
(1997) 12 MAD CK 0192
In the Madras High Court
Case No : Tax Case No. 1452 of 1986

Commissioner of Income Tax

APPELLANT

Vs

V. Ganesan

RESPONDENT

Date of Decision : 23-12-1997

Acts Referred:

Income Tax Act, 1961 — Section 32A

Citation : (1999) 235 ITR 426

Hon'ble Judges : P. Thangavel, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

N.V. Balasubramanian, J.—At the instance of the Department, the Tribunal, has referred the following question of law for our opinion under s. 256(1) of the IT Act, 1961, for the asst. yr. 1980-81 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the assessee is entitled to the investment allowance ?"

2. The assessee an individual, takes contracts for construction of buildings for different parties. During the assessment proceeding, for the asst. yr. 1980-81, the assessee claimed investment allowance on 14 different items which are listed as under :

1. Centering sheet
2. Red cutting machine R. M. Brand hand lever shearing machine with handle
3. Ramming machine
4. Ramming machine
5. Ramming machine
6. Double folding trestle

7. Vibrator
8. Concrete mixer
9. Acrow from fitting
10. Acrow from fitting
11. Swivel coupler (scaffolding unit)
12. Acrow Scaffolding unit
13. Acrow Scaffolding unit
14. Levelling instrument

The aggregate value of all the items came to Rs. 1,23,019 and the ITO rejected the claim of the assessee for the investment allowance under s. 32A of the IT Act (hereinafter referred to as the "Act"). On the ground that the assessee was not engaged in the manufacture or production of any article or thing specified under s. 32A of the Act. The CIT(A), following the decision of the Orissa High Court in Commissioner of Income Tax Vs. N.C. Budharaja and Company, and the decision of the Bombay High Court in the case of Commissioner of Income Tax, Bombay City-II Vs. Pressure Pilling Co. (India) P. Ltd., held that the assessee was entitled to grant of investment allowance. The above view of the CIT(A) was confirmed by the Tribunal on an appeal preferred by the Revenue.

3. The order of the Tribunal that is the subject-matter in the present tax case reference.

4. Mr. C. V. Rajan, learned counsel for the Revenue, submitted that the issue raised in the question is squarely covered by the decisions of the Supreme Court in the case of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, and in the case of Builders Associations of India Vs. Union of India and others, .

5. Mr. P. P. S. Janarthana Raja, learned counsel for the assessee, submitted that the assessee was manufacturing certain articles incidental to the construction of the buildings and to that extent, the assessee is entitled to the grant of investment allowance.

6. We have carefully considered the submissions of learned counsel for both sides.

7. The Supreme Court in the case of CIT vs. N. C. Budharaja & Co. (supra) clearly held that the assessee (sic-engaged in) construction of building is not entitled to investment allowance under s. 32A of the Act as the said provision did not comprehend within its ambit construction of a dam, a bridge, a building, a road, a canal and other similar constructions.

8. Admittedly, the assessee is a contractor in the construction of the building. On

the basis of the decision of the Supreme Court in N. C. Budharaja's case (supra), the assessee is not entitled to claim the investment allowance. The above decision of the Supreme Court in N. C. Budharaja's case (supra) was considered again by the Supreme Court in Builders Associations of India vs. Union of India & Ors. (supra) and the Supreme Court held therein that there was no need to reconsider its earlier decision and thus reaffirmed the earlier view.

9. We are of the opinion that the Tribunal was not correct in holding that the assessee is entitled to investment allowance under s. 32A of the Act.

10. Mr. P. P. S. Janarthana Raja, learned counsel for the assessee submitted that the assessee had manufactured certain articles and to that extent the assessee should be regarded as an industrial undertaking. But we are unable to accept the contention of the assessee as no such case was put forward before the Tribunal on behalf of the assessee and there is no such finding recorded by the Tribunal that the assessee was manufacturing certain articles. Further from the decision of the Supreme Court in N. C. Budharaja's case (supra), it is clear that where an assessee manufactured certain articles incidentally for the construction of the building, the assessee is not entitled to investment allowance under s. 32A of the Act. Further, the Tribunal has also not recorded its finding that the assessee was manufacturing certain articles independent of the construction of business activities carried on by the assessee. The Tribunal referred to its earlier order in (1983) 3 ITD 172 . But it cannot be assumed that the facts in the case of Progressive Engg. Co. (supra) were similar to the present case as well. Since there is no finding of the Tribunal that the assessee was manufacturing certain articles independently, we are of the view that it is not permissible for the assessee to raise such a contention that the assessee was manufacturing certain articles independent of the business activity carried on by the assessee. Accordingly, we hold that the Tribunal was not correct in holding that the assessee is entitled to investment allowance under s. 32A of the Act.

11. We answer the question of law referred to us in the negative and in favour of the Revenue.

12. No costs.