(1994) 02 GUJ CK 0019

In the Gujarat High Court

Case No : Income-tax Reference No. 141 of 1982

Commissioner of Income Tax APPELLANT

Vs

Thyristors Controls Pvt. Ltd. RESPONDENT

Date of Decision : 04-02-1994

Acts Referred:
Income Tax Act, 1961 — Section 32A, 32A(1), 43(3)

Citation : (1994) 207 ITR 317

Hon'ble Judges : R.K. Abichandani, J;M.B. Shah, J

Bench : Division Bench

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

Judgement

R.K. Abichandani, J.—The Income Tax Appellate Tribunal, Ahmedabad Bench "C", has referred for the opinion of this court u/s 256(1) of the Income Tax Act, 1961, the following question :

"Whether, on the facts and the in the circumstances of the case even assuming that the books containing technical know-how were kept in the office, the assessee is entitled to investment allowance in respect thereof the u/s 32A(1) of the Income Tax Act, 1961 ?"

2. The assessment year is 1977-78. The assessee carried on business of the manufacturing certain electrical equipment and had made a claim for deduction by way of investment allowance of Rs. 92,415 on the amount of Rs. 5,69,651 for the cost of technical know-how u/s 32A(1) of the Act. The Income Tax Officer disallowed this claim on the ground that the books containing the technical know-how were installed in office premises and, therefore, were excluded by the proviso to sub-section (1) of section 32A of the Act. The Commissioner of Income Tax (Appeals) on the appeal allowed the assessee''s claim of the deduction on the said count. In appeal preferred before the Tribunal, the Tribunal confirmed the Commissioner of income tax''s order though on a different ground, holding that the word "installed" in the proviso to section 32A(1) of the Act could not apply to

books containing technical know-how which were to be treated as plant.

3. It is clear that in view of the definition of "plant" contained in section 43(3) books would be "plant" within the meaning of section 32A(1) of the Act. Therefore, these books which contained technical know-how would be "plant" within the meaning of section 32A(1) of the Act. Under the said provision, in respect of the plant specified in sub-section (2) which is owned by the assessee and is wholly used for the purpose of the business carried on by him, there shall, in accordance with and subject to the provisions of the section, be allowed a deduction in respect of the previous year in which such plant was installed or first put to use as provided therein. A sum of investment allowance equal to 25 per cent. of the actual cost of the plant to the assessee would be allowed by way of the deduction in such cases. The assessee had, therefore, claimed investment allowance in respect of the said books containing technical know-how. The word "installed" occurring in section 32A(1) would not necessarily mean that it should be fixed in a position, but the word is also used in the sense of "induct" or "introduce" or "placing an apparatus in position for service or use" as held by the Supreme Court in COMMISSIONER OF Income Tax, MADRAS Vs. MIR MOHAMMAD ALI. ARUNA MILLS LTD. : INTERVENER., . The word "installed" would mean to place in position for service or use or to set up for service or use. The books would be installed when they would be placed for use in the premises in question. From the record, it appears that the factory building and the office building of the assessee were the same. Since the factory and the office was in the same building, it cannot be said that the these books were not installed in the factory building, or that they were installed the office premises. Therefore, in our view, the proviso to section 32A(1) would not be attracted in this case. We would, therefore, uphold the finding of the Tribunal on the above ground. Since the factory and the office of the assessee are in the same building, it would not be necessary to decide as to what would happen to books kept in the office as posed in the first part of the question referred to us. We, therefore, hold that the assessee is entitled to investment allowance in respect of the books containing technical know-how u/s 32A(1) of the Act and for the reason indicated above answer the question referred to us in the affirmative, in favour of the assessee and against the Revenue.

4. The reference stands disposed of accordingly with no order as to costs.

