
(1993) 03 BOM CK 0058

In the Bombay High Court

Case No : Income-tax Reference No. 531 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Reunion Engineering Co. (P) Ltd

RESPONDENT

Date of Decision : 30-03-1993

Acts Referred:

Income Tax Act, 1961 — Section 32, 32(1), 34

Citation : (1994) 116 CTR 195 : (1993) 203 ITR 274 : (1993) 70 TAXMAN 546

Hon'ble Judges : U.T. Shah, J;B.P. Saraf, J

Bench : Division Bench

Advocate : A.V. Sonde, Dr. V. Balasubramanian, for the Appellant;

Judgement

DR. B.P. Saraf, J.—By this reference u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellant Tribunal has referred the following question of law at the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the assessee-company was entitled to initial depreciation u/s 32(1)(vi) of the Act on such plant and machinery as claimed by the assessee-company ?"

2. The assessee is a company which carries on the business as electrical installation contractors and manufacturers of electrical products. In its assessment for the assessment year 1976-77, the assessee claimed initial depreciation u/s 32(1)(vi) of the Income Tax Act, 1961 (for short, "the Act"), on the ground that it was an "industrial company" within the meaning of section 2(9) (c) of the relevant finance Act and a small scale industrial undertaking within the meaning of Explanation (3) to section 32(1)(vi) of the Act. This claim was rejected by the Income Tax Officer as in his opinion the assessee was not an "industrial company". On appeal, the Appellate Assistant Commissioner accepted the contention of the assessee and held that the assessee was an industrial undertaking engaged in the manufacturing or processing of goods and it also

fulfilled the requirements of section 32(1)(vi) of the Act and was, therefore, entitled to initial depreciation. The Revenue went in appeal to the Income Tax Appellate Tribunal (for short, "the Tribunal"). Before the Tribunal two submissions were made by the Revenue. The first submission was that the assessee was not an industrial company and the second was that even if it was an industrial company, it was not a small scale industrial undertaking within the meaning of Explanation (3) to section 32(1)(vi) of the Act. So far as the first submission is concerned, the Tribunal held that from the nature of the work carried on by the assessee, it was evident that it was engaged in a series of activities involving manufacturing and processing of goods. In this connection, the Tribunal referred to the circular of the Central Board of Direct Taxes dated February 17, 1978, wherein the authorities under the Act were advised to take a liberal approach in interpreting the expression "industrial company". In that view of the matter, the Tribunal upheld the finding of the Appellate Assistant Commissioner that the assessee was an industrial company.

3. As regards the second question also, the Tribunal did not accept the contention of the Revenue : The case of the Revenue was that the aggregate value of the machinery and plant installed by the assessee for the purpose of business of the undertaking exceeded Rs. 7.5 lakhs and that being so, in view of Explanation (3) to section 32(1)(vi) of the Act it could not be held to be a small scale industrial undertaking. The break-up of investment is as follows :

4. The Tribunal was of the opinion that u/s 32(1)(vi), motor cars, trucks, cycles, typewriters and calculators which were, in all, valued at Rs. 4,18,321 could not be treated as machinery or plant within the meaning of the above provision and if they are excluded, the value of the machinery and plant will be much less than Rs. 7.5 lakhs. The Tribunal, therefore, felt that the assessee was entitled to initial depreciation u/s 32(1)(vi) of the Act.

5. The Revenue filed an application u/s 256(1) of the Act requiring the Tribunal to refer the following two questions to this court for opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the assessee-company was an "industrial company" within the meaning of section 2(8)(c) of the relevant Finance Act ?

(2) If the answer to the question referred in (1) above is in the "negative", whether the Appellate Tribunal was justified in law in holding that the assessee-company was entitled to initial depreciation u/s 32(1)(vi) of the Act on such plant and machinery as claimed by the assessee-company ?"

6. The Tribunal refused to refer the first question as in its opinion it was a finding of fact which has been arrived at by it on an appreciation of the materials and evidence before it. The Tribunal also observed that its finding that the assessee was an industrial company was also in consonance with the circular of the Board dated February 17, 1978, referred to above. The Tribunal, however, felt that the second question, which involved the interpretation of Explanation (3) to section

32(1)(vi) of the Act was a question of law and, therefore, reframed the same and referred the question set out in paragraph 1 above to this court. The Revenue did not file any application u/s 256(2) of the Act in regard to question No. 1 nor did it take out any notice of motion seeking reference of the same. Hence, the finding of the Tribunal that the assessee is an "industrial company" has become final. The only controversy that arises in this reference is whether the assessee is a "small scale industrial undertaking" within the meaning of Explanation (3) to section 32(1)(vi) of the Act.

7. The submission of learned counsel for the Revenue before us is that motor cars, trucks, cycles, typewriters and calculators are plant and machinery and they cannot be excluded in the computation of the value of the machinery and plant for the purpose of Explanation (3) to section 32(1)(vi). We have considered the submissions. However, on a careful perusal of the language of section 32(1)(vi) of the Act and Explanation (3) thereto, we find it difficult to accept the same. Section 32(1)(vi), as it stood at the relevant time, so far as it is relevant, reads as under:

"Section 32, Depreciation. - (1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of section 34, be allowed -

(vi) in the case of a new ship or a new aircraft acquired after the 31st day of May, 1974, by an assessee 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 assessee, 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) :.....

Explanation. - For the purposes of this clause, -

(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 assessee, the actual cost thereof to the assessee; and

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

8. From a plain reading of section 32(1)(vi), it is clear that the Legislature has specifically excluded from the ambit of machinery or plant, "office appliances or road transport vehicles". That being so, it is not necessary to interpret the expression "machinery and plant" to find out whether office appliances and road transport vehicles fall within its scope and ambit or not because even if the two expressions "machinery" and "plant" are interpreted widely to include the office appliances and road transport vehicles, in view of the specific exclusion made by the Legislature in section 32(1)(vi) itself, they cannot be treated as machinery or plant for the purposes of this sub-section.

9. The submission of counsel for the Revenue appears to be based on the language of the Explanation (3) to the above provision where the expression "machinery and plant" has only been mentioned and the exclusion has not been reiterated. This approach, in our opinion, is not correct. An Explanation to a statutory provision has to be read with the main provision to which it is added as an Explanation. An Explanation appended to a section or a sub-section becomes an integral part of it and has no independent existence apart from it. There is, in the eye of law, only one enactment, of which both the section or the sub-section and the Explanation are two inseparable parts. In that view of the matter, in the absence of anything repugnant in the subject or context, the words and expressions used in the Explanation are to be given the same meaning as given to them in the main provision itself. On a conjoint reading of section 32(1)(vi) and Explanation (3) thereto, it becomes abundantly clear that the expression "machinery and plant" in the Explanation refers back to the "plant and machinery" described in section 32(1)(vi) which clearly excludes "office appliances or road transport vehicle". That being so, motor cars, trucks, cycles, typewriters and calculators cannot be treated as plant and machinery for the purposes of this section and, therefore, their value cannot be taken into consideration for determining the ceiling of Rs. 7.5 lakhs for the purpose of determining whether in industrial company is a small scale industrial undertaking or not. In our opinion, the language of section 32(1)(vi) as well as the Explanation is clear. There is no ambiguity therein nor is there any scope for any other interpretation than the one we have given above. In that view of the matter, we do not find any error in the decision of the Tribunal. We, therefore, hold that the Tribunal was justified in holding that the assessee-company was entitled to initial depreciation u/s 32(1)(vi) of the Act on the plant and machinery as claimed by the assessee.

10. Accordingly, in the light of the foregoing discussion, we answer the question

referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. No order as to costs.