**First Leasing Co. of India Ltd. Vs. Income-tax Officer**

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**Court** : Income Tax Appellate Tribunal ITAT Madras

**Decided On :** Nov-30-1982

**Reported in** : (1983)3ITD808(Mad.)

**Judge** : G Krishnamurthy, Vice, T Rangarajan

**Appellant** : First Leasing Co. of India Ltd.

**Respondent** : income-tax Officer

**Judgement** :

1. This is an appeal in which the point raised is res integra and quite interesting too. It deals with the question whether investment allowance contemplated in Section 32A of the Income-tax Act, 1961 ('the Act'), is allowable to an assessee who does not himself engage in production or manufacture of goods or things referred to in Sub-section (2) of Section 32A, but purchases machinery and lends it to those who utilise it for the purpose of manufacture of goods referred to in Sub-section (2) of Section 32A. The plea of the assessee in this case is that the asset was owned by it, was brand new and was wholly used for the purpose of the business of the assessee which is that of leasing and the leased machinery was used in an industrial undertaking for the purpose of business referred to in Sub-section (2) of Section 32A and thus the requirements of Section 32A are fulfilled. The argument of the assessee is based on the view that the Act does not require the assessee to engage in an industrial activity. It merely states that the asset should be installed in an industrial undertaking engaged in the business of construction, etc.

2. On the other hand, the revenue's view is that since the assessee was not carrying on any business activity on its own, by not putting the machines in question to such use as is referred to in Sub-section (2) of Section 32A, the investment allowance was not admissible to the assessee.

3. To resolve this dispute which is quite of interest, we may now refer to the facts in this case in a little more detail.

4. The assessee is a public limited company which came into existence, as is seen from the memorandum of association, for the main purpose of purchase of all forms of movable and immovable property including machinery and equipment and to lease or otherwise deal with them in any manner whatsoever including resale thereof, to carry out financing operations and perform financing services including factoring, making of loans both short and long-term along with provision of financial software such as computer programmes, to grant permission to other entities to carry on leasing under the direction of the assessee-company, to provide a leasing advisory/counselling service to other entities. It purchased machinery of various kinds and pursuant to its main object of leasing it to others, leased the said machinery to various persons, like, Eastern Commercial & Industrial Enterprises (P.) Ltd., Shaw Leiner Ltd., Beama Manufacturers (P.) Ltd. and so on. The machinery leased out by the assessee had been employed by the lessees in such industrial undertakings as are referred to in Sub-section (2) of Section 32A. That the machinery leased out by the assessee-company had been employed by the lessees for the purposes which are referred to in Sub-section (2) of Section 32A and would entitle them to the grant of investment allowance if those activities were carried on by the assessee itself, was not disputed.

5. The assessee claimed investment allowance of Rs. 61,032 for the assessment year under appeal. The ITO disallowed the claim on the ground that investment allowance was admissible only if the assets owned by the assessee were used in the business carried on by the assessee and since the assets were leased out and were used by the lessees, the assessee was not entitled to the claim. Aggrieved by this disallowance, an appeal has been preferred before the Commissioner (Appeals). He also agreed with the ITO and confirmed the disallowance.

He held that the assessee did not fulfil the conditions laid down in Sub-section (2) of Section 32A although the conditions laid down by Sub-section (1) of Section 32A had been fulfilled. He held that though the assessee owned the assets and used them for the purpose of the business carried on by it, namely, business of leasing, it was not possible to say that the machinery or plant had been installed in order that the requirement of Sub-section (2) of Section 32A could be said to have been satisfied. He also held that the assessee's business did not constitute an industrial undertaking to enable the assessee to entitle it to the investment allowance. Reliance was placed before him on a decision of the Allahabad High Court in the case of Ajodhya Prasad Tara Chand Khekra v. CIT [1967] 66 ITR 576, which the Commissioner (Appeals) distinguished by pointing out that that judgment related to allowance of development rebate under Section 19(2)(vi)(b) of the 1922 Act and that the conditions laid down in the 1922 Act for the allowance of development rebate were totally different from the conditions prescribed for the allowance of investment allowance under Section 32A of the 1961 Act. It will be seen from the order of the Commissioner (Appeals) that although he held that the leasing of machinery is a business carried on by the assessee, the claim for investment allowance was inadmissible, because the machines so leased out, could not be said to have been installed by the assessee so as to satisfy the requirements of Section 32A(2)(b). It was against this order of the Commissioner (Appeals) that the present appeal is directed.

