(2004) 11 AHC CK 0217

In the Allahabad High Court

Case No : IT Ref. No. 36 of 1987

Commissioner of Income Tax — APPELLANT

Vs

S.R. Cold Storage — RESPONDENT

Date of Decision : 01-11-2004

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 32A

Citation : (2005) 197 CTR 504

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Judgement

1. The Tribunal, New Delhi, has referred the following questionslaw u/s 256(1) of the IT Act, 1961. hereinafter referred to as the Act, for opinion to this Court.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in allowing investment allowance u/s 32A of the IT Act, 1961, on the machinery installed in assessee''s cold storage ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the cold storage plant is entitled to investment allowance when the Department''s reference application in the case of M/s Car Cold Storage. Shahjahanpur in R.A. No. 331/All/1984, dt. 18th July, 1984 is pending decision of Allahabad High Court on similar issue ?"

2. The reference relates to the asst. yr. 1980-81.

3. We have heard the learned counsel for the parties.

4. The respondent-assessee runs a cold storage which made a claim for allowing investment allowance of Rs. 1,26,831 on the plant and machinery installed by it. The ITO did not accept the claim on the ground that it was not manufacturing or producing any article. The order was upheld by the CIT(A). However, in further appeal, the Tribunal had held that the respondent is entitled for investment allowance. It may be mentioned here that the apex Court in the case of Delhi

Cold Storage Pvt. Ltd. Vs. Commissioner of Income Tax, New Delhi, has held that in a cold storage manufacturing activity does not take place nor it can be said that any processing is undertaken, therefore, it is not an industrial company. In this view of the matter the investment allowance u/s 32A is not admissible to cold storages.

5. Respectfully following the aforesaid decision, we answer both the questions referred to us in the negative, i.e., in favour of the Revenue and against the assessee. However, there shall be no order as to costs.

