
(2001) 02 RAJ CK 0001

In the Rajasthan High Court

Case No : Income Tax Reference No. 119 of 1995 26 February 2001.

Commissioner of Income Tax

APPELLANT

Vs

Laxmi Art Studio

RESPONDENT

Date of Decision : 26-02-2001

Acts Referred:

Income Tax Act, 1961 — Section 143, 256, 263, 32A

Citation : (2001) 168 CTR 380 : (2001) 249 ITR 710

Hon'ble Judges : Sunil Kumar Garg, J;Rajesh Balia, J

Bench : Full Bench

Judgement

R. Balia, J.

Heard learned counsel for the Revenue. No one appeared for the respondent-assessee in spite of service.

2. The facts giving rise to this reference are that the respondent-assessee is a registered firm. It had purchased and installed a new colour lab processing unit in December, 1984, at a cost of Rs. 7,37,088.24. The assessee created a reserve as required u/s 32A and claimed investment allowance for the assessment year 1985-86 at Rs. 62,723.23 which claim was accepted by the assessing officer u/s 143(1) and the same was reopened u/s 143(2)(b). The Income Tax Officer withdrew the investment allowance earlier granted vide order dated 29-3-1988, and against which an appeal was taken before the Deputy Commissioner (Appeals). During this period regular assessment for the assessment year 1986-87 was completed u/s 143(3) by order dated 31-3-1987, in which the assessee's claim was accepted for the grant of investment allowance in respect of the aforesaid plant and machinery amounting to Rs. 1,21,549.

However, the Commissioner being of the view that such grant of investment allowance was erroneous and was prejudicial to the interests of the Revenue, set aside that order in exercise of his powers u/s 263 of the Income Tax Act and directed the assessing officer to disallow the aforesaid deduction about the

investment allowance u/s 32A. The order of the Commissioner (Appeals) was made on 14-3-1989. The reason which prevailed with the Commissioner for holding the assessment order to be erroneous and prejudicial to the interest of the Revenue was stated to be that the activity of the respondent firm cannot be termed as an activity of manufacture or production of any article or thing within the meaning of section 32A(2)(b)(ii). It was held that :

"The machine which appears to be a mini laboratory accepts negatives of photo films and after applying chemical and other things delivers the coloured photographs in different sizes. Plain paper reel is inserted into the machinery on which the colour photographs is printed automatically. The negative films passes through the process of heaters, waters, distilled waters for washing, again heaters, chemicals, bleaching, fixture through stabilisers. The unit consists of three types of machinery known as developer, paper processor and printing machine from which it would be seen that the activities of the unit are for printing of photographs which is simply a process of raw material which to my mind does not fall within the definition of manufacturing and production of any articles or thing as described in section 32A."

This order was subjected to appeal before the Tribunal, which held that the process in the unit was that it accepts the negatives of the photo-films and after applying chemicals and other things it delivers colour photographs in different sizes. It very much amounted to production of an article or thing if not manufacture.

In coming to this conclusion it relied on a large number of decisions rendered by various Benches of the Income Tax Appellate Tribunal. The Tribunal was of the view that the Commissioner has merely reviewed the order of the Income Tax Officer because the order was not in favour of the Revenue but in view of various decisions, the Tribunal held that the assessee had duly complied with the provision of section 32A regarding the claim of deduction on account of investment allowance and the assessee's claim has rightly been allowed by the Income Tax Officer in the assessment order completed u/s 143(3) after due enquiry and consideration. In view thereof the order of the Commissioner of Income Tax was set aside.

The Commissioner moved an application u/s 256(1) of the Income Tax Act, 1961, for referring the question of law said to be arising out of the Tribunal's order. That application has been allowed and it referred the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was entitled to deduction of investment allowance u/s 32A of the Income Tax Act, 1961, and that the action of the Commissioner u/s 263 of the Act was not justified ?"

3. Having heard learned counsel for the Revenue and considering the provisions of section 32A, we are of the opinion that the principles enunciated by this court

in Commissioner of Income Tax Vs. Trinity Hospital, and by the Gujarat High Court in Natvarlal Ambalal Dave Vs. Commissioner of Income Tax, , which has followed the decision of the Rajasthan High Court in Commissioner of Income Tax Vs. Trinity Hospital, squarely govern the present case. Both the cases referred to above dealt with the question of x-ray machines installed by the hospital/nursing homes for the purpose of taking pictures of the human body through the process of mechanical ultra sound processors and radiations.

The contention raised by the Revenue in two cases was very much in line with the reason adopted by the Commissioner in his order u/s 263, viz., the process in bringing out the x-ray photos carrying the photographs of the inner body does not result in manufacture of any article or thing. The substance of the contention was that it is only a part of rendering service to a particular consumer that the inner part of the human body of a particular person was projected on x-ray photos and those photographs are used for the purpose of diagnosis. It does not result in manufacture or production of any article or thing to which activity alone a provision of section 32A applies.

