

(2001) 02 DEL CK 0090

In the Delhi High Court

Case No : Income Tax R. No. 108 of 1982

Commissioner of Income Tax

APPELLANT

Vs

M/s. Usha Electronics (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 07-02-2001

Acts Referred:

Citation : (2001) 3 AD 498 : (2001) 168 CTR 305 : (2001) 91 DLT 116 : (2001) 249 ITR 695 : (2001) 116 TAXMAN 397

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

Bench : Division Bench

Advocate : Mr. Sanjeev Khanna and Mr. Ajay Jha, for the Appellant;

Judgement

Arijit Pasayat, C. J.

1. At the instance of Revenue, following questions have been referred for opinion of this Court u/s 256(1) of the Income Tax Act, 1961 (in short "Act") by the Income Tax Appellate Tribunal Delhi Bench "C" Delhi (in short "Tribunal"):-

"(i) Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in cancelling the order of the Commissioner of Income Tax passed u/s 263?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the assessed company was a small scale industrial undertaking?

(iii) Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the cost of installation was not to be taken into consideration for working out the cost of plant and machinery for the purposes of section 32(1)(vi)?"

The dispute relates to the assessment year 1976-77.

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

assessed is a private limited company. During the relevant assessment year, while determining the amount of depreciation, Income Tax Officer (in short "I.T.O.") allowed initial depreciation of Rs.58,284/- on the cost of indigenous machinery, valued at Rs.2,91,413/- u/s 32(1)(vi) read with Explanation (3) thereto on the ground that assessed was a small scale industrial undertaking. For the aforesaid purpose, assessed submitted following details, as regards the total costs, in respect of plant and machinery.

Particulars	Actual cost	Expenditure	Total incurred on installation etc.
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Imported machinery	5,29,060.08	1,99,760.17	7,28,820.25
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Indigenous machinery	2,14,756.74	76,656.53	2,91,413.27
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It was, in the circumstances, submitted by the assessed that the actual cost of plant and machinery was Rs.7,43,817/- and cost of installation amounting to Rs.2,76,417/- was not to be included. I.T.O. accepted the details as filed and held that assessed was a small scale industrial undertaking. Accordingly, it was observed that initial depreciation @20% was allowable on the cost of indigenous machinery purchased by the company. Commissioner of Income Tax (in short the "Commissioner") examined the aforesaid aspects u/s 263 of the Act. He was of the view that, Explanation (3) to Section 32(1)(vi) makes the position clear that, if the aggregate value of machinery and plant installed is more than Rs.7.5 lacs, then initial depreciation is not allowable. It was observed that, the actual cost of plant and machinery exceeded the figure of Rs.7.5 lacs, and accordingly, the assessed was not entitled to the benefit. For the purpose of arriving at the figure, the installation cost was taken into account. It was further noted that depreciation had been claimed and allowed on the aggregate value of machinery of Rs.10,20,234/-, inclusive of the installation charges. Commissioner, in essence, concluded that assessed was not a small scale industrial undertaking. assessed preferred appeal before the Tribunal. With reference to Section 43(1) of the Act, which defines "actual cost", it was held that the word used is "installed". The plant and machinery could be installed at various stages and use of the word "as on the last day" would imply that the plant and machinery in its entirety installed in the year had to be taken into consideration and the use of the words "aggregate value" has to be considered in that context. Referring to the expression "unless context otherwise requires", it was observed by the Tribunal that, context which is relevant is one like a present one, and cost of installation has to be excluded, while working out actual cost. It was observed that, installation charges can vary from place to place, and it could not be the intention of legislature that, a small scale industrial undertaking should have different meanings at different places. In that event, according to the Tribunal, assessed was required first to find out the cost of installation, before it could

endeavor to set up an industrial undertaking on a small scale. Installation charges are added to the cost of machinery in altogether a different context, and merely because it cannot be allowed as a revenue expenditure, it has thus to be allowed over a number of years. The installation charges are for installing the plant and machinery and those are not the cost of plant and machinery. Accordingly, it was held that, the assessed was a small scale industrial undertaking. On being moved for reference, questions, as set out above, have been referred for opinion of this Court.

3. We have heard learned counsel for the Revenue. There is no appearance on behalf of the assessed inspire of service of notice.

Learned counsel for the Revenue, with reference to the language used in Section 32(1)(vi), submitted that the stress is on the installation of the machinery or plant, and in fact the language of the provision makes it clear that plant and machinery become operative or functional after they are installed. Merely because there can be a variation in the cost of installation that cannot per se be a ground to exclude the installation charges from the computation of actual cost.

4. To appreciate the submission of learned counsel for the Revenue, it would be appropriate to set out the provision itself, so far as relevant:-

Depreciation.

