(1999) 10 MAD CK 0007

In the Madras High Court

Case No : 13 October 1998 Tax Case No. 935 of 1992

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

COMP-HELP SERVICES (P) LTD. — RESPONDENT

Date of Decision : 13-10-1999

Acts Referred:
Income Tax Act, 1961 — Section 33(1)

Citation : (2000) 159 CTR 220

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

Bench : Full Bench

Advocate : Mrs. Chitra Venkataraman, for the Revenue and None, for the Assessee, for the Appellant;

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 that benefit of section 32A on the ground that

the assessee is an industrial company engaged in production or article or things, in spite of specific prohibition u/s 32A(1)(a) against deduction in

respect of plant and machinery installed in office premises

2. The assessment year is 1985-86.

3. 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 (Appeals) 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.

4. 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 CIT v. M. C. Budharaja & Co & Anr. (1993) 114 CTR (SC)

420 : (1994) 204 ITR 412 (SC)5 that the, word ""production"" has a wider connotation than the word ""manufacture"".

While every manufacture can be regarded as production, every production riot amount to manufacture. It was further observed by the Court that

the word ""production"" or ""produce"" when used injuxtaposition 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.

5. The word ''''production'''' in section 32A(ii) therefore, comprehends processing activity and the word ""article"" in that provision includes

movables. The data processing computers involves processing and therefore, capable of being regarded as part of process of production. The

balance sheet, 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 end-product is put is different from the one to which raw data is put at

the time it is fed into a computer. The end-product obtained as a result of data processing such as balance sheets etc are therefore, capable of

being regarded as new articles.

6. 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 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.

7. 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 is does, for the purpose of deciding as to whether it is merely an office machine or some thing 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 tinder section 33(1) of the Income Tax Act.

8. 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 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.

9. In the case of CIT v. Peerless Consultancy Services (P) Ltd. (1990) 90 CTR (Cal) 73 : (1990) 136 ITR 609 , the Calcutta High Court also

held that a data processing company is an industrial company for the purpose. of Finance Act, 1981.

10. We, therefore, answer the question referred to us in favour of the assessee and against the Revenue.

