

---

**(1991) 10 AHC CK 0023**

**In the Allahabad High Court**

**Case No : Income-tax Reference No. 205 of 1990**

Commissioner of Income Tax

APPELLANT

Vs

Kothiwalla Cold Storage

RESPONDENT

---

**Date of Decision : 24-10-1991**

**Acts Referred:**

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

**Citation :** (1992) 101 CTR 470 : (1993) 199 ITR 399 : (1992) 63 TAXMAN 330

**Hon'ble Judges :** R.K. Gulati, J;A.N. Verma, J

**Bench :** Division Bench

**Final Decision :** Disposed Of

---

## **Judgement**

A.N. Verma, J.—At the instance of the Revenue, the following question has been referred for our opinion :

" Whether, on the facts and in the circumstances of the case and the material available on the records, the Tribunal was justified in law in allowing the claim of investment allowance on the new machineries purchased during the year ?"

2. The facts giving rise to this reference are these. The assessee-firm is running a cold storage. Its accounting year for the assessment year 1982-83 ended on October 9, 1981. In the relevant previous year, the assessee had debited a sum of Rs. 5,058 in the profit and loss account which he claimed as investment allowance u/s 32A(2)(b)(ii) of the Income Tax Act. The same was disallowed by the Inspecting Assistant Commissioner (Assessment). On appeal, the Commissioner of Income Tax (Appeals), relying on a decision of the Madhya Pradesh High Court in Mittal Ice and Cold Storage Vs. Commissioner of Income Tax, , held that the cold storage could not be said to be engaged in manufacturing or producing any article or thing and, therefore, the assessee was not entitled to claim any deduction by way of investment allowance on account of the purchase of machinery for its cold storage plants.

3. On further appeal to the Income tax Appellate Tribunal, the investment

allowance claimed by the assessee was allowed and the Assessing Officer was directed to allow investment allowance on the new machinery purchased by the assessee in accordance with law. In support, the Tribunal placed reliance on the decision of the Punjab and Haryana High Court in Commissioner of Income Tax Vs. S. Warriam Singh Cold Stores, .

4. The question referred for our opinion turns on a true and proper interpretation of section 32A(2)(b) of the Income Tax Act. By our order of date disposing of three connected Income Tax References, viz., ITR No. 47 of 1985, ITR No. 80 of 1990 and ITR No. 106 of 1991 (CIT v. Nandlal Cold Storage [1993] 199 ITR 527), we have held on an analysis of section 32A(2)(b)(iii) and the various authorities that no investment allowance is claimable under that provision on account of purchase of any new machinery or plant by an assessee for running a cold storage- The ratio is that the operation of a cold storage does not involve manufacture or production of any article or thing and, consequently, no deduction is admissible on account of the purchase of any machinery or plant for running a cold storage.

5. Our decision in the above Income Tax references furnishes a complete answer to the question referred for our opinion. As we have dealt with the question referred for our opinion which was materially the same as that referred in the present case in considerable depth, it is unnecessary to repeat the reasons which had persuaded us to take the view indicated above.

6. Learned counsel for the assessee, however, sought to distinguish that case on the ground that the present is a case covered by Sub-clause (ii) of Clause (b) of Section 32A(2) whereas the one dealt with by us in the other references was concerned with Sub-clause (iii). There is, in our opinion, no material difference between Sub-clauses (ii) and (iii). Both refer to the crucial words "for the purposes of business of manufacture or production of any article or thing". Analysing these words and keeping in view the meaning which has been consistently assigned to the words "manufacture or production" in various decisions of the Supreme Court as well as standard dictionaries, this court has held that the business of operating a cold storage does not involve manufacture or production of any article or thing".

7. We reiterate the view expressed by us in the above references and hold that the Tribunal was wrong in taking the view that the investment allowance claimed by the petitioned was legally admissible.

8. We, accordingly, answer the question referred for our opinion in the negative, in favour of the Revenue/and against the assessee. The Revenue shall be entitled to its costs which we assess at Rs. 250.