eligible for development rebate u/s 33(1) of the Income Tax Act.

7. In the case of Commissioner of Income Tax Vs. Datacons (P.) Ltd., , the Karnataka High Court held that when as a result of data processing, balance-sheets, stock accounts, sales analysis, etc., are printed as per the requirements of the customers, processing was involved and, therefore, the data processing company is an industrial company entitled to the concessional rate of taxation u/s 2(7)(c) of the Finance (No. 2) Act, 1977. The court further observed that the activities involved in a data processing company would clearly fall within the concept of goods, though not manufacture of goods.

8. In the case of Commissioner of Income Tax Vs. Peerless Consultancy Services (Pvt.) Ltd., , the Calcutta High Court also held that a data processing company is an industrial company for the purpose of the Finance Act, 1981.

9. We, therefore, answer the question referred to us in favour of the asses-see and against the Revenue.

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