
(2003) 02 KL CK 0061

In the High Court Of Kerala

Case No : Income Tax R. No. 311 of 1999

Mar Gregorious M.M.M. Centre

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 19-02-2003

Acts Referred:

Income Tax Act, 1961 — Section 32A(2), 34

Citation : (2003) 3 ILR (Ker) 61 : (2003) 261 ITR 443 : (2003) 1 KLT 890

Hon'ble Judges : K.S. Radhakrishnan, J;J.M. James, J

Bench : Division Bench

Advocate : C. Kochunny Nair and Dale P. Kurian, for the Appellant; P.K. Ravindranatha Menon and George K. George, for the Respondent

Judgement

K.S. Radhakrishnan, J.—The following questions of law stand referred to this Court under S. 256(1) of the Income Tax Act for our opinion.

(1) Whether on the facts and circumstances of the case the Hon"ble Tribunal was justified in denying the investment allowance on E.C.G. Machine, X-ray Unit and other laboratory equipments?

(2) Whether the Hon"ble Tribunal was justified in holding that since the above referred equipments are not independent industrial undertaking but only part of the composite undertaking and therefore the benefit of investment allowance is not available?

Before answering the above questions, we may refer to the basic facts. The assessee is a partnership firm running a hospital at Kozhencherry. In the income tax assessment for the year 1989-90 assessee claimed investment allowance of Rs. 3,38,375/- on the cost of assets like fire extinguishers, lifts, surgical instruments, laboratory equipments, water heaters, X-ray machines, generator etc. The assessing officer did not allow the claim on the ground that the machinery or plant had not been used for the manufacture or production of any article or thing. The Commissioner (Appeals) confirmed the disallowance as the

Commissioner was of the view that in the light of the decision of the apex court in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, hospital did not qualify as an industrial undertaking for the purpose of manufacture or production of any article or thing. Matter was taken up before the Tribunal. Before the Tribunal it was contended on behalf of the assessee that the decision of the Apex Court was not applicable to the facts of the case. Placing reliance on the decision of the Appellate Tribunal in the case of Dr. S. Surender Reddy 30 ITD 296 and also in the case of Dr. P. Vithal Bhat 6 ITD 560 investment allowance was allowed on the cost of equipments like x-ray machine, ECG machine, stabilizer etc. The Tribunal upheld the order of the Commissioner holding that assessee is not entitled to get investment allowance on the plant and machinery installed in the hospital. The Tribunal did not agree that at least on the ECG and the equipments in the x-ray unit and the laboratories investment allowance should be allowed. The order of the Commissioner (Appeals) was therefore upheld.

2. Counsel appearing for the applicant placed strong reliance on the decision of this Court in Commissioner of Income Tax Vs. Prasad Film Laboratories P. Ltd., . Reliance was also placed on the decision of the Guwahati High Court in Commissioner of Income Tax Vs. Dr. M.L. Agarwalla, Counsel appearing for the Revenue submitted that the assessee had installed all the equipments in the hospital for its own use and the same would not qualify as an industrial undertaking. In any view, even if it is an industrial undertaking it is not manufacturing or producing any article or thing. Hospital only gives treatment to patients and do medical treatment.

3. We heard counsel on either side at length.

4. The question that is posed for consideration is whether the assessee is entitled to get investment allowance for various equipments it has installed in the hospital. Relevant provision which is to be construed is Section 34 and 32A(2) (b). On going through the above mentioned provision, two conditions are to be satisfied so as to become eligible for allowance as regards machinery is concerned. One it must be concerned with small scale undertaking and the other such undertaking must be producing some article or thing. At the first blush it may think that hospital as such could not manufacture or produce any article or thing unlike in the case of other manufacturing unit like x-ray units, ECG machine etc. by separate industrial undertakings, but instances are many where the hospital could manufacture and produce various products for the benefits of their patients or else patients have to go outside and get materials like x-ray, scanning report etc. This Court had occasion to consider almost similar situation in Commissioner of Income Tax Vs. A. Yunus Kunju, which was subsequently followed by the Gauhati High Court in Commissioner of Income Tax Vs. Dr. M.L. Agarwalla, and took the view that assessee is entitled to investment allowance in respect of ultrasound medical diagnostic electrical equipment, air conditioner and voltage stabilizer on the ground that the assessee did not manufacture or

produce any article or thing as envisaged in S. 32A(2)(b)(ii) of the Act. The Calcutta High Court in Commissioner of Income Tax Vs. Air Survey Co. of India (P.) Ltd., in the case of the assessee, an air survey company, engaged in the business of survey, mapping, aerial photography and aero-magnetic photography claimed investment allowance u/s 32A of the Act in respect of aircraft radio purchased, after relying upon the decisions in Commissioner of Income Tax Vs. Trinity Hospital, and Commissioner of Income Tax Vs. Upasana Hospital, answered the question in favour of the assessee.

5. We are of the view the above mentioned judicial pronouncements would support the case of the assessee. The assessee is therefore entitled to get investment allowance in respect of hospital equipments and other laboratory equipments. We therefore answer the questions in favour of the assessee and against the Revenue.

6. Copy of the judgment under the seal of the Court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench as required by law.