In this connection, Mr. Bhandawat, learned counsel for the Revenue, has also relied on the decision of the Supreme Court in Rainbow Colour Lab v. State of Madhya Pradesh (2000) 118 STC 9, in which the Supreme Court has held that the activity of taking photographs or developing photographs and bringing out the prints thereof cannot be termed as an act of works contract or job work but is primarily a case of rendering services through skill and labour. On that premise, learned counsel for the Revenue contends that since the end-product photograph is the mere outcome of skill and labour applied on the photo paper through processing of negatives, it does not give rise to activity of manufacture or production.

4. We are unable to sustain the aforesaid plea. The marketability of the production/end-products or whether it is sold as generic goods as is the requirement of tax on sale or purchase of the goods is not the requirement of section 32A. What is required u/s 32A is that the installed plant and machinery must be for the business of the assessee which should be for manufacture or production of goods not included in the list of articles or things in the Eleventh Schedule appended to the Act. It is not further condition of applicability of section 32A that such article or thing so manufactured or produced must be an article or thing which could be sold and bought in the open market as a general commodity of general merchandise. Whether the transaction of processing of negatives or for bringing out positive photo prints for the purpose of specified customers result into manufacture or production of any article or thing is for transferring it to a specified customer who owns negative or could be sold on counter to anyone who wants to buy may be relevant in the context of considering sale of goods for the purposes of levy under the Sales Tax Act, but is hardly relevant consideration for deciding the controversy in the context of the Income Tax Act. Under the Sale of Goods Act the basic requirement is existence

of goods of which there can be a sale within the meaning of the Sale of Goods Act, the sale being the taxable event. It is in that background, where transfer of property in goods is merely incidental to rendering of service, and not the principal nature of the activity, that such activity is not considered as a sale. Therefore the marketability of the goods as a commodity in the market becomes a necessary ingredient of the taxing event under the Sales Tax Act. Moreover execution of works contract and the taxability of the transaction in respect of transfer of property in goods involved in the execution of a works contract whether as goods as such or in any other form has received special treatment by deeming provision under the scheme of the Constitution as well as various sales tax laws. Therefore, whether the activity of processing of negative delivered by a customer, or in respect of persons carrying on activity of photographer to take snaps and deliver the end result to the customers by getting it processed through the mechanical method, which results in a photo print is a transaction of sale or is a transaction of rendering service only is hardly relevant for the present controversy.

What is relevant is whether end-product of such activity is manufacture or production of an article or thing. It may be noticed that subject of charge under the sales tax laws is "sale of goods". The requirement of section 32A is only manufacture of or production of an article or thing. It may be noticed that the goods is a generic expression of wider import and ordinarily refers to plurality of subject of sale, whereas the expression used in section 32A is in the singular and of much narrower import.

5. The principle which has been enunciated by the Rajasthan High Court and the Gujarat High Court referred to above in connection with securing x-ray plates containing photographs of the inner part of the human body is nearer home. The process of securing the end-product in both has similarity namely photographs of various objects, viz., human body obtained by mechanical process through human skill and labour can be firstly impressed on the negative films and then after processing the same is processed in various sizes on the photo papers for the purpose of delivering to the customers, may for the purpose of sales tax amount to a contract of service, but cannot denude from the fact that the end result is production of an article or thing which was not earlier in existence. The court laid down the principle that photographs of various parts of the human body by x-ray machines are the end result of activities carried on with the machine by human endeavour which is helpful for the proper and efficient diagnosis of the patient. The photographs or the graphs obtained cannot be used for any purpose other than diagnosis of the person whose body print it represents.

It is further clear to our mind that it is not the requirement of section 32A of the Income Tax Act, 1961, nor can it be read in the context of the provision that in order to fulfil the condition that a machinery or plant must have been installed in an industrial undertaking for the purpose of manufacture or production of any

article or thing, it must be related to production of such article or thing which is saleable in the open market only. If any plant and machinery that is specified in section 32A is manufacturing, producing any article or thing not in the prohibitory list of Eleventh Schedule, it is a plant and machinery through which an article or thing is produced notwithstanding the production of such article or thing only satisfied the personal need of an individual for whom it is manufactured or produced. A custom-made article or thing does not cease to be an article or thing manufactured or produced, because it is produced on order with particular specifications by the customer. The assessee is entitled to deduction on account of investment allowance on investment made in installing any such plant and machinery u/s 32A.

In view of the aforesaid our answer to the question referred is in the affirmative, that is to say, in favour of the assessee and against the Revenue. We hold that coloured photo processing machine installed by the assessee to be investment in the plant and machinery engaged in the business of the assessee for manufacturing and production of article or thing known as coloured photographs, and is entitled for deduction on account of investment allowance u/s 32A of the Income Tax Act, 1961, in respect thereof.