6. Shri N.A. Palkhivala, the learned counsel appearing for the assessee, pointed out, at the outset, that the object of enacting Section 32A is to give a boost, a fillip to rapid industrialisation in the country by providing incentives in the shape of investment allowance which was certainly a great concession and a boon to start new industries in the desired channels for which this section has provided for. This is also in lieu of the initial depreciation that was formerly admissible, but now replaced with investment allowance, with effect from 1-4-1976. The grant of allowance under Section 32A should be viewed in the light of this object and any interpretation placed on it should be to further that object and not to stifle it. The interpretation sought for, by the revenue is both narrow and hyper-technical and would not promote but impede the legislative object. The business of the assessee-company is to lease out the machinery thus helping the persons who

are not in a position to invest huge sums of money in the purchase of machinery. Installation of such machinery by them and use by them for the manufacture of specified categories of goods in permissible lines of business is direct, if not indirect installation by the assessee himself because the word 'installation' used in Section 32A(2)(b) meant only putting the machinery into operation ; bringing it into use, there being no requirement that the assessee should instal it in his own business.

This is a recognition by the Legislature, of the particular form of business that the assessee has been carrying on, namely, leasing. It is, therefore, incorrect to state that the machinery leased out by the assessee has not been installed as was wrongly supposed by the Commissioner (Appeals). Leasing out of the machinery is thus in accord with the legislative intent enabling such business also to obtain the benefit of the investment allowance. Section 32A(1) requires that the machinery or plant should be : (a) owned by the assessee and (b) should be wholly used for the purpose of business carried on by the assessee.

As the business carried on by the assessee is that of leasing of the machinery, the main ingredient of Section 32A has been satisfied. This being the finding of the Commissioner (Appeals) also, he should not have rejected the claim of the assessee by further saying that the requirement of Sub-section (2) of Section 32A has not been satisfied on the erroneous view that the machinery had not been installed by the assessee. He submitted that there was a contradiction in the views taken by the Commissioner (Appeals). He then submitted that on the interpretation placed by the revenue on this section, neither the hirer would get the investment allowance because he is not the owner of those assets, nor the assessee because the machinery had not been installed by it. This, according to him, is travesty of justice and creation of hardship by a peculiar interpretation placed upon the section by the executive when the Legislature did not intend it. He then submitted that there was a distinction between Clause (a) of Sub-section (2) and Clause (b) of Sub-section (2) of Section 32A. Clause (a) stated that a new ship or new aircraft which is also entitled to investment allowance should be 'engaged in the business of operation of ships or aircraft carried on by the assessee.' Here, the requirement is by the use of the words put in, in inverted commas, that the new ship or new

aircraft should be used by the assessee in its business. Such a requirement is absent in Clause (b) because it only spoke of the 'machinery or plant installed'. It does not say that the new machinery or plant should be used by the assessee in the business carried on by it unlike in the case of new ship or new aircraft. If the machinery or plant had been installed (i.e.) put into operation, or brought into use for the purpose of construction or manufacture or production of any article or thing, no matter by whomsoever, the requirement of Section 32A is satisfied, if the assessee continues to be the owner. Thus the construction, manufacture or production of articles or things, is to be achieved by the machinery or plant which is new and owned by the assessee. Therefore, the combined effect of Sub-sections (1) and (2) of Section 32A, is that the assessee must own the assets and those assets must be employed in the business of construction, manufacture or production of any article or things excluding the things specified in the Eleventh Schedule, then the owner of the machinery would be entitled to the investment allowance. This is in short the argument addressed to us by the learned counsel for the assessee, Shri N.A.Palkhivala.

