
(2006) 08 GUJ CK 0015
In the Gujarat High Court
Case No : IT Ref. No. 22 of 1996

Commissioner of Income Tax

APPELLANT

Vs

Statronics and Enterprises (P) Ltd.

RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 263, 32(1), 32A, 34

Citation : (2007) 288 ITR 455

Hon'ble Judges : R.S. Garg, J; M.R. Shah, J

Bench : Division Bench

Advocate : Mona M. Bhatt, for Manish R. Bhatt, for the Appellant; None, for the Respondent

Judgement

R.S. Garg, J.—The Tribunal, Ahmedabad Bench "A", at the instance of the Revenue, has made this reference on the following questions for the opinion of this Court:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the investment allowance and additional depreciation is allowable on computers ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that data processing and printout would certainly be a thing produced by the assessee even if not a thing manufactured by the assessee and thereby the assessee-company is entitled to deduction u/s 32A ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the computer machinery installed by the assessee-company are plant and machinery as a natural corollary and thereby the additional depreciation is entitled to the assessee ?

2. The assessee is a private limited company established by two technocrats, who started and established Startronics Enterprises (P) Ltd. All the machineries required for this project were imported from the United States of America. The

assessee-company is engaged in the business of data processing system designing and software development and supply. While completing the assessments u/s 143(3) of the IT Act ("the Act" for short), the AO allowed to the assessee-company certain deductions.

2.1 Later, on perusal of the records of the Income Tax proceedings in the assessee's case for the asst. yrs. 1985-86, 1986-87 and 1987-88, the learned CIT observed that the orders framed u/s 143(3) by the ITO were erroneous insofar as these were prejudicial to the interest of the Revenue. Accordingly, he invoked his jurisdiction u/s 263 of the Act. In response to the notice issued by the CIT, the assessee submitted that the computers installed were plant and machinery and were entitled to investment allowance in view of the judgment of the Bombay High Court in the case of Commissioner of Income Tax Vs. IBM World Trade Corporation, . The learned CIT did not accept the submission. The CIT held that since the computers were installed in the office premises, additional depreciation was not admissible on the same. He further held that extra-shift allowance for triple shift to the data processing equipment was also not admissible in view of the provisions of depreciation Schedule Part III-C(5).

2.2 On an appeal, the Tribunal held that in view of the judgment of the Gujarat High Court in the case of Commissioner of Income Tax, Gujarat Vs. Ajay Printery Private Ltd., , the data processing and printout would certainly be a thing produced by the assessee. It was observed that the assessee was entitled to the deduction u/s 32A of the Act. It also observed that the computer machinery installed by the assessee are plant and machinery as a natural corollary, the assessee would be entitled to the additional depreciation and accordingly, held that the CIT was not justified in setting aside the assessments.

3. Mrs. Bhatt, learned Counsel for the Revenue, is heard. None appears for the opponent though the office report shows that the opponent is served.

4. It is the submission of the learned Counsel for the Revenue that the first question encompasses two questions within its sweep, the first question is that whether the investment allowance was allowable and the second that the additional depreciation could still be allowed.

5. In view of the judgment reported in Commissioner of Income Tax Vs. Professional Information Systems and Management, we must hold that the computers and the data processing machines would be the plant and machinery and the investment allowance would be available.

6. Placing reliance upon Section 32(1)(iia) of the Act, it is submitted that if the plant or machinery is installed in any office premises or in the residential accommodation, then, no deduction shall be allowed under Clause (iia) of Section 32(1). Section 32(1)(iia), with its proviso, for the purposes of this case, would read as under:

32. (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-

(i) xxxxxx

(ii) xxxxxx

(iia) in the case of any new machinery or plant (other than ships and aircraft) which has been installed after the 31st day of March, 1980, but before the 1st day of April, 1985, a further sum equal to one-half of the amount admissible under Clause (ii) (exclusive of extra allowance for double or multiple shift working of the machinery or plant and the extra allowance in respect of machinery or plant installed in any premises used as a hotel) in respect of the previous year in which such machinery or plant is installed or, if the machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year:

Provided that no deduction shall be allowed under this clause in respect of-

(a) any machinery or plant installed in any office premises or any residential accommodation;

x x x x x x x 7. It is submitted that even if the computers and data processing machines are taken to be plant and machinery and are entitled to investment allowance, because of their location in the office, additional depreciation would not be allowable. Thrust of the argument is on the words "office premises".

8. The submission is that the computers and the data processing machines are always kept in the office and in this case, when the computers and the data processing machines are used in the office, then, the additional depreciation would not be allowable.

9. It is to be noted that the words "office premises" have not been defined in the IT Act. The word "office" would partake its character with the activities carried on in the said premises. In a given case, a doctor's clinic would be his office, but, would also be his clinic and if he installs a computer or some machine for the purposes of pathology, then, his office would be taken to be an industrial premises for the purposes of depreciation and investment allowance. In a given case, a computer kept in the office of a manager for his personal use or for some other purpose, then, such computer would not be entitled to investment allowance and/or additional depreciation. In the present case, the words "office premises" though would be covering office but, industrial premises would not come within office premises if the said premises are used for data processing. In the present case, undisputedly, the office premises are used as industrial premises for production of the data processors. The submission of the learned Counsel is based on a narrow interpretation of the words "office premises", which we are unable to concede.

10. In view of the above referred discussion, question No. 1 deserves to be

answered against the interest of the Revenue. Consequently, question Nos. 2 and 3 will also have to be answered against the interest of the Revenue. The reference stands disposed of. No costs.