

* **HIGH COURT OF DELHI : NEW DELHI**

+ **ITR No. 193 of 1988**

Judgment reserved on: April 02, 2008

% Judgment delivered on: April 11, 2008

The Commissioner of Income Tax
Delhi-XIII,
New Delhi

.... Petitioner

Through Mr. J.R. Goel, Advocate.

Versus

Dr. Yogender Sharma,
E-34, Krishan Nagar,
Delhi-110051

.... Respondent

Through Ms. Kavita Jha with Mr. Sandeep
S. Karhail, Advocates.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MADAN B. LOKUR, J.

In this reference under Section 256(1) of the Income Tax

Act, 1961 (for short the Act), the following question of law has been referred for our opinion: -

“Whether on the facts and in the circumstances of the case, the ITAT was correct in law in directing the ITO to grant investment allowance to the assessee in terms of Section 32A of the Income-tax Act, 1961?”

2. The Assessee is a practicing Radiologist and he had installed an X-ray machine on which he claimed a deduction by way of an investment allowance under Section 32A of the Act. This was disallowed by the Assessing Officer and also by the Commissioner of Income Tax (Appeals). However, the Income Tax Appellate Tribunal (for short the Tribunal) while relying upon an order passed by the Nagpur Bench of the Tribunal in some other case came to the conclusion that the Assessee was entitled to the deduction under Section 32A of the Act. It is in these circumstances that the present reference is made to this Court.

3. It is not clear from the statement of the case whether the Assessee had purchased the X-ray machine for installation in his clinic or somewhere else. Learned counsel for the parties say that we may proceed on the basis that X-ray machine was installed in the clinic of the Assessee.

4. Section 32(A) (1) of the Act provides that an Assessee may claim a deduction (under certain conditions) in respect of machinery or plant specified in sub-section (2), which is owned by the Assessee and is wholly used for the purposes of the business carried on by him.

5. Section 32A (2) of the Act provides that the machinery or plant referred to in sub-Section (1) would, inter-alia, be the following namely: -

“any new machinery or plant installed after 31st March, 1976 in a small-scale industrial undertaking for the purposes of business of manufacture or production of any article or thing.”

6. A reading of the above provision shows (as far as we are concerned) that the machinery or plant should first of all be installed in a small scale industrial undertaking. The second requirement is that the machinery or plant must be used for the purposes of business of manufacture or production of any article or thing.

7. We have been told by learned counsel for the parties that an issue similar to the present, had arisen in several High Courts and all the High Courts except the Bombay High Court have taken a view that in a clinic or a hospital or a diagnostic centre, such machinery or plant would be entitled to the benefit of investment allowance. Unfortunately, we are not in agreement with the High Courts other than the Bombay

High Court.

8. In ***Commissioner of Income Tax v. Trinity Hospital, [1997] 225 ITR 178***, the Rajasthan High Court dealt with X-ray machines, ultrasound scanner etc. installed in a hospital/nursing home. The Rajasthan High Court proceeded to consider whether an X-ray machine, ultrasound scanner etc. produces or manufactures any article or thing. This question was answered in the affirmative and with regard to the question whether the hospital was a small scale industrial undertaking, reliance was placed upon Explanation (2) to Section 32A(2) of the Act, which provides as follows: -

“An industrial undertaking shall be deemed to be a “small-scale undertaking”, if the aggregate value of the machinery and plant (other than tools, jigs, dies and moulds) installed, as on the last day of previous year, for the purposes of the business of the undertaking, does not exceed.....”

9. The Rajasthan High Court held that for being classified as a small scale undertaking, it is necessary that the investment made should be less than the prescribed financial limit provided in the Act and since the Assessee had spent less than that limit on the installation of machines, it is a small scale industrial undertaking.

