
(2001) 03 DEL CK 0033

In the Delhi High Court

Case No : Income Tax R. No's. 155 and 156 of 1982

Commissioner of Income Tax

APPELLANT

Vs

M/s. Modi Industries Ltd.

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Citation : (2001) 3 AD 610 : (2001) 250 ITR 35 : (2001) 117 TAXMAN 80

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; D.K. Jain, J

Bench : Division Bench

Advocate : Mr. R.D. Jolly and Mr. Ajay Jha, for the Appellant; Mr. S.K. Aggarwal, for the Respondent

Judgement

Arijit Pasayat, C. J.

1. These two references, which relate to the assessment years 1969-70 and 1971-72 involve a common question referred u/s 256(1) of the Income Tax Act, 1961 (in short "Act") by the Income Tax Appellate Tribunal Delhi Bench-A New Delhi (in short "tribunal"):-

"Whether on the facts and circumstances of the case the Tribunal was justified in law in holding development rebate was allowable even on the items of plant and machinery costing less than Rs.750/-?"

2. Factual position in a nutshell is as follows:-

assessed a public limited company claimed deduction under the 1st total income. assessed also claimed development rebate in respect of such new items of plant and machinery. The Income Tax Officer (in short "I.T.O.") held that development rebate could not be allowed in respect of plant and machinery whose total value has been allowed to be written off under the proviso to Section 32(1)(ii). Matter was carried in appeal before the Appellate Assistant Commissioner (in short "AAC"). Said officer held that the ITO was not correct in refusing to allow development rebate on such items of plant and machinery. Appeals were

preferred by the Revenue before the Tribunal. Revenue's stand was that once having got a deduction by operation of one provision, there could not be allowance of a further deduction. To put it differently, it was Revenue's stand that the provisions applies to actual cost and 100% deduction is to be allowed and not 100% depreciation. Additionally two benefits are relatable to grant of a particular type of benefit and Therefore double deduction is not permissible. Tribunal held that assessed is entitled to the allowance of development rebate u/s 33(1)(b), if the requisite development rebate reserve has been created and this allowance was different in context from the depreciation allowed on the cost of plant and machinery which does not exceed Rs.750/- each. On being moved for reference, question as set out above, has been referred for opinion of this Court.

3. The stand taken before the Tribunal was reiterated by learned counsel for the Revenue. Learned counsel for the assessed, on the other hand, submitted that the scope of the allowances under the two provisions are entirely different and the provisions operate in different fields.

4. The two provisions read as follows;

"Depreciation.

Sec.32(1)(ii) - In respect of depreciation-

in the case of buildings, machinery, plant or furniture, other than ships covered by clause (i) such percentage on the written down value thereof as may in any case or class of cases be prescribed;

Provided that where the actual cost of any machinery or plant does not exceed seven hundred and fifty rupees, the actual cost thereof shall be allowed as a deduction in respect of the previous year in which such machinery or plant is first put to use by the assessed for the purposes of his business or profession."

Development rebate-

Sec. 33(1)(b) The sum referred to in clause (a) shall be-

(A) in the case of a ship, forty percent of the actual cost thereof to the assessed;

(b) in the case of machinery or plant-

(i) where the machinery or plant is installed for the purposes of business of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule-

(a) thirty-five per cent of the actual cost of the machinery or plant to the assessed, where it is installed before the 1st day of April, 1970, and

(b) twenty-five per cent of such cost, where it is installed after the 31st day of March, 1970;

(ii) where the machinery or plant is installed after the 31st day of March, 1967,

by an assessed being an Indian company in premises used by it as a hotel and such hotel is for the time being approved in this behalf by the Central Government-

(a) thirty-five per cent of such cost, where it is installed after the 31st day of March, 1970;

(b) twenty-five per cent of such cost, where it is installed after the 31st day of March, 1970;

(iii) where the machinery or plant is installed after the 31st day of March, 1967, being an asset representing expenditure of a capital nature on scientific research related to the business carried on by the assessed,-

(a) thirty-five per cent of the actual cost of machinery or plant to the assessed, where it is installed before the 1st day of April, 1970, and

(b) twenty-five, per cent of such cost, where it is installed after the 31st day of March,. 1970;

(iv) in any other case,-

(a) twenty per cent of the actual cost of the machinery or plant to the assessed, where it is installed before the 1st day of April 1970, and

(b) fifteen per cent of such cost, where it is installed after the 31st day of March, 1970.

(1A)(a) An assessed who, after the 31st day of March, 1964, acquires any ship which before the date of acquisition by him was used by any other person shall, subject to the provisions of section 34, also be allowed as a deduction a sum by way of development rebate at such rate or rates as may be prescribed, provided that the following conditions are fulfilled, namely:-

(i) such ship was not previous to the date of such acquisition owned at any time by any person resident in India;

(ii) such ship is wholly used for the purposes of the business carried on by the assessed; and

(iii) such other conditions as may be prescribed.

(b) An assessed who installs any machinery or plant (other than office appliances or road transport vehicles) which before such installation by the assessed was used outside India by any other person shall, subject to the provisions of section 34, also be allowed as a deduction a sum by way of development rebate at such rate or rates as may be prescribed, provided that the following conditions are fulfilled, namely:-

(i) such machinery or, plant was not used in India at any time previous to the date of such installation by the assessed;

- (ii) it is imported in India by the assessed from any country outside India;
- (iii) no deduction on account of depreciation or development rebate in respect of such machinery or plant has been allowed or is allowable under the provisions of the Indian Income Tax Act, 1922 (11 of 1922), or this Act in computing the total income of any person for any period prior to the date of the installation of the date of the installation of the machinery or plant by the assessed;
- (iv) such machinery or plant is wholly used for the purposes of the business carried on by the assessed; and
- (v) such other conditions as may be prescribed."

5. Section 32(1)(ii) and Section 33(1)(b) are independent provisions and operate in different contextual situations. Claim under each of them has to be decided on the language thereof. Depreciation is allowable u/s 32 of the Act @ 100% in view of the 1st proviso, which stipulates a particular cost for each plant and machinery to get the benefit. Grant of development rebate in terms of Section 33(1)(b) is not dependent on the rate of depreciation allowable u/s 32 of the Act but as per Part I & II of Appendix-I to the Income Tax Rules, 1962 (in short "Rules"). It would not make any difference even if the rate of depreciation is different. Though learned counsel for the Revenue submitted that both the Sections are intended to further a particular object and not different objects, we find no substance in it. The two sections are intended to achieve different objectives. It is to be noted that allowance of development rebate u/s 33 is hedged with several conditions and even if it is allowed once it can be withdrawn on the happening of certain contingencies. Therefore the Tribunal was justified in its conclusion that both the depreciation and development rebate were allowable on the facts of the case. The answer to the question, Therefore, is in the affirmative, in favor of the assessed and against the Revenue.

Both the references are accordingly disposed of.