(1999) 08 CAL CK 0041

In the Calcutta High Court

Case No : Income Tax R. No. 196 of 1993

Commissioner of Income Tax APPELLANT

Vs

Unit Construction Co. Pvt. Ltd. RESPONDENT

Date of Decision : 09-08-1999

Acts Referred:

Income Tax Act, 1961 — Section 32A(2)

Citation : (1999) 157 CTR 361 : (1999) 240 ITR 718

Hon'ble Judges : Y.R. Meena, J;Ranjan Kumar Mazumdar, J

Bench : Division Bench

Advocate : Soumitra Pal, for the Appellant;None, for the Respondent

Judgement

1. By this reference application u/s 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following questions set out at page 2 of the statement of case for the opinion of this court :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding the view that the assessee-company was entitled to investment allowance as it was an industrial company according to the Income Tax Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in upholding the order of the Commissioner of Income Tax (Appeals) who directed the Assessing Officer to allow the asses-see-company the benefit of investment allowance as claimed ?"

2. The assessment year involved is 1985-86. On scrutiny of the books of account, the Income Tax Officer found that the assessee had claimed investment allowance at Rs. 90,048 on the assets worth Rs. 3,60,192. The Income Tax Officer did not allow the investment allowance, as the assessee does not come in the category of "industrial undertaking". The Commissioner of Income Tax (Appeals) holding that the assessee is an industrial company directed to allow investment allowance. The Tribunal also has confirmed the view taken by the

Commissioner of Income Tax (Appeals).

3. Heard learned counsel for the Revenue. None appeared for the assessee.

4. Section 32A provides for investment allowance in respect of ship or any aircraft or any machinery or plant specified in Sub-section (2) which is owned by the assessee and is wholly used for the purposes of the business carried on by him. What would be the ship, aircraft, machinery or plant, that has been given in Sub-section (2) of Section 32A. There is no provision for investment allowance to a industrial company. The issue has been considered by the apex court in the case of Builders Associations of India Vs. Union of India and others, wherein their Lordships have considered that the investment allowance is permissible only in the case of "industrial undertakings" and not in the case of "industrial company" or, an assessee which is indulging in construction. Admittedly, the assessee is engaged in construction work. That cannot be an industrial undertaking as it does not manufacture an article or thing. When the assessee is not an industrial undertaking, there is no question of allowing the benefit to the assessee u/s 32A of the Act.

5. Accordingly, we answer the questions in the negative, that is, in favour of the Revenue and against the assessee.

6. The reference application is, accordingly, disposed of.