7. The learned standing counsel for the department, Shri A.N.Rangaswamy, who has been specially engaged for this case, submitted by taking us through the Finance Minister's speech when Section 32A was introduced in the Parliament and also by taking us through 'Maxwell on The Interpretation of Statutes', 12th Edition, that there was a difference between a 'trade' and 'industry'. What was contemplated by Section 32A is to allow investment allowance by way of promotion of industries to those assessees who used the machinery in their business for the purpose of the business of construction, manufacture or production of articles or things and not to those who supplied the machinery to those industrial undertakings who are engaged in the business of these specified goods. A person who was engaged in supplying machinery is only a trader. A trader is not entitled to investment allowance. Therefore, the owner of the machinery must also use it and if the owner of the machinery does not use it, he is not entitled to the investment allowance, howsoever he exploits this machinery. He then referred us to the Circular issued by the CBDT and various other rules to point out that the object is only to allow investment allowance only when it was used by the assessee being the owner thereof for the production of the

contemplated goods or things.

He then submitted how there is internal evidence in the section itself to exclude leasing of machinery. By pointing out that lease also is a form of 'transfer', he submitted that under Sub-section (5) of Section 32A, any investment allowance made would be deemed to have been wrongly made if the machinery or plant is sold or otherwise 'transferred' by the assessee before the expiry of eight years. Since the leasing being a form of transfer, the allowance given would have to be immediately withdrawn because it should then be deemed to have been wrongly allowed which shows that the Legislature did not contemplate the allowance of investment allowance in respect of lease of machinery. He then submitted that the expression 'wholly used' in Section 32A must mean 'exclusively used' which meant by the assessee himself and not by anyone else. For this proposition, he relied upon the decision of the Madras High Court in the case of CIT v. Pandyan Bank Ltd. [1969] 71 ITR 707 and that of the Calcutta High Court in the case of CIT v. J. Thomas & Co. (P.) Ltd. [1977] 110 ITR 566. He also placed reliance upon the decision of the Supreme Court in the case of K.P. Varghese v. ITO [1981] 131 ITR 597 and the decision of the Delhi High Court in Addl.

CIT v. Mrs. Avtar Mohan Singh [1982] 136 ITR 645 for the view that if necessary violence could be done to the language used in the statute if the intention of the Legislature is not clearly brought out. The interpretation to be placed must be to further the object for which the section had been enacted and not to defeat it. He also placed reliance upon the decision of the Bombay High Court in the case of CIT v.Plastics Packaging (P.) Ltd. [1982] 134 ITR 236 and the decision of the Madras High Court in the case of A.R. Krishnamurthy & A.R. Rajagopalan v. CIT [1982] 133 ITR 922 for the proposition that the assessee must utilise the machinery in its own business. Only then it would be entitled to the allowance of the investment allowance. Thus the main argument of Shri Rangaswamy has been, the expression 'wholly used' must mean exclusively used and if so understood it must be used by the assessee and by none else and if that is so, the user by the lessees cannot be equated with the user by the assessee and, therefore, the claim of the assessee is inadmissible even if all the other conditions are satisfied. He also pointed out that what was done by the assessee was nothing

but financing moneys in kind by way of machinery and such financing does not amount to installation of machinery for the purpose referred to in Sub-section (2).

8. Shri Palkhivala, in his reply, submitted that the attempt of the learned standing counsel was to give to the expression 'business' used in Sub-section (2) a different meaning from the meaning assigned to it in Sub-section (1). He submitted that there was nothing either in Sub-section (1) or in Sub-section (2) to suggest that Sub-section (2) controls Sub-section (1) in so far as the meaning of the expression 'business' is concerned. Sub-section (1) when it used the word 'business' refers to the business carried on by the assessee.

Sub-section (2), when it uses the expression 'business' refers to the business in which the machinery has to be used. Since the expression 'business' used in Sub-section (2) is in a different context and not the same as the meaning of 'business' used in Sub-section (1), Sub-section (2) does not attempt to control Sub-section (1). He then submitted that even though the word 'lease' has been used in the agreement, what was actually meant was hiring or licencing and hiring or licencing was different from the concept of leasing. Since there was no leasing contemplated by the assessee even if the word 'lease' has been used in the agreement, there is no question of transfer involved in it and consequently the argument based upon Sub-section (5) of Section 32A. is not available to the revenue. He then submitted that the attempt of the learned standing counsel to substitute the words in the statute should not be permitted. Since there are no synonyms in the English language, we will be doing great violence if the word 'wholly' is substituted by the word 'exclusively'. The expression 'wholly' has a different connotation and that connotation is not to be understood by substituting the word 'exclusively' for the word 'wholly' when the entire meaning could change. Even other-wise, if the context in which the word 'wholly' is used is borne in mind, i.e., before the expression business carried on by the assessee, the expression 'exclusively' does not give a different meaning as to suggest that the machinery should be used exclusively by the assessee himself and no one else.

