(1986) 03 GUJ CK 0003

In the Gujarat High Court

Case No : Income-tax Referrence No. 533 of 1980

Commissioner of Income Tax APPELLANT

Vs

Shiv Constructions RESPONDENT

Date of Decision : 07-03-1986

Acts Referred:

Income Tax Act, 1961 — Section 33A

Citation : (1987) 62 CTR 58 : (1987) 165 ITR 159 : (1987) 33 TAXMAN 316

Hon'ble Judges : R.C. Mankad, J;A.P. Ravani, J

Bench : Division Bench

Advocate : S.N. Shelat, for the Appellant; J.P. Shah, for the Respondent

Judgement

R.C. Mankad, J.—The assessee, a partnership firm, is engaged in the business of construction of roads and buildings. For the assessment year 1974-75, it claimed development rebate of Rs. 77,946 on the purchase of dumpers on the ground that the dumpers were part of machinery used for construction. The Income Tax Officer did not accept the assessee''s claim holding that the dumpers were road transport vehicles. The Appellate Assistant Commissioner having confirmed the view taken by the Income Tax Officer, the assessee carried the matter in appeal before the Income Tax Appellate Tribunal ("Tribunal" for short). The Tribunal came to the conclusion that the dumpers were part of the construction machinery and were used by the assessee as such, and in its view, dumpers which may be transport vehicles in the hands of one person, could be tools of business in the hands of others. Since the dumpers were used for the purpose of construction work by the assessee, the assessee could not be denied the development rebate as stated above. The Revenue, being aggrieved by the decision of the Tribunal, the following question has been raised to us at its instance u/s 256(1) of the Income Tax Act 1961, for our opinion :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the dumpers in the hands of the assessee were not road transport vehicles but were the tools of the business of the assessee and the assessee was entitled to get development rebate on the cost of dumpers ?"

2. It is not necessary for us to examine the question on merits since Mr. J. P. Shah, learned counsel appearing for the assessee, has conceded that the dumpers are road transport vehicles and, therefore, the assessee is not entitled to development rebate as claimed by it. In view of this concession made by Mr. Shah, the question referred to us must be answered in the negative and against the assessee.

3. Reference answered accordingly with no order as to costs.

4. A copy of this judgment should be sent under the seal of this court and under signature of the Registrar to the Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad.