

(2003) 04 BOM CK 0055

In the Bombay High Court

Case No : Income Tax Appeal No. 247 of 2001

The Insight Diagnostic and Oncological Research Institute
Private Limited

APPELLANT

Vs

The Deputy Commissioner of Income Tax, Special Range-I

RESPONDENT

Date of Decision : 16-04-2003

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 260A, 32A, 32A(1), 32A(2)

Citation : (2003) 182 CTR 632 : (2003) 262 ITR 41

Hon'ble Judges : S.H. Kapadia, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : Pramod Y. Vaidya, for the Appellant; R.V. Desai and P.S. Jetly,
instructed by L.S. Shetty, for the Respondent

Final Decision : Dismissed

Judgement

S.H. Kapadia, J.—The short question which arises for determination in this appeal is: whether the assessee was entitled to deduction of investment allowance on CT Scan Machine installed and used by the assessee during the Accounting Year ending on 31/3/1990 relevant to the Assessment Year 1990-91.

FACTS:

2. Assessee is a Company incorporated on 31/1/1989. Its main object was to run a Diagnostic Centre in Mumbai. The assessee filed its return of income for the year ending 31/3/1990 returning a loss of Rs. 44.90 lakhs. During the year, the assessee had bought CT Scan Machine at the cost of Rs. 83.89 lakhs. In its computation of income, the assessee had claimed a deduction of investment allowance u/s 32A of the Act at the rate of 20% amounting to Rs. 16.77 lakhs on the aforesaid Machine after debiting the reserve as per Section 32A(4) of the Act. The assessment was completed u/s 143(3) of the Act vide Order dated 24/4/1992 determining the loss on account of unabsorbed depreciation at Rs. 26.90 lakhs which was allowed to be carried forward to the subsequent years but

disallowing the claim of investment allowance u/s 32A of the Act. Being aggrieved by the Order of Assessment, the matter was carried in appeal to the Commissioner (Appeals) who took the view that the Diagnostic Centre was a business and the data obtained from CT Scan Machine amounted to manufacture/production of articles or things. Accordingly, the Commissioner (Appeals) directed AO to allow the investment allowance to the assessee. Being aggrieved, the Department carried the matter in appeal to the Tribunal which took the view that the assessee was not an Industrial Undertaking engaged in manufacture of any article or thing. Accordingly, the Tribunal allowed the appeal. Being aggrieved, the assessee has come by way of appeal u/s 260A of the Income Tax Act with the following questions:-

"(a) Whether on the facts and in the circumstances of the case the Tribunal was justified in law in holding that the appellant was not entitled to deduction of investment allowance of Rs. 16,77,837/- on the C.T. Scan machine installed and used by the appellant during the year under consideration?

(b) Whether on the facts and in the circumstances of the case the Tribunal was justified in law in holding that the diagnostic centre run by the appellant was not an industrial undertaking?

(c) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that generating reports from C.T. Scan machine did not amount to manufacture or production of article or thing?"

ARGUMENTS:

3. Mr. Pramod Vaidya, learned Advocate for the assessee submitted that the activity of the assessee was a business activity. That, the CT Scan Machine was used to X-ray internal parts of the human body and to locate the diseases and, therefore, the CT Scan Machine resulted in manufacturing or producing articles/things. That, taking the photographs was the main activity of the Machine. He relied upon several Judgments of the various High Courts in support of his contention that the assessee was entitled to deduction of investment allowance of Rs. 16.77 lakhs on CT Scan Machine installed and used by the assessee during the year in question. He contended that the assessee was recognized as a Small Scale Industrial Undertaking and in the circumstances it was entitled to deduction of investment allowance.

