(2002) 07 GAU CK 0004

In the Gauhati High Court

Case No : IT Reference No. 2 of 2001 & Income-tax Reference No. 2 of 2001

Commissioner of Income Tax — APPELLANT

Vs

Dr. M.L. Agarwalla — RESPONDENT

Date of Decision : 31-07-2002

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 32A, 32A(2), 32A(2)(b)(ii), 32A(2)(ii)

Citation : (2003) 131 TAXMAN 69

Hon'ble Judges : J.N. Sharma, J;D. Biswas, J

Bench : Division Bench

Advocate : U. Bhuyan, for the Appellant; Ramesh Goenka, Raj K. Agarwala and M. Talukdar, for the Respondent

Judgement

D. Biswas, J.—In compliance with the order dated August 11, 2000, passed by the Supreme Court in Civil Appeal No. 4560 of 2000 arising out of SLP (C) No. 4067 of 2000 directed against the judgment and order of this court in Civil Rule No. 14(M) of 1988, the Revenue has formulated the following question of law and referred the same to this Court for decision : Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in allowing investment allowance on ultrasound medical diagnostic electrical equipment, air-conditioner and servo voltage stabilizer?

The assessee, Dr. M.L. Agarwalla, is a qualified radiologist engaged in the business of x-ray diagnosis since the assessment year 1981-82. For the assessment year 1989-90, the assessee claimed deduction u/s 32A of the income tax Act, 1961, in respect of plant and machinery purchased and installed by him in the aforesaid business. The Assessing Officer rejected the claim of the assessee for investment allowance of Rs. 1,95,960 in respect of ultrasound medical diagnostic electrical equipment, air-conditioner and servo voltage stabilizer on the ground that the assessee in the aforesaid business does not manufacture or produce any article or thing as envisaged in section 32A(2)(b)(ii) of the Act. The aforesaid assessment order u/s 143(3) was reversed on appeal by the Deputy Commissioner of income tax (Appeals) and the learned Tribunal also affirmed the aforesaid decision of the first appellate authority in income tax Appeal No. 175 (Gauhati) of 1993. 2. The answer to the question referred is dependent on whether the ultra-sound equipment produces any article or thing within the meaning of section 32A(2)(b) (ii) of the Act. An identical question came up for consideration before the Rajasthan High Court in Commissioner of Income Tax Vs. Trinity Hospital, . The assessee-firm in that case was running a hospital/nursing home and installed x-ray machine, an ultrasound scanner/ultra sonographic machine, a foetal monitor and an air-conditioning equipment for catering to the needs of the patients. The firm claimed investment allowance as per the provisions of section 32A(2)(b) (ii) which admits of investment allowances to the extent of 25 per cent in a small scale industrial undertaking for the purpose of business or manufacture or production of any article or thing. The High Court taking into consideration the decision in Commissioner of Income Tax Vs. Shaw Wallace and Co. Ltd., and CIT v. Dr. V.K. Ramachandran [1981] 128 TIR 727 (Mad.), held that the photographs of various parts of the body obtained by these machines are the resultant product of "work and activities". They are the result of the efforts and activities giving in black and white the internal position of different parts of the body for proper and efficient diagnosis. The exercise undertaken with the help of these machines for appropriate diagnosis is the effort or activity which in turn can be said to be the "thing" produced within the meaning of section 32A of the Act. The installation of the ultrasound diagnostic machine, in the opinion of the High Court, was for the purpose of the business of production of a "thing" and hence the assessee was entitled to investment allowance as per the provisions of section 32A.

3. The reason available in Shaw Wallace & Co. Ltd.''s case (supra) is that having regard to the nature and function of the computer and the data processing a computer centre set up in an industry cannot be equated with office appliances. The Calcutta High Court held that a data processing machine is a complicated machine which has to be operated by a specially trained person and the final end product, namely, printed materials and the statements are entirely different from the articles initially fed into the computer. In Dr. V.K. Ramachandran''s case (supra), the Madras High Court with regard to x-ray machine observed that-

...even a professional activity could be tinged with a commercial character if the indicia of commerce are manifest in it. The way in which the assessee carried on the x-ray activity was in no way different from a non-qualified person carrying on a radiological institute. The mere fact that a professional man had, as an adjunct to his professional activities, such an institute did not disable him from running it as a commercial venture and earning income therefrom. The Tribunal was right in its view and the assessee was entitled to development rebate....

4. The decision rendered by the Tribunal in the instant case has been sought to be assailed by Shri Bhuyan, learned counsel for the Revenue with reference to a decision of this Court in Commissioner of Income Tax Vs. Down Town Hospital

Ltd., . In that case the assessee claimed deduction under sections 80HH and 80-I in respect of the entire hospital. The court held that in the absence of a clear finding to show that a new article or thing is manufactured or produced out of some raw materials, it is difficult to hold that the assessee, Down Town Hospital, is an industrial undertaking. This decision in our opinion is not applicable in the instant case. The assessee claimed investment allowance as per the provisions of section 32A(2) for the ultrasound medical diagnostic electrical equipment, air-conditioner and servo voltage stabilizer and not for the entire establishment.

5. The decision of the Rajasthan High Court in Trinity Hospital''s case (supra) was rendered taking into consideration the ratio in Dr. V.K. Ramachandran''s case (supra) of the Madras High Court and Shaw Wallace & Co. Ltd.''s case (supra) of the Calcutta High Court. The nature and character of the equipment purchased and installed by the assessee in the instant case are identical and these are being used for the purpose of intensive study of the internal condition of the body which comes out in black and white and assists in proper diagnosis after expert scrutiny. If we go by the ratio available in Shaw Wallace & Co. Ltd.''s case (supra) and Dr. V.K. Ramachandran''s case (supra), we have no doubt in our mind that the assessee-firm in the instant case can be said to be in production of a "thing" within the limit of section 32A(2)(ii) of the Act.

6. Mr. Ramesh Goenka, learned counsel for the assessee, argued that the prepondence of judicial opinion would also weigh with the claim of the assessee-firm in the instant reference. In support of this contention, learned counsel referred to a number of decisions of various High Courts. In Commissioner of Income Tax Vs. Air Survey Co. of India (P.) Ltd., , the assessee, an air survey company, engaged in the business of survey, mapping, aerial photography and aero-magnetic photography claimed investment allowance u/s 32A of the Act in respect of aircraft radio purchased. The question before the High Court was whether the activity and the use of aircraft radio in the aforesaid business would fall within the purview of the expression "manufacture" or "production" and whether the ultimate photography which came to be produced as a result of such activity was covered by the expression "article" or "thing". The Calcutta High Court relying on the decisions in Trinity Hospital''s case (supra) and in Commissioner of Income Tax Vs. Upasana Hospital, answered the question in favour of the assessee. Similarly, in Commissioner of Income Tax Vs. Dr. L.C. Mitra, , the Patna High Court held that investment allowance in respect of parts of x-ray machine is permissible u/s 32A of the Act. The decision was rendered in consonance with the view of the Tribunal that parts of the machinery could certainly be considered as a plant though not as machinery and, as such, entitled to investment allowance u/s 32A of the Act. In Commissioner of Income Tax Vs. Dr. S. Surender Reddy, , it was held that by putting the x-ray film into the x-ray machine a different article was produced and, therefore, investment allowance was permissible in respect of the x-ray film which comes out as a different article after it is put into the x-ray machine. In Commissioner of Income Tax Vs. Prasad Productions (P.) Ltd., , the Madras High Court allowed investment allowance on

cameras, laboratory machines and other equipment relying on the decision of the Andhra Pradesh High Court in Commissioner of Income Tax Vs. Prasad Film Laboratories P. Ltd., for identical reasons.

7. The above decisions of various High Courts relate to the permissibility of investment allowance u/s 32A. In addition, a Division Bench of this Court in Commissioner of Income Tax Vs. Technotive Eastern (Pvt.) Ltd., dealt with the question whether an assessee is entitled to allowance under sections 80HH and 80-I of the income tax Act, 1961, on income earned through computer documentation service. The court held that a computer division is an industrial undertaking for the nature of its use in data processing and, as such, the assessee is entitled to deduction under sections 80HH and 80-I of the income tax Act. This decision lends support to the claim of the assessee that the exercise undertaken by the assessee-firm in the process of diagnosis of the disease through the ultrasound diagnostic equipments is a "thing" produced within the meaning of section 32A(2)(ii) of the Act. The ratio in Live Tone v. State of Tripura [2001] 122 STC 115 (Gauhati) and in Vishwa Vimohan Jha Vs. State of Meghalaya and Others, also lend support to the above view. The preponderance of judicial opinion and desirability of uniformity impel us to decide that the assessee-firm is entitled to investment allowance u/s 32A(2)(b) (ii). In the result, we answer the question in the affirmative, i.e., in favour of the assessee.