(1997) 11 AP CK 0053

In the Andhra Pradesh High Court

Case No : Case Refd. No. 43 of 1989

Commissioner of Income Tax	APPELLANT
Vs	
Progressive Engineering Co.	RESPONDENT

Date of Decision : 19-11-1997

Acts Referred:
Income Tax Act, 1961 — Section 28, 32(A)

Citation : (1998) 148 CTR 551 : (1998) 230 ITR 729 : (1998) 100 TAXMAN 25

Hon'ble Judges : P. Venkatarama Reddi, J;Krishna Saran Shrivastav, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

P. Venkatarama Reddy, J.—At the instance of the CIT, Karnataka Central, Bangalore, the following substantial question of law is referred under s. 256(1) of the IT Act for the decision of the High Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the tippers in the hands of general works contractor were not road transport vehicles, but were the tools of the business of the assessee and the assessee was entitled to get investment allowance on the cost of these tippers ?"

2. The assessment years relevant to this referred case are 1979-80 to 1982-83. The respondent is a registered firm engaged in the business of civil contract works. In connection with the business, the assessee purchased hydraulically operated tippers mounted on truck chassis for loading earth, etc., and unloading the same at the project site without the aid of human agency. The ITO as well as the AAC denied to the assessee the benefit of deduction under s. 32A of the IT Act towards investment allowance provided for by the said section. Sub-s. (1) of s. 32A, in so far as it is relevant, provides for allowance of deduction for the machinery or plant specified in sub-s. (2) which is owned by the assessee and is wholly used for the purposes of the business carried on by him. The investment

allowance that could be allowed in respect of the previous year is 25 per cent of the actual cost of the machinery or plant. It is not in dispute that tippers purchased by the respondent during the previous year conform to the description of machinery or plant as specified in sub-s. (2). The ground for disallowance of the claim is, however, traceable to the second proviso to sub-s. (1) which enjoins that no deduction shall be allowed in respect of "any office appliances or road transport vehicles". The preceding clause (a) bars the claim of deduction on the machinery or plant installed in an office premises or a residential accommodation including a guest house. The ITO and the AAC took the view that "tippers" are road transport vehicles within the meaning of clause (b) of the second proviso to sub-s. (1) of s. 32A and, therefore, they do not qualify for relief under s. 32A. The ITO, in order to understand the meaning of the expression "road transport vehicle", sought the aid from the definition of "vehicle" occurring in the Road Transport Corporations Act, 1950. The Tribunal, while reversing the view taken by the lower authorities, held that the expression was not used in any technical sense and that it would cover those vehicles which are used for transporting goods and persons. The Tribunal purported to follow the decision of the Gujarat High Court in the case of Commissioner of Income Tax Vs. Tarun Commercial Mills Ltd., , in which the expression "office appliances" occurring in the same clause was interpreted. The Tribunal also referred to the IT Rules to support its viewpoint. The Tribunal consequently allowed the appeal.

3. We are of the view that the conclusion reached by the Tribunal is correct. We find it difficult to bring the tippers within the exclusionary clause provided for by the second proviso by treating the tippers as road transport vehicles. The assessing authority wholly misdirected itself in looking at the definition of vehicle in the Road Transport Corporations Act which is an Act to provide for the regulation and incorporation of the Road Transport Corporations in the country. In fact, the definitions of road transport service and vehicle, even if it is permissible to import, do not in any way support the view taken by the AO. In the absence of any definition in the IT Act, the expression road transport vehicle, shall, as rightly pointed out by the Tribunal, be understood in common parlance and in accordance with its ordinary connotation. We do not think that tippers are referred to as transport vehicles either in the customer or commercial circles. Moreover, the context in which the said expression is used and the purpose for which certain items are excluded in cls. (a) and (b) have to be kept in view before understanding the correct meaning of the expression "road transport vehicles". Having regard to the context and purpose, we are of the view that the vehicles which are directly used in the course of the work operations carried on by the assessee are not meant to be excluded from the benefit of investment allowance. Unless there is a clear indication or clear language is employed, we feel the relief under s. 32A in respect of machinery and plant employed as tools of business or for aiding the actual operations carried on by the assessee should not be denied.

4. In view of the foregoing discussion, we answer the question in the affirmative,

that is to say, in favour of the assessee and against the Revenue. Accordingly, the reference case is disposed of. No costs.

