(1995) 03 AP CK 0067

In the Andhra Pradesh High Court

Case No : Case Referred No. 21 of 1987

Commissioner of Income Tax APPELLANT

Vs

Super Drillers RESPONDENT

Date of Decision : 23-03-1995

Acts Referred:

Income Tax Act, 1961 — Section 28, 32A(2), 80HH, 80HHA, 80J

Citation : (1995) 2 ALT 765 : (1995) 127 CTR 199 : (1996) 222 ITR 629

Hon'ble Judges : T.C. Rangarajan, J;S.S. Mohammed Quadri, J

Bench : Division Bench

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

Judgement

Syed Shah Mohammed Quadri, J.—The assessee in this cases a firm which carries on the business of drilling bore-wells. For the assessment years 1981-82 and 1982-83, it claimed depreciation of 30 per cent. on the rig and compressor used in drilling the bore-wells. The Income Tax Officer allowed the depreciation at ten per cent. being of the view that the assessee was not a "mineral oil concern" and so, the assessee was not entitled to depreciation at 30 per cent. However, on appeal, having regard to the judgment of the Income Tax Appellate Tribunal in the assessee''s own case for the assessment year 1979-80, the appellate authority, i.e., the Commissioner of Income Tax (Appeals) granted 30 per cent. depreciation and it was confirmed by the Tribunal. The said view of the Tribunal relating to the assessment year 1979-80 was confirmed by this court by the judgment in Commissioner of Income Tax Vs. Super Drillers, .

2. Further, the assessee also claimed that it is an industrial undertaking carrying on business in drilling bore-wells and, therefore, it is entitled to the relief u/s 80J and sections 80HH and 80HHA of the Income Tax Act, 1961. The Income Tax Officer disallowed the said claim. On appeal, the Commissioner of Income Tax (Appeals) confirmed the view of the Income Tax Officer and on further appeal, the Income Tax Appellate Tribunal took the view that the assessee is an industrial

undertaking engaged in manufacturing or producing articles or things and, therefore, it is entitled to relief under the said provisions.

3. At the instance of the Revenue, the following questions are referred to this court for opinion u/s 256(1) of the Income Tax Act :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in allowing 30 per cent. depreciation on rig and compressor used in boring of wells, in accordance with the entry D-4 of the Depreciation Schedule under the Income Tax Rules, 1962, for the assessment years 1981-82 and 1982-83 ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is correct in holding that the assessee-firm which carries on business in drilling bore-wells, is an industrial undertaking engaged in manufacturing or producing articles or things and is entitled to relief u/s 80J and 80HH/80HHA for the assessment years 1981-82 and 1982-83 ?"

4. In so far as the first question is concerned, from the facts narrated above, it is clear that the said question is covered against the Revenue by the judgment of this court confirming the view taken by the Tribunal in Commissioner of Income Tax Vs. Super Drillers, . Following the said judgment, the first question is answered in the affirmative, i.e., in favour of the assessee and against the Revenue.

5. In so far as the second question is concerned, learned standing counsel submits that the Tribunal followed its earlier judgment in the case of Jaldhara Borewell Corporation - (I. T. A. No. 1076/(Hyd) of 1982, dated July 6, 1983). The reasoning given in that case by the Tribunal, was reproduced in the order of the Tribunal in paragraph 6 at page 36 which is as follows :

"So it is very clear from the above decision that it is enough if what is produced is property and the thing produced need not always be movable property. A dam which is permanently fastened to earth can as well be considered to be an article produced. On the same parity of reasoning there is scope to hold that a borewell which is permanently fastened to earth can as well be taken to be an article produced."

6. This reasoning was, however, upheld by this court in the case of the very same assessee in the judgment in Commissioner of Income Tax Vs. Super Drillers, . Our High Court came to the conclusion that the drilling operations do result in the production of underground water for use on the surface of the ground and in that sense, it must be held that the assessee is an industrial undertaking. But in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, , one of the questions that arose for consideration of the Supreme Court was whether the judgment of the Karnataka High Court in Commissioner of Income Tax Vs. Buildmet Pvt. Ltd., was correct. The Supreme Court held that the benefit of investment allowance u/s 32A was

not available in respect of new machinery employed in digging bore-wells as sub-clause (iii) of clause (b) of sub-section (2) of section 32A does not comprehend within its ambit construction of a dam, a bridge, a building, a road, a canal and other similar constructions. In as much as the purported construction involved in this case is also a bore-well, the ratio of the Supreme Court squarely applies to this case. In view of the recent pronouncement of the Supreme Court in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, , the judgment of this court in Commissioner of Income Tax Vs. Super Drillers, holding that the business of drilling bore-well is an industrial undertaking, is no longer good law. Following the judgment of the Supreme Court in Budharaja''s case [1993] 294 ITR 412, we answer the second question in the negative, i.e., in favour of the Revenue and against the assessee.

7. The reference is, accordingly, answered. No costs.