FINDINGS:

4. Investment allowance is granted u/s 32A. Sub-section 1 requires that the machinery or plant should be owned by the assessee and it should be wholly used for the purpose of the business carried on by the assessee and that such machinery or plant should be the machinery or plant specified in Sub-section 2 i.e. it should be new machinery or plant installed in an Industrial Undertaking for the purposes of the business of manufacture or production of articles or things (see Commissioner of Income Tax v. Shaan Finance Pvt. Ltd. reported in 231 ITR

308). The question which arises for determination in this appeal is: whether the above pre-conditions to attract Section 32A are satisfied in this case? On facts, the Tribunal has found that the CT Scan Machine has been installed in a Diagnostic Centre which is not an Industrial Undertaking and, therefore, the assessee was not argued to deduction of investment allowance. It has been argued on behalf of the assessee that the Diagnostic Centre is the business activity and, therefore, it is an Industrial Undertaking. Hence, assessee was entitled to claim deduction u/s 32A of the Act. We do not find any merit in this argument. Firstly, as stated above, Sub-section 1 of Section 32A requires that the plant or machinery should be owned by the assessee; that it should be used for the purpose of business carried on by the assessee and that such plant or machinery should be installed in an Industrial Undertaking for the purpose of business of manufacture or production of an article or thing. It is this last pre-condition which is not fulfilled in this case. The CT Scan Machine is installed in a Diagnostic Centre. That Diagnostic Centre is not an Industrial Undertaking for the purpose of business of manufacture. In this connection, one must read the expression "Industrial Undertaking" in the context of Income Tax Act and not in the context of the Industrial Disputes Act and, if so read, it is clear that the activity should be of production of any article or thing and any activity which primarily concerns production of any article or thing would fall in the category of Industrial Undertaking [see *Natvarlal Ambalal Dave Vs. Commissioner of Income Tax*,]. In the present case, the Tribunal has found on facts that the CT Scan Machine was a part of Diagnostic Centre. That, the CT Scan Machine played an ancillary role in the working of the Diagnostic Centre. We do not see any reason to interfere with this finding of fact. The important point, however, which we would like to emphasize is that u/s 32A, the machinery or plant should be installed in an Industrial Undertaking for the purpose of business of manufacture or production of articles/things. In the present case, since CT Scan Machine is installed in a Diagnostic Centre, one of the pre-conditions to attract Section 32A is not satisfied. Hence, the assessee was not entitled to deduction of investment allowance on CT Scan Machine installed and used by the assessee during the year under consideration. In the case of *Fariyas Hotels Pvt. Ltd. v. Commissioner of income tax* reported in 11 ITR 390, the Bombay High Court has laid down a test to attract Section 32A of the Income Tax Act. In that Judgment, it has been held that deduction on account of investment allowance is admissible only in respect of plant or machinery specified in Section 32A(2). That, investment allowance is available only in respect of machinery which is used for the purpose of manufacture of articles or things and it is not available in respect of machinery installed for the purpose of business of the assessee which does not fall within the specification contained in Section 32A(2). In the present case, the reports of patients coming out from CT Scan Machine did not amount to manufacture or production of article or thing and, therefore, one of the basic tests laid down in *Commissioner of Income Tax, Karnataka, Bangalore Vs. M/s. Shaan Finance (P) Ltd., Bangalore*, is not satisfied. In the case of *Commissioner of Income Tax, Vidarbha, Nagpur v. Dr. P.K. Thamaskar (H.U.F.)*, Nagpur decided on October 20,

1992 vide Income Tax Reference No. 155 of 1984, it has been held that X-ray films cannot be treated as manufactured articles or things as contemplated by Section 32A(2)(b)(iii). That, the exposed film is not an article or thing having any commercial value. That, it is only a media for the purposes of knowing the ailments in the human body. That, the fees charged is not the price of the exposed film but it is charged for services rendered. That, essentially, the price paid was for rendering professional service. In the circumstances, it was held by the Bombay High Court that X-ray films cannot be treated as a manufactured article or thing u/s 32A(2)(b)(iii). In our view, the said Judgment applies to the facts of the present case. Secondly, the CT Scan Machine was installed in a Diagnostic Centre run by the assessee which Centre was not an Industrial Undertaking and, therefore, the test laid down by the Bombay High Court in the case of Fariyas Hotels Pvt. Ltd. (supra) is not satisfied.

5. Accordingly, we answer all the above three questions in the affirmative i.e. in favour of the Department and against the assessee.

ORDER

6. Accordingly, assessee's appeal stands dismissed with no order as to costs.