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

(vi) in the case of a new ship or a new aircraft acquired after the 31st day of May, 1974, by an assessed engaged in the business of operation of ships or aircraft or in the case of new machinery or plant (other than office appliances or road transport vehicles) installed after that date for the purposes of business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in items 1 to 24 (both inclusive) in the list in the Ninth Schedule or in the case of new machinery or plant (other than office appliances or road transport vehicles) installed after that date in a small-scale industrial undertaking for the purposes of business of manufacture or production of any other articles or things, a sum equal to twenty per cent of the actual cost of the ship, aircraft, machinery or plant to the assessed, in respect of the previous year in which the ship or aircraft is acquired or the machinery or plant is installed, or if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year; but any such sum shall not be deductible in determining the written down value for the purposes of clause (ii):

(a) any machinery or plant installed in any office premises or any residential accommodation, including any accommodation in the nature of a guest house,

(b) any ship, aircraft, machinery or plant in respect of which the deduction by way of development rebate is allowable u/s 33, and

(c) any ship or aircraft acquired after the 31st day of March, 1976, or any machinery or plant installed after that date.

Explanation- For the purposes of this clause,-

(1) "new ship" or "new aircraft" includes a ship or aircraft which before the date of acquisition by the assessed was used by any other person, if it was not at any time previous to the date of such acquisition owned by any person resident in India;

(2) "new machinery or plant" includes machinery or plant which before its installation by the assessed was used outside India by any other person, if the following conditions are fulfilled, namely:-

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

(b) such machinery or plant is imported into India from any country outside India; and

(c) no deduction on account of depreciation 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 machinery or plant by the assessed;

(3) an industrial undertaking shall be deemed to be a small-scale industrial undertaking, if the aggregate value of the machinery and plant installed, as on the last day of the previous year, for the purposes of the business of the undertaking does not exceed seven hundred and fifty thousand rupees; and for this purpose the value of any machinery or plant shall be-

(a) in the case of any machinery or plant owned by the assessed, the actual cost thereof to the assessed; and

(b) in the case of any machinery or plant hired by the assessed, the actual cost thereof as in the case of the owner of such machinery or plant."

5. A bare reading of the provision makes the position clear that, deductions allowable are clearly relateable to the new machinery or plant other than office appliances or road transport vehicles installed after the relevant date i.e. the 31st day of May 1974. In the provision itself, reference is in the case of new machinery and plant, other than road transport vehicles to those "installed after that date in a small scale industrial undertaking for the purpose of business of manufacture or production of any other articles or things" (underlined for emphasis). Therefore, legislature had intended that for the purpose of getting the benefit u/s 32, there must have been installation of the plant or machinery for the purpose of business of manufacture or production. As has been rightly submitted by the learned counsel for the Revenue, the plant and machinery do not become functional or operational until they are installed. Therefore, the cost

of installation has to be taken into account while working out the aggregate value of the machinery and plant installed. Sub-Section (3) refers to the actual cost of the plant and machinery to determine whether the aggregate value of machinery and plant installed exceeds Rs. 7.5 lacs or not. Here again the expression used is "if the aggregate value of the machinery and plant installed" (underlined for emphasis). In the case of Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad, , it was observed by the Apex Court that the accepted accountancy rule for determining the cost of fixed assets is to include all expenditure necessary to bring such assets into existence and to put them in working condition. At the cost of repetition, we may observe that the plant and machinery do not become functional and are not in working condition till they are installed. The expression "actual cost" has been defined in Section 43 of the Act and the expression means the actual cost of the assets to the assessed reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. The actual cost of the assets to the assessed would obviously include the cost of installation thereto. By way of an illustration, after referring to the meaning of the word "cost" as observed in Simons Taxes 3rd edition Vol.3 (Page 424), it was held that in certain cases expenses like freight or warehousing charges or insurance are to be added to the price. A distinction was made between two expressions "cost" and "price".

6. It has also to be noticed that, one of the reasons, which weighed with the Tribunal, was the possibility of variation of installation cost at different places. That would not make any difference to the position in law. In fact in Challapalli Sugars Ltd's case (supra), Supreme Court considered the case of two assessed i.e. one who installed machinery and plant with his own funds and the other with borrowed funds. Though, it was argued that interest paid on loan, incurred for the purpose of acquisition and installing the machinery, if taken into account in considering the actual cost of the plant, the result would result in actual cost being higher than a case where machinery for the plant is acquired with assessed's own funds. Apex Court observed that even if it is so, it would not militate against the view expressed by it.

Above being the position, the 3rd question referred has to be answered in the negative, in favor of the Revenue and against the assessed. In view of this, other two questions referred are also to be answered in the negative, in favor of the Revenue and against the assessed.