(1996) 03 MP CK 0061

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 342 of 1992

Commissioner of Income Tax — APPELLANT

Vs

Mewara Constructions — RESPONDENT

Date of Decision : 25-03-1996

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

Citation : (1997) 226 ITR 152

Hon'ble Judges : N.K. Jain, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; A.S. Garg, for the Respondent

Judgement

A.R. Tiwari, J.—The applicant (Commissioner of Income Tax, Bhopal) has filed this application u/s 256(2) of the Income Tax Act, 1961 (for short "the Act"), seeking a direction to the Tribunal to state the case and refer the proposed question, as extracted below, after rejection of the application on December 30, 1991, registered as R. A. No. 388/Ind. of 1991 for the assessment year 1987-88 arising out of the order dated July 22, 1991, passed by the Tribunal in I.T.A. No. 1128/Ind. of 1990, for our consideration and opinion :

"Whether, on the facts and in the circumstances of the case, the assessee is entitled for investment allowance u/s 32A when its activity is construction of roads ?"

2. Facts lie in a narrow compass. The assessee-firm is a civil contractor. For the assessment year 1987-88, it claimed investment allowance of Rs. 1,62,163 u/s 32A of the Act on the machinery costing Rs. 6,48,651. This claim of allowance was rejected by the Assessing Officer. The assessee then filed the appeal before the Commissioner of Income Tax (Appeals). The appeal was allowed and the claim was accepted. The applicant/Department then filed the appeal before the Tribunal. The assessee supported the order before the Tribunal on the contentions that the construction of roads involved mechanical process beginning

from extraction of boulders and ending with rolling process by road rollers. The Tribunal upheld the contentions and order. It was held that the activity of the assessee was not construction of roads simpliciter but involved manufacturing process also. The order thus went against the applicant. The applicant then filed the application, as noted above. That application was rejected on December 30, 1991. This application u/s 256(2) of the Act is filed thereafter.

3. We have heard Shri D.D. Vyas, learned counsel for the applicant/ Department, and Shri A.S. Garg, learned counsel for the non-applicant/ assessee.

4. We find that the Tribunal dismissed the appeal and observed as under :

"The assessee is engaged in construction with the help of heavy machinery. That in the construction of the roads, it involves a mechanical process beginning from extraction of boulders from quarries by blasting with the help of compressor. Thereafter, the boulders are converted into metal with the help of crushing machine, after crushing the metal is fed into hot mix plant which has four units. Thereafter, through bucket elevator it will go to dryer unit where burners are fixed and the metal is heated up to 200 degrees centigrade. This hot metal goes through another bucket elevator to grading unit where vibrating screens of different sizes are fixed, wherein metal is separated into four different sizes. Then it goes through a controlling system by belt conveyor. It will go to the mixing unit as per specified grading. There asphalt is mixed into the hot metal coming from a controlled pipe by an asphalt heating unit. Then the mixed metal is put into dumpers where the temperature must be 130 degrees centigrade to 165 degrees centigrade. These dumpers go to the road side where a pulverizing unit is present and these dumpers feed the mixed material to that unit where automatically the mixed materials are laid on the road uniformly through a screen fixed imperver. Before laying of this mixed material on the road, liquid asphalt is sprinkled by a separate unit called ''star boiler'' and this method is called ''tack cost''. After laying this material, the process of rolling comes which needs road roller of 8 to 10 m.ts."

5. Section 32A provides for investment allowance. Section 32A(2)(b)(iii) of the Act provides as under :

" (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 :"

6. As the aforesaid provision is applied by the Tribunal, it is necessary to appreciate whether the activity of the assessee is capable of being categorised as "any other industrial undertaking for the purposes of construction, manufacture or production of any article".

7. In Commissioner of Sales Tax, Bombay Vs. Bharat Petroleum Corporation Ltd., ; it is held as under (page 230) :

"As pointed out in State of Gujarat Vs. Raipur Manufacturing Company Ltd., where a subsidiary product is turned out regularly and continuously in the course of a manufacturing business and is also sold regularly from time to time, an intention can be attributed to the manufacturer to manufacture and sell not merely the main item manufactured but also the subsidiary products."

8. The connotation of the word "manufacture" is thus clear.

9. Considering the facts and features of the case and taking into account the submissions as urged before us, we are satisfied that the aforesaid question is one of law arising out of the order passed by the Tribunal in I. T. A. No. 1128/ Ind. of 1990 on July 22, 1991, for the assessment year 1987-88.

10. The question imprimis is one of interpretation of the aforesaid provision.

11. Accordingly, we find that this is a fit case for issuance of the directions, as prayed for.

12. We, therefore, allow this application and direct the Tribunal to state the case and refer the aforesaid question of law for our consideration and opinion.

13. The Tribunal is also directed to make an endeavour to comply with this direction within a period of six months from the receipt of the copy of this order.

14. Counsel fee for each side is, however, fixed at Rs. 750, if certified.

15. Transmit a copy of this order to the Tribunal immediately, in accordance with law.