
(1992) 01 KAR CK 0016

In the Karnataka High Court

Case No : Income-tax Referred Case No. 13 of 1986

Hindustan Machine Tools Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 16-01-1992

Acts Referred:

Income Tax Act, 1961 — Section 256 (1), 256 (1), 32, 32

Citation : (1993) 109 CTR 297 : (1992) 197 ITR 18

Hon'ble Judges : S.P. Bharucha, C.J.;Shivaraj V. Patil, J

Bench : Division Bench

Advocate : K.P. Kumar, for the Appellant; H. Raghavendra Rao, for the Respondent

Judgement

S.P. Bharucha, C.J.—This is a reference u/s 256(1) of the Income Tax Act, 1961, made at the instance of the assessee. The assessment year with which we are concerned is the assessment year 1978-79. The question that we are required to answer reads thus :

"Whether, on the facts and circumstances of the case, technical documentation by way of drawings and designs which constitute plant was entitled to extra shift allowance in accordance with a circular of the CBDT directing computation of extra shift allowance on the basis of the working of the concern as such without reference to the working of individual machinery ?"

2. The assessee, in computing its income of the previous year ended March 31, 1978, corresponding to the assessment year 1978-79, took into account a sum of Rs. 3,97,573, being extra shift allowance on capitalised documentation fees. It was the assessee's contention that these drawings and designs were required to be consulted at every stage of the multiple working of the shifts and were, therefore, admissible to extra shift allowance. Reliance was placed upon a circular issued by the Central Board of Direct Taxes dated September 28, 1970 (Circular No. F 10/83/69-ITA (II), which reads thus :

"The Board have decided that where a concern has worked double shift or triple shift, extra shift allowance will be allowed in respect of the entire plant and machinery used by the concern without making any attempt to determine the number of days on which each machine actually worked double or triple shift during the relevant previous year."

3. It was contended that, having regard to this circular, the extra shift allowance has to be computed on the basis of the working of the concern and without reference to the working of any particular plant or machinery. Depreciation being allowable on the cost of drawings and designs which were plant, they automatically qualified for extra shift allowance without regard to whether they had been actually utilised. Counsel for the assessee also pointed out that, in the depreciation table annexed to the Rules, no prohibition was indicated against the grant of depreciation in respect of documentation whereas it did appear, in the form of the letters "NESA" (meaning no extra shift allowance), against certain other items of machinery therein. The Revenue, on the other hand, contended that although technical documentation, it was not capable of multiple shift working, so that extra shift allowance thereon was inadmissible.

4. The Income Tax Officer decided the issue in favour of the Revenue; the Appellate Assistant Commissioner decided the issue in favour of the assessee. The Income Tax Appellate Tribunal, following an order passed by its Bench at Ahmedabad in the case of ITO v. Anil Starch Products Ltd. [1983] 6 ITD 1 all, held that drawings and designs were not entitled to extra shift allowance.

5. It will be seen that the question which we are required to answer is : are the drawings and designs entitled to extra shift allowance in accordance with or under the said circular. The said circular says that where a concern has worked double or triple shifts, extra shift allowance shall be allowed in respect of the entire plant and machinery used by the concern and no attempt need be made to determine the number of days on which each machine actually worked multiple shifts during the relevant previous year. Upon a plain reading of the said circular, it is patent that drawings and designs which, admittedly, are plant are entitled to extra shift allowance if it is shown that the assessee's concern had worked multiple shifts and it is not necessary to determine whether the drawings and designs themselves had actually been employed in the working of the multiple shifts.

6. Our attention was drawn by Mr. Kumar, learned counsel for the assessee, to the judgment of the Kerala High Court in Commissioner of Income Tax Vs. Punalur Paper Mills Limited, The said circular was considered there and the High Court held that no error had been committed by the Income Tax Officer in the assessment order passed by him in the matter of allowing extra shift allowance in respect of the entire machinery of the assessee in terms of the said circular without determining which machinery had worked and when. The judgment said that it was too late in the day for the Revenue to contend that the said circular would not bind it or that it should not be given effect to if it went beyond or

deviated from the terms of the statute. A circular issued by the Board could relax the rigour of the law, but it could not impose any burden upon a taxpayer.

7. Having regard to the frame of the question, we are not required to determine the effect of a circular issued by the Board and cannot take note of an argument advanced on behalf of the Revenue in terms similar to that repelled by the Kerala High Court.

8. On behalf of the Revenue, reliance was placed upon a judgment of the Calcutta High Court in *Anantapur Textiles Ltd. Vs. Commissioner of Income Tax*, The question that arose for consideration there read thus (at page 851) :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the extra shift allowance on machinery worked triple shift should be calculated with reference to the actual number of days each item of machinery had been put to use and not on the number of days the concern had worked in the previous year in view of section 32 of the Income Tax Act, 1961, and the Rules thereunder ?"

9. Having regard to the manner in which the question posed to us has been framed, this judgment can give us no assistance.

10. On behalf of the Revenue, emphasis was laid upon a departmental circular No. 109 issued on March 20, 1973 (See [1973] 89 ITR 30). It summarises the position about allowance of normal depreciation and extra shift allowance from year to year. In regard to extra shift allowance from 1970-71, the position is stated to be this :

"(1) The allowance is in addition to the normal allowance of depreciation.

(2) It can be allowed only when the assessee has claimed and proved to the satisfaction of the Income Tax Officer that a concern, for which the allowance is claimed, has actually worked double or triple shift, as the case may be.

(3) No such extra allowance for multiple shift is admissible in respect of -

(a) machinery or plant against which the letters "NESA" appear in the depreciation Schedule . . ."

11. This department circular reiterates that what is relevant is that a concern has worked double or triple shift and that is what the assessee has to prove.

12. On behalf of the Revenue, Mr. H. Raghavendra Rao drew our attention to a judgment of the Madras High Court in *South India Viscose Ltd. Vs. Commissioner of Income Tax*, where this departmental circular was referred to and it was held that the word "concern" had been used in the circular only to show that the Income Tax Officer was obliged to allow extra shift depreciation allowance if the assessee made a claim therefor; except for the use of this word, the court did not find that the departmental circular gave any kind of "global allowance" on all the machinery purchased by the assessee and set up in its business. The Income

Tax Officer, the court held, was required to apply this mind to examine which machinery owned by the assessee had been used in the extra shift. So long as the particular machinery had worked the extra shift in the relevant year for the specific period, it would be eligible for extra shift allowance on the basis of the number of days, provided the words "NESA" did not apply thereto.

13. For the purpose of this reference, we are concerned only with the terms of the said circular No. 109, dated March 20, 1973 (See [1973] 89 ITR 30). It is that circular which is referred to specifically in the question. Upon an interpretation of that circular, we are left in no doubt about the answer to the question.

14. Our attention was also drawn by Mr. Raghavendra Rao to a short note stating that the Supreme Court had dismissed a SLP against the judgment of the Allahabad High Court in Juggilal Kamlatpat Spinning and Weaving Mills Co. Ltd. v. CIT [1992] 193 ITR 25, where the High Court had held, on a reference, that extra shift allowance should be restricted only to the particular items of machinery worked and to the number of days worked. We have no means of knowing what the assessment order was in regard to which the reference had been made to the Allahabad High Court, whether the said circular dated March 20, 1973, had been brought to the attention of the court and what the questions were that were posed to the court.

15. Having regard to the manner in which the question has been framed for resolution by us, we are, as we have said, in no doubt about the answer.

16. We answer the question in the affirmative and in favour of the assessee.

17. There shall be no order as to costs.