9. This section, said to be capable of yielding two meanings to the extent relevant, is in the following terms : 32A. (1) In respect of a ship or an aircraft or 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, there shall, in accordance with and subject to the provisions of this section, be allowed a deduction in respect of the previous year in which the ship or aircraft was acquired or the machinery or plant was installed or, if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, of a sum by way of investment allowance equal to twenty-five per cent of the actual cost of the ship, aircraft, machinery or plant to the assessee : Provided that no deduction shall be allowed under this section in respect of- (a) any machinery or plant installed in any office premises or any residential accommodation, including any accommodation in the nature of a guest house ; (c) any ship, machinery or plant in respect of which the deduction by way of development rebate is allowable under Section 33 ; and (d) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head 'Profits and gains of business or profession' of any one previous year.

(2) The ship or aircraft or machinery or plant referred to in Sub-section (1) shall be the following, namely :- (a) a new ship or new aircraft acquired after the 31st day of March, 1976, by an assessee engaged in the business of operation of ships or aircraft ; (b) any new machinery or plant installed after the 31st day of March, 1976, (i) for the purposes of business of generation or distribution of electricity or any other form of power ; (ii) in a small-scale industrial undertaking for the purposes of business of manufacture or production of any article or thing ; or (iii) in any other industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing, not being an article or thing specified in the Eleventh Schedule.

10. A careful anylsis of this section shows for eligibility of investment allowance, the following conditions seem necessary : (a) there should be a ship or aircraft or machinery and plant which is new and must, be acquired after the 31st day of March, 1976, (c) it must be wholly used for the purposes of business carried on by the assessee, (d) the ship or the aircraft or the machinery or plant must be such as is specified in Sub-section (2), (e) if it is ship or aircraft, the assessee must be

engaged in the business of operation of ships or aircraft, (f) in the case of machinery or plant, it must be installed for the purposes of business referred to in Sub-Clauses (i), (ii) and (in) of Clause (b) and it should not be machinery or plant installed in any office premises or any residential accommodation or a guest house, or any office appliances or road transport vehicles, or in respect of which development rebate is allowable under Section 33, or in respect of machinery or plant, the whole of the actual cost of which is allowed as a deduction.

If the above requirements are satisfied, investment allowance ordinarily should have been allowed. Taking Sub-section (1) of Section 32 independently, we found that it lays down the qualifications for the allowance of investment allowance. We are not concerned in this appeal with the ship or aircraft. We are concerned only with machinery or plant. The machi-nery or plant, for the purpose of investment allowance, must first be such as specified in Sub-section (2). Second requirement is, it must be owned by the assessee. Third requirement is, it must be wholly used 'for the purposes of the business carried on by the assessee'. The business carried on by the assessee is that of leasing machinery and plant, to the concerns engaged in the activities specified in Sub-clause (iii) of Clause (b) of Sub-section (2). In the business of leasing of machinery and plant, the machinery and plant owned by the assessee has been fully used. There is neither doubt nor dispute about that aspect. Thus the third requirement is satisfied. But the question is, when Sub-section (1) stated that the machinery or plant should be such as is specified in Sub-section (2), is it laying down a condition that the assessee should use it. To us it appeared that it was only describing the machinery or plant in respect of which investment allowance could be allowed. Except the purpose of description of machinery entitled to investment allowance, Sub-section (2) has no other purpose. It does not further prescribe that the assessee should use the machinery in its own business. This requirement is specifically provided for ships and aircrafts. Even there, all that Sub-section (2)(a) lays down is that the assessee should be one, engaged in the business of operation of ships and aircrafts to get the allowance. It does not further prescribe that the assessee should use them in its business. Except for the inference that an assessee engaged in the business of operation of ships and aircrafts would use the new ship or aircraft acquired after 1-4-1976 for its own business, even such an assessee can still allow the new ship or

