(1974) 09 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No. 167 of 1974

Sri Durga Enterprises (Brindhavan Hotel) APPELLANT

Vs

Income Tax Officer, Benaglore-1 and Another RESPONDENT

Date of Decision : 12-09-1974

Acts Referred:
Income Tax Act, 1961 — Section 264, 32, 33, 33 (6)

Citation : (1975) ILR (Kar) 247 : (1976) 102 ITR 745

Hon'ble Judges : E.S. Venkataramaiah, J

Bench : Single Bench

Advocate : K. Ramgopal, for the Appellant; S.R. Rajasekhara Murthy, for the Respondent

Judgement

Venkataramiah, J.—The petitioner is a partnership firm which is running a hotel in Bangalore City. During the assessment year 1971-72, the petitioner claimed a sum of Rs. 10,745 by way of development rebate u/s 33 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), in respect of a lift, air conditioning plant and sanitary fittings installed in the hotel during the relevant period. The Income Tax Officer declined to allow the rebate. Aggrieved by the order of the Income Tax Officer the petitioner preferred a revision petition before the Commissioner of Income Tax (hereinafter referred to as "the Commissioner") u/s 264 of the Act. The Commissioner dismissed the revision petition and confirmed the order of the Income Tax Officer. This writ petitioner is filed against the order of the Commissioner.

2. The sole reason given by the Income Tax Officer and the Commissioner for disallowing the claim of the petitioner is that the petitioner which is not an Indian company and which is not approved by the Central Government as stated in the proviso the sub-section (6) of section 33, was not entitled to the rebate u/s 33(1)(a) and (b) (B) (iv)(b) of the Act. The relevant part of section 33 reads as follows :

"33(1)(a) In respect of a new ship or new machinery or plant (other than office appliances or road transport vehicles) which is owned by the assessee and is wholly used the purposes of the business carried on by him, there shall, in accordance with and subject to the provisions of this section and of section 34, be allowed a deduction, in respect of the previous year in which the ship was acquired or the machinery or plant was installed or, if the ship, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, a sum by way of development rebate as specified in clause (b);

(b) the sum referred to in clause (a) shall be -........

(B) in the case of machinery or plant, -.......

(iv) in any other case -......

(b) fifteen per cent. of such cost, where it is installed after 31st day of March, 1970.........

(6) Notwithstanding anything contained in the foregoing provisions of this section, no deduction by way of development rebate shall be allowed in respect of any machinery or plant installed after the 31st day of March, 1965, in any office premises or any residential accommodation, including any accommodation in the nature of a guest-house :

3. Provided that the provisions of this sub-section shell not apply in the case of an assessee being Indian company, in respect of any machinery or plant installed by it in premises used by it as a hotel, where the hotel is for the time being approved in this behalf by the Central Government."

4. On a true construction of the provisions extracted above it has to be held that the ground on which the authorities below declined to allow the rebate claimed by the petitioner is untenable.

5. A close study of section 33 makes the point clear. The extent of rebate claimable in respect of machinery and plant by an assessee running a hotel which is approved by the Central Government is set out in section 33(1)(b)(B)(ii). The case of the petitioner who is an assessee running a hotel not falling under the above clause falls under the residuary clause, enacted by the Finance Act, 1965, provided that notwithstanding anything contained in the earlier part of section 33, no deduction by way of development rebate would be admissible in respect of any machinery or plant installed after 31st day of March, 1965, in any office premises or any residential accommodation including any accommodation in the nature of a guest-house. It meant that an assessee falling under any of the categories referred to in clause (iv) of section 33(1)(b)(B) would not be entitled to claim development rebate in respect of machinery or plant installed after March 31, 1965, in any office premises or any residential accommodation, including accommodation in the nature of a guest-house, owned or maintained by the assessee. It is significant that Parliament has stated in the above clause that no rebate would be allowed in respect of machinery or plant in the

accommodation in the nature of a guest-house and not in a hotel, although in section 33 the expression "hotel" is used at other places. Hence, the expression "guest-house" should not be treated as meaning a able to hold that it refers to a place where the guests of the assessee are received and entertained gratuitously or at a concessional rate. The proviso to sub-section (6) of section 33 which was enacted in 1967 provided that the provision for disallowance of rebate in sub-section (6) would not apply in the case of an assessee being an Indian company, in respect of machinery or plant installed by it in the premises used by it as a hotel where the hotel is for the time being approved in this behalf by the Central Government. What the proviso means is that where the assessee Central Government even though the plant or machinery installed is in the portion used as office premises as a hotel approved by the Central Government even though the plant or machinery installed is in the portion used as office premises, residential accommodation including any accommodation in the nature of a guest-house maintained by the assessee would still be entitled to claim the rebate notwithstanding sub-section (6) of section 33. The language of section 33 which has been amended from time to time has led to some confusion. It is no doubt true that the use of the expression "hotel" in the proviso has created room for thinking that the scope of sub-section (6) of section 33 had been enlarged. But I do not think that such an interpretation is permissible in this case. When the case of the petitioner does not fall within sub-section (6) of section 33, it would be unjust to construe the proviso to that sub-section as taking away the rebate to which the petitioner is entitled on the ground that the expression "guest-house" in that sub-section referred to a hotel, but not to a guest-house which is maintained to entertain the guests of the assessee gratuitously.

6. Admittedly the machinery and plant in question have been installed in a hotel where the petitioner has been carrying on its business. It is not the case of the revenue that the petitioner has been running its office in the premises where the machinery and plant are installed or any of the partners or servants of the petitioner are using any part of the premises in which the machinery and plant are installed as residential accommodation. Nor is it the case of the department that the petitioner has been using the place for the purpose of receiving and entertaining its guests gratuitously. It is, therefore, clear that sub-section (6) is not at all attracted to the case on hand. Hence, the claim for rebate has to be allowed.

7. The orders, of the Commissioner and the Income Tax Officer to the extent they disallow the development rebate in respect of the plant and machinery in question are set aside. The Income Tax Officer is directed to make the necessary modification in the order of assessment in the light of the above judgment.

8. The other contention which relates to the claim for depreciation allowance u/s 32 in respect of the lift installed by the petitioner is not pressed.

9. The petition is accordingly disposed of. No costs.

