(1995) 02 MAD CK 0006

In the Madras High Court

Case No : Tax Case No. 340 of 1983 (Reference No. 170 of 1983) & Tax Case No. 340 of 1983 Reference No. 170 of 1983

Commissioner of Income Tax APPELLANT

Vs

K.S. Raman RESPONDENT

Date of Decision : 01-02-1995

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 32A

Citation : (1996) 84 TAXMAN 450

Hon'ble Judges : Thanikkachalam, J;Jayarama Chouta, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; J. Naresh Kumar, for the Respondent

Judgement

Thanikkachalam, J.—At the instance of the revenue, the Tribunal has referred the following two questions of law said to arise out of the

order of the Tribunal for the assessment year 1978-79 for our opinion u/s 256(1) of the income tax Act, 1961:

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is correct in allowing the assessee''s claim for investment

allowance u/s 32A of the income tax Act, 1961?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is correct in allowing the sum of Rs. 6,118 being the

guarantee commission paid on the purchase of capital asset as revenue expenditure?

Insofar as the first question is concerned, it is covered against the assessee by a decision of the Supreme Court in Commissioner of Income Tax,

Orissa and Others Vs. N.C. Budharaja and Company and Others, wherein it was held that the assessee is not entitled to the allowance u/s 32A of the Act because that provision did not comprehend within its ambit construction of a dam, bridge, road or canal or other similar construction.

Accordingly, we answer this question in the negative and in favour of the department.

2. So far as the second question is concerned, it relates to allowance on guarantee commission. While allowing the deduction under guarantee

commission as revenue expenditure, the Tribunal followed a decision of this Court in Sivakami Mills Ltd. Vs. Commissioner of Income Tax, .

Inasmuch as the Tribunal has followed a decision of this Court while holding that the assessee is entitled to deduction of guarantee commission, we

consider that no referable question of law arises out of the order of the Tribunal. Accordingly, we answer the question referred to us in the

affirmative and against the department. There will be no order as to costs.