aircraft for exploitation by others. Even in such a case, it seemed to us, that such exploitation of ship or aircraft would entitle the assessee to claim investment allowance, provided he continues to be an assessee engaged in the operation of ships and aircrafts. Thus, the first condition is whether the machinery or plant in respect of which investment allowance is claimed, is the one specified in Sub-section (2). We have to, therefore, go to Sub-section (2) only for the purpose of finding out whether the machinery or plant satisfied the conditions mentioned therein. The conditions mentioned in Sub-section (2)(b) are that the machinery and plant must be new, it must be installed after 31-3-1976 in an industrial undertaking for the purpose of business of construction, manufacture or production of any article or thing not being an article or thing specified in the list in the Eleventh Schedule. The machinery and plant must be installed in any industrial undertaking for the purposes of the business specified therein. The machinery and plant, that the assessee had leased out, had been installed by the hirers, in their industrial undertakings for the specific purpose of the business referred to in Clause (b)(iii). The installation by the lessee is installation by the assessee. The assessee did not part with his title over the machinery and plant. He continued to be its owner. The lease agreement is only for a period of 6 years which is non-cancelable. There is no option to the hirer in the lease agreement, to purchase the machinery. The assessee is entitled to all the claims of insurance as lessor though the premium is to be paid by the lessees. The insurance policies against fire, theft are taken in the name of the lessor (i.e.) the assessee. The hirer must return the machinery to the lessor after the period of lease, maintained in good condition except for the normal wear and tear. There is a specific provision in the lease agreement that the lessee, shall at all times use the machinery for the stated purpose and would indemnify the assessee if the machinery has been used for a purpose other than the one stated in the agreement, That is to say, the lessee shall keep the machinery installed always for the purpose of business specified in Clause (b)(iii) of Sub-section (2). Installation of machinery and plant, as will be seen from Sub-section (2)(b) is the primary requisite, secondary being the purpose for which it is installed. The primary requisite of 'installation' of machinery and plant is not further qualified, or conditioned by any requirement that the assessee should instal it. If the machinery has been sold, then the assessee would cease to be its owner in which

case the requirement of ownership would not be satisfied and the investment allowance would become inadmissible. Only in such an event, can it be said that the assessee is a trader in machinery and plant though such machinery and plant is used for the categories of business referred to in Sub-section (2)(b)(iii). Not till then. Thus a careful reading of Sub-section (1) would show that, when it referred to machinery and plant specified in Sub-section (2), it was only describing, specifying the nature of machinery and plant that would be entitled to investment allowance.

That is why Sub-section (2) starts with the words 'the ship or aircraft, or machinery or plant referred in Sub-section (1) shall be the following'. The words 'shall be the following' specify the use of the type of machinery and plant, which the Legislature intended to encourage. Any machinery and plant, which is new, purchased after 31-3-1976 and installed for the purpose of business of construction, etc., shall be entitled to investment allowance, provided the assessee is the owner thereof and such machinery is wholly used for the purpose of business, it was carrying on. Now, it can be said, that the business, the assessee has been carrying on, should be such, as to require the installation of the machinery and plant for its business.

This argument is possible and is not out of place. But here, the assessee has been carrying on the business of leasing machinery and plant and ensuring by the lease agreement that the said machinery is put to specified uses. In that 'leasing of machinery' business, these machines and plant were wholly used. There is no doubt about that. Thus the requirement of using the machinery and plant for the purpose of the business, carried on by the assessee, is satisfied.

11. Here, the contention of the learned standing counsel is that the word 'wholly' should be read as 'exclusively'. First, we are unable to accept his suggestion, for we are powerless, to substitute words in a statute. We have to read the words used in a statute harmoniously, giving to each word, the assigned meaning and then arrive at the intention, apply it to a set of given facts. Beyond that, we have no power to test the meaning of a section, by substituting such words, which may appear, to bring out the controversy, because, the suggested word may be the culmination of a thinking in one particular view and may project that view. That

perhaps is the reason, why in construing statutes, words are not permitted to be substituted. So, in the process of suggesting a construction which gives effect to the intention of the Legislature and the object behind the grant of the allowance, the suggestion made by the learned standing counsel to substitute the word 'exclusively' for the word 'wholly', is perhaps not permissible. We will refer to the other particular arguments he made, a little later.

