(1998) 03 MAD CK 0126

In the Madras High Court

Case No : Tax Case No. 1374 of 1985 (Reference No. 875 of 1985)

Commissioner of Income Tax APPELLANT

Vs

Dowel Erectors RESPONDENT

Date of Decision : 04-03-1998

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

Citation : (2000) 243 ITR 832

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; None, for the Respondent

Judgement

R. Jayasimha Babu, J.—The question referred to us at the instance of the Revenue arising from the assessment of the respondent Dowel Erectors, for the assessment year 1979-80 is as to whether the assessee was entitled to investment allowance u/s 32A(2)(b)(iii) of the Income Tax Act on the ground that its activity amounted to manufacture or production of an article or thing.

2. The activity of the assessee has been described by the Tribunal as under:

"1. Column reactors.--Erection, aligning", grounding, cleaning and flushing by water, draining, drying by compressed air and completing as per drawings, specifications and instruction, etc.

2. Special from plates.--Fabrication of plates at works site by rolling, cutting, edge preparation, cleaning and testing according to the specifications in the drawings.

3. Fabrication of reinforcing pads for pipe connections from the materials supplied and erection and welding of the same.

4. Piping (above (ground).--Cutting edge preparing, bending, welding, threading and laying above ground, overhead on rocks and at all elevations, etc.

5. Structural works.--Supplying and fabricating and erecting in position mild steel structures such as platforms, ladders, hand rails, etc."

2. It is evident that the assessee is engaged in the business of erection which work is done at the site and involves assembling of various parts and fabrication to the extent required for being attached to complete the boiler. The boiler so erected is not meant to be moved. It rests on a foundation on the ground and is meant to become a part of the plant and machinery of the industrial undertaking for which the erection is carried out. It has been stated by the Tribunal that the assessee was doing that work for Bharat Heavy Electricals Limited.

3. The claim of the assessee that the activity of erection of the boiler is "construction of a thing" is unsustainable in the light of the recent deci- sions of the apex court in the case of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, and in the case of Builders Associations of India Vs. Union of India and others, . In the case of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, , the apex court held that it is not possible or permissible to read the word "construction". as referring to construction of dams, bridges, buildings, roads or canals and that the words "articles" and "things" are used interchangeably. It was observed by the apex court-that the word "construction" had been used in that Section , as that term was appropriate in the case of ships, as in common parlance, the activity of ship building is not regarded as manufacture and the more appropriate expression was the word "construction". The use of the word "construction" in that Section , it was held by the court, was not intended to apply to construction activity as ordinarily understood, and that the use of the word "thing" has no special significance, as it was used interchangeably with the word "articles".

4. An "article" is normally regarded as movable and it was held by the apex court that it was in that sense in which that word has been used in the Section .

5. A Bench of this court in the case of Mohammed Ibrahim Vs. Northern Circars Fibre Trading Co., , has held that for the purpose of deciding as to whether the machinery installed on a foundation embedded in the earth is treated, as movable or immovable, besides that fact of being attached to the earth, the more important consideration was the object of the annexation, which is a question of fact to be determined in the circumstances of each case. The intention of the parties, viz., the asses-see and the industrial undertaking for which he performed the work was to keep the boiler attached to the earth so long as it was used as a boiler, and that boiler was not intended to be removed and used elsewhere at any defined intervals.

6. In the case of Special Deputy Collector, Land Acquisition, Defence Equipment Factory Vs. Karuppayee Ammal and Others, , another Division Bench of this court adverted to the following tests for finding out as to when a movable property fixed to earth may become an immovable property :

"(i) the intention of the parties ;

(ii) mode of affixation and whether the affixation is intended to be permanent ; and

(iii) the onus of proof that even after annexation the article continues to be movable is on the person who alleges it."

7. Applying those tests here, there can be no doubt that the erection of the boiler was intended to be fixed permanently. It has, therefore, to be regarded as immovable property and not as movable property, although, after it is detached and when moved is capable of being regarded as movable property.

8. The assessee, therefore, is not entitled to the benefit of the investment allowance on the machinery used by it for erecting boilers. Our answer to the question referred to us is, therefore, in the negative. In the circumstances of the case, there will be no order as to costs.