
(1999) 09 KL CK 0063
In the High Court Of Kerala
Case No : Income Tax R. No. 7 of 1996

Commissioner of Income Tax	Vs	APPELLANT
Harisons Malayalam Ltd.		RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

Income Tax Act, 1961 — Section 32A

Citation : (2000) 245 ITR 127

Hon'ble Judges : Arijit Pasayat, C.J.;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; C.N. Ramachandran Nair, for the Respondent

Judgement

Arijit Pasayat, C.J.—At the instance of the Revenue, the following question has been referred by the Income Tax Appellate Tribunal, Cochin Bench, for opinion in terms of Section 256(1) of the Income Tax Act, 1961 in short "the Act").

"Whether, on the facts and in the circumstances of the case, the asses-see is entitled to investment allowance on computers ?"

2. The factual position as set out in the statement of case is as follows. The assessee is a public limited company mainly engaged in the business of growing tea, rubber, cardamom, etc., and also executing engineering contract works. It claimed investment allowance on computers installed in the estate offices.

3. The Assessing Officer disallowed the claim for investment allowance on the ground that those machines are office equipment. On appeal, the Commissioner of Income Tax (Appeals) (in short "the CIT(A)") allowed the claim by referring to a decision of the Bombay High Court in Commissioner of Income Tax, Bombay City-I Vs. I.B.M. World Trade Corporation, . The Revenue contested the correctness of such decision before the Tribunal. It was observed by the Tribunal that the assessee is entitled to get investment allowance on computers in the light of the decision of the Calcutta High Court in Commissioner of Income Tax

Vs. Shaw Wallace and Co. Ltd., , At the instance of the Revenue as stated above, the question has been referred to us.

4. With reference to Section 32A of the Act, learned counsel for the Revenue submitted that certain conditions have to be fulfilled before deduction can be granted, and the conditions were not fulfilled to be entitled to deduction. According to learned counsel for the assessee, the Commissioner of Income Tax (Appeals) and the Tribunal found that the factual position clearly indicated about entitlement of the assessee to get the benefit. Whether a particular machine is liable for deduction or not would depend upon the prescriptions in the relevant provision and the factual position of the case. Section 32A(2)(b)(iii) is relevant to the purpose of this case. Section 32A(1) and (2) reads as follows :

"32A. (1) In respect of a ship or an aircraft or machinery or plant specified in Sub-section (2), which is owned by the assessee and is wholly used for the purposes of the business carried on by him, there shall, in accordance with and subject to the provisions of this Section, be allowed a deduction, in respect of the previous year in which the ship or aircraft was acquired or the machinery or plant was installed or, if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, of a sum by way of investment allowance equal to twenty-five per cent, of the actual cost of the ship, aircraft, machinery or plant to the assessee :

Provided that in respect of a ship or an aircraft or machinery or plant specified in Sub-section (8B), this Sub-section shall have effect as if for the words "twenty-five per cent.", the words "twenty per cent." had been substituted :

Provided further that no deduction shall be allowed under this Section in respect of-

(a) any machinery or plant installed in any office premises or any residential accommodation, including" any accommodation in the nature of a guest house ;

(b) any office appliances or road transport vehicles ;

(c) any ship, machinery or plant in respect of which the deduction by way of development rebate is allowable u/s 33 ; and

(d) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year. . . .

(2) The ship or aircraft or machinery or plant referred to in Sub-section (1) shall be the following, namely :--

(a) a new ship or new aircraft acquired after the 31st day of March, 1976, by an assessee engaged in the business of operation of ships or aircraft ;

(b) any new machinery or plant installed after the 31st day of March, 1976-

(i) for the purposes of business of generation or distribution of electricity or any other form of power ; or

(ii) in a small scale industrial undertaking for the purposes of business of manufacture or production of any article or thing ; or

(iii) in any other industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing, not being an article or thing specified in the list in the Eleventh Schedule :

Provided that nothing contained in Clauses (a) and (b) shall apply in relation to,--

(i) a new ship or new aircraft acquired, or (ii) any new machinery or plant installed,

after the 31st day of March, 1987, but before the 1st day of April, 1988, unless such ship or aircraft is acquired or such machinery or plant is installed in the circumstances specified in Clause (a) of Sub-section (8B) and the assessee furnishes evidence to the satisfaction of the Assessing Officer as specified in that clause ;

(c) any new machinery or plant installed after the 31st day of March, 1983, but before the 1st day of April, 1987, for the purposes of business of repairs to ocean-going vessels or other powered craft if the business is carried on by an Indian company and the business so carried on is for the time being approved for the purposes of this clause by the Central Government."

5. Undisputedly, in order to be eligible the stipulations as laid in the provisions have to be satisfied. The assessee has to prove that the conditions were fulfilled with reference to the factual background. On a reading of the orders passed by the Commissioner of Income Tax (Appeals) and the Tribunal, we do not find any discussion with regard to the factual aspect and only with reference to the decisions rendered by the High Courts, the matter was disposed of. Whether the decisions were applicable to the facts of the case has not been analysed. In the circumstances, we remit the matter back to the Tribunal for examining the factual aspect and record its conclusion about the entitlement or otherwise of the assessee.

6. The Income Tax reference is disposed of as above.