12. This interpretation which we are seeking to place upon what was contemplated by Sub-section (2) will also in a manner become clear if Sub-section (1) of Section 32A is read, particularly the expression 'for the purpose of the business carried on by'. By contrast, Sub-section (2) which requires the plant or machinery to be used in a specified category of industrial undertaking does not require that the industrial undertaking should be carried on by the owner of the plant or machinery who claims investment allowance. At this stage, Mr.

Palkhivala has introduced an argument based upon the Explanation (2) to Section 32A(2) which deals with the question of what should be deemed to be 'a small-scale industrial undertaking'. This question has to be determined with reference to the aggregate value of the machinery and plant installed for the purpose of the business of the undertaking because Clause (b) of the Explanation provided that for valuing the machinery or plant which is 'hired by the assessee', the actual cost thereof to the owner should be taken into account. This provision shows that the Legislature did contemplate that for the purpose of this section, machinery or plant may be held by one person and actually used for the purposes of production by another and it is not necessary that the owner of the machinery and the actual manufacturer should be the same person. This argument appears to us to be justified and acceptable. Since Section 32A(1) used the expression 'for the purpose of business carried on by him', the purpose of hiring out of plant and machinery was admittedly the business as considered by the Commissioner (Appeals) and cannot be held to have been excluded from the various businesses contemplated for the purpose of the grant of the investment allowance. If hiring out of plant and machinery is one of the recognised modes of doing business, the section should be so construed as to cover that type of business also. If in that business, the plant and machinery have been fully used, the assessee would not

be disentitled to the investment allowance if the plant and machinery is such that it answered the description given in Sub-section (2). It is also a trite law that a provision for deductions or relief should be construed liberally and in a manner as to effectuate the object of the Legislature and not to defeat it. If the object of the Legislature is to grant investment allowance for the promotion of industries in the country to achieve rapid industrialisation, the interpretation to be placed upon it should be such as to further that object and not to defeat it. If the construction placed upon this section by the revenue is adopted, as we have stated earlier, no party, neither the assessee nor the owner of the industrial undertaking would be able to get the investment allowance and it would defeat the very purpose of the legislation, namely, promoting small-scale industrial undertakings and other industrial undertakings producing the different articles except those specified in the Eleventh Schedule to the Act.

13. We may also refer to another aspect at this stage. Section 32A(2) did not specify who should instal the machinery, whether the owner of the machinery or the actual manufacturer. Thus there is doubt about that aspect. It is now a well settled rule of law that in the interpretation of fiscal statutes, if there is a doubt as to its construction, the construction most beneficial to the subject should be adopted. The earliest case on the point by the Supreme Court was in CIT v. Shahzada Nand & Sons [1966] 60 ITR 392 and the latest was in the case of CIT v. Madho Pd. Jatia [1976] 105 ITR 179. Here, the learned standing counsel submitted an argument based upon incorporating the terms of Sub-section (2)(b)(iii) bodily in Sub-section (1) to suggest that, then it would mean that the plant or machinery described in Sub-section (2)(b)(iii) should be owned by the assessee and should be wholly used by him for the purpose of business referred to in Sub-section (2)(b)(iii). This argument, we are unable to accept, for the simple reason that it does create a doubt in construing the word 'business' referred to in Section 32A(1) and (2)(b)(iii), whether it refers to the business carried on by the assessee, where the plant and machinery on which investment allowance is claimed, is employed and used by the assessee, or describes the business of manufacture, etc.

...in which such machinery should have been installed. Since the purpose for the use of the expression 'business' is different in both the sub-sections, the substitution sought for, by the learned standing counsel for the revenue, even if permitted, may not lead to the construction which he had been canvassing for. This very fact shows how difficult it is to interpret this provision, to what grave doubts it is leading to. Here, in this area, the maxim laid down by the Supreme Court referred to above, would apply. The learned standing counsel's argument that Section 32A(1) speaks of the business and the business is the business of construction referred to in Sub-section (2)(b)(iii) and that business should be carried on by the assessee and none else, is, therefore, not possible to accept. He refers to us the principle of interpretation applicable in such circumstances, namely the same word