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(2004) 06 MAD CK 0012

In the Madras High Court

Case No : Tax Cases No''s. 12 and 13 of 2002

Commissioner of Income Tax APPELLANT

Vs

Tamil Nadu Minerals Ltd. RESPONDENT

Date of Decision : 16-06-2004

Acts Referred:
Income Tax Act, 1961 — Section 263, 32A, 80HHC

Citation : (2005) 274 ITR 482

Hon'ble Judges : N.V. Balasubramanian, J;M. Thanikachalam, J

Bench : Division Bench

Advocate : J. Narayanasamy, for the Appellant; M.P. Senthil Kumar, for Philip George, for the Respondent

Judgement

N.V. Balasubramanian, J.—The Income Tax Appellate Tribunal has referred the following common question of law to this court for the

assessment years 1986-87 and 1987-88.

Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the assessee is

entitled to investment allowance on the activities of the assessee, viz., mining granite from quarries and exporting them after cutting, polishing, etc.,

which tantamount to manufacture for the purpose of Section 32A of the Income Tax Act, 1961 ?

2. The assessments of the assessee for the two years in question were completed by the Assessing Officer allowing the claim of the assessee with

regard to investment allowance u/s 32A of the Income Tax Act, 1961 (hereinafter referred to as ""the Act""). The Commissioner of Income Tax,

exercising the power of revision u/s 263 of the Income Tax Act, passed a consolidated order dated March 14, 1990, holding that the assessee would not be entitled to investment allowance inasmuch as there was no manufacturing activity and the Deputy Commissioner of Income Tax was

directed to disallow the investment allowance and deduction u/s 80HHC for the assessment years 1986-87 and 1987-88 and revise the

assessments in accordance with the provisions of law.

3. As against the order passed by the Commissioner of Income Tax u/s 263 of the Income Tax Act, the assessee carried the matter in appeal

before the Income Tax Appellate Tribunal and the Tribunal, following its earlier order in the assessee''s own case, came to the conclusion that the

activities of quarrying mining of granite would amount to manufacture for the purpose of Section 32A of the Income Tax Act. The Tribunal allowed

the appeal preferred by the assessee in so far as the disallowance of investment allowance for the purpose of Section 32A of the Act. As against

the said order, the Revenue sought for the reference. Accordingly, the above question of law was framed and the same has been referred to us by

the Tribunal.

4. Learned counsel appearing for the Revenue has brought to the decision of this court in Commissioner of Income Tax Vs. Bishal Enterprises,

wherein this court considered the question of claim of investment allowance and held that preparation of granite blocks does not amount to

manufacture or production of articles within the meaning of Section 32A of the Act and the assessee would not be entitled to claim investment

allowance u/s 32A of the Act. Learned counsel for the Revenue also brought to the notice of this court the decision of this court in The

Commissioner of Income Tax Vs. Vijay Granites P. Ltd., wherein this court has held that cutting and polishing of granite would not amount to

production or manufacture of article and the assessee is not entitled to investment allowance in respect of the machinery used. Learned counsel for

the Revenue therefore submitted that in view of the decisions of this court rendered in Commissioner of Income Tax Vs. Bishal Enterprises, and

The Commissioner of Income Tax Vs. Vijay Granites P. Ltd., stated supra, the assessee is not entitled to claim investment allowance and the view

of the Tribunal that the assessee is entitled to claim investment allowance is not sustainable in law.

5. Learned counsel for the assessee on the other hand submitted that neither the

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Commissioner nor the Tribunal has gone into the nature of the

activities of the assessee. Learned counsel submitted that the assessee has claimed before the Commissioner of Income Tax that apart from

extracting granite, the assessee has converted granite into a marketable commodity which would amount to manufacture of article and the assessee

was entitled to claim investment allowance. Learned counsel further submitted that the said point was not gone into either by the Commissioner or

the Tribunal.

6. We carefully considered the submissions of learned counsel for the Revenue and the assessee. There can be no dispute that in view of the

decisions of this court in Commissioner of Income Tax Vs. Bishal Enterprises, and The Commissioner of Income Tax Vs. Vijay Granites P. Ltd., if

the assessee has done merely cutting and polishing of granite slabs, it would not amount to manufacture or production of article and the assessee

would not be entitled to investment allowance u/s 32A of the Income Tax Act. The case of the assessee was that it has converted the granite into a

marketable commodity but the case of the assessee was not gone into and the nature of the activities of the assessee was not ascertained. We find

from the order of the Commissioner of Income Tax that the assessee has raised a specific point that the assessee, after extracting granite, has

converted the same into a marketable commodity. The Commissioner of Income Tax in the revisional order has not gone into the nature of the

activities of the assessee. The Income Tax Appellate Tribunal has, merely following the assessee''s own case in respect of the earlier assessment

year, allowed the claim of investment allowance. It has not considered the specific point raised by the assessee and has not gone into the nature of

the activities of the assessee. In the absence of any factual finding on the question, viz., the activities of the assessee, we are of the view that the

question referred to us cannot be answered. But we make it clear that if the assessee''s activity was merely cutting and polishing of granite, it would

not amount to manufacture or production of article and the assessee would not be entitled to claim investment allowance u/s 32A of the Income

Tax Act in respect of the machinery used. However, if the assessee has done something more, the assessee has to establish the same before the

Tribunal. The Tribunal is directed to go into the question and determine the

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nature of the activities of the assessee and also decide whether the

activities of the assessee would fall within the scope of Section 32A of the Act. Needless to mention, it is open to the Revenue to contest that the

activities of the assessee do not amount to manufacture or production of article. Since the factual basis for grant of investment allowance is absent,

we return the reference without answering the question referred to us subject to the directions earlier given.

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