10. In ***Commissioner of Income Tax v. Upasana Hospital, [1997] 225 ITR 845*** the Kerala High Court dealt with an X-ray machine

and other accessories such as I.C.C.U. and E.C.G. equipment in a hospital. The Kerala High Court proceeded on the basis that the Assessee in that case was carrying on a business and reliance was again placed upon Explanation (2) to Section 32A(2) of the Act for coming to the conclusion that the Assessee was a small scale industrial undertaking since the cost of the plant and machinery installed was below the prescribed financial limit.

11. The Andhra Pradesh High Court in ***Commissioner of Income Tax v. Dr. S.Surender Reddy***, [2000] 243 ITR 110 held that an X-ray machine produces a different article from what is put into the machine, namely, an X-ray film and, therefore, the Assessee in that case would be entitled to the benefit of investment allowance since the machine is used for the manufacture or production of an article or thing.

12. The Gauhati High Court in ***Commissioner of Income Tax v. Dr. M.L. Agarwalla***, [2002] 258 ITR 102 followed the view expressed by the aforesaid three High Courts as well as the view expressed by the Madras High Court in ***Commissioner of Income Tax v. Prasad Productions (P.) Ltd.***, [2001] 247 ITR 445. The same view has been expressed by the Kerala High Court in ***Mar Gregorious Memorial Muthood Medical Centre v. Commissioner of Income Tax***, [2003] 261

ITR 443 and by the Gujarat High Court in **Commissioner of Income Tax v. Suresh and Family Trust, [2007] 288 ITR 101.**

13. As mentioned above, the Bombay High Court has taken a different view in **Insight Diagnostic and Oncological Research Institute Pvt. Ltd. v. Deputy Commissioner of Income Tax, [2003] 262 ITR 41.** In this case, a CT Scan machine was installed in a diagnostic centre and it was held that a diagnostic centre is not an industrial undertaking in the context of the Income Tax Act. In fact the expression “industrial undertaking” must be read in the context of the Income Tax Act and not in the context of the Industrial Disputes Act.

14. As mentioned above, we are in agreement with the view taken by the Bombay High Court. What is required to be seen is that the machinery or plant must be installed first of all in a small scale industrial undertaking and secondly it must be used for the purposes of business of manufacture or production of any article or thing. The primary question is, therefore, whether a clinic or a diagnostic centre is at all a small scale industrial undertaking. Explanation (2) to Section 32A(2) is a deeming provision and an industrial undertaking shall be deemed to be a small scale industrial undertaking, if it satisfies certain conditions. But, first of all, it must be an industrial undertaking before

the deeming provision with regard to the financial limits can be invoked. In other words, if a unit is not an industrial undertaking then, even if it fulfills the financial requirements, it cannot be deemed to be a small scale industrial undertaking. Therefore, what is to be first seen is whether a unit is an industrial undertaking or not. If the answer is in the negative then the deeming provision cannot be invoked.

15. In our opinion the expression “industrial undertaking” is to be used in the context in which it is used in the Income Tax Act and not in the context in which it is used in other laws such as the Industrial Disputes Act. If so understood, it cannot be said by any stretch of imagination or by the use of common English language, that a hospital or a clinic or a diagnostic centre or any such unit is an industrial undertaking. It may be that a machine or a plant within a clinic or a hospital or a diagnostic centre may manufacture or produce an article or thing; but that would not convert a clinic or a hospital or a diagnostic centre into an industrial undertaking. The unit must first be an industrial undertaking and it is then that we have to see whether it can be deemed to be a small scale industrial undertaking and then if it is involved in the production or manufacture of an article or thing.

16. The primary condition in the present case is not met

inasmuch as the clinic of the Assessee cannot be said to be an industrial undertaking. If that be so, it is of no consequence whether the X-ray machine manufactures or produces an article or a thing. The primary condition is not met in the first place

17. In our opinion, the question of law referred to us is required to be answered in the negative in favour of the Revenue and against the Assessee.

18. We wish to express our gratitude to Ms. Kavita Jha, Advocate who spent so much time and effort on the case as an amicus and assisted us unflinchingly.

19. The reference is disposed of.

MADAN B. LOKUR, J

April 11, 2008
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V.B. GUPTA, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.