(1997) 07 AP CK 0025

In the Andhra Pradesh High Court

Case No : Referred Case No. 108 of 1989

Commissioner of Income Tax APPELLANT

Vs

Elemech Industrial Constructions RESPONDENT

Date of Decision : 09-07-1997

Acts Referred:

Income Tax Act, 1961 — Section 32A

Citation : (1998) 229 ITR 503

Hon'ble Judges : V. Rajagopala Reddy, J;S.S. Mohammed Quadri, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; None, for the Respondent

Judgement

Syed Shah Mohd. Quadri, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the Revenue, the following question is referred to this court for opinion which relates to the assessment years 1982-83 and 1983-84.

"Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in holding that the assessee is entitled to investment allowance u/s 32A of the Income Tax Act ?"

2. The respondent-assessee, a registered firm, carries on business in fabrication work. It claimed investment allowance u/s 32A of the Income Tax Act for the assessment year 1982-83 in a sum of Rs. 2,09,934 and for the assessment year 1983-84 in a sum of Rs. 2,84,363. The Income Tax Officer declined to grant the allowance on the ground that it is not an industrial undertaking. It was noted that the nature of the assessee''s contract work, was structural fabrication wherein raw material like steel rods and steel sheets, supplied by the contractors, are fabricated into steel structures as per the specifications and designs given in the process of such fabrication and that the process involves assembling but not manufacturing. On appeal by the assessee, the Commissioner (Appeals) upheld the view of the Income Tax Officer. On further appeal to the Income Tax appellate Tribunal, it took the view that the assessee is

not (sic) carrying on any manufacturing work and, therefore, it is not (sic) an industrial company.

3. It is not in dispute that if the assessee-company is an industrial company it is entitled to the allowance u/s 32A of the Act. The dispute is whether the activities carried on by the assessee would amount to manufacture or only assembling of various parts.

4. For the purposes of section 2(7)(c) of the Finance Act, 1978, a Division Bench of this court, of which one of us i.e., Syed Shah Mohd. Quadri Co., was a member, in Commissioner of Income Tax Vs. Beehive Engineering Co. and Allied Industries (P.) Ltd., considered whether the assessee-company therein, which was purchasing angles, joints and channels, cutting them into required sizes and welding the pieces to manufacture trusses, would fall within the meaning of industrial company. The Bench opined that it was an industrial company. Following the said opinion, in this case also, the activities carried on by the assessee-company cannot but be held to be the activities of an industrial company.

5. In the result, we answer the question in the affirmative, i.e., in favour of the assessee and against the Revenue. The reference is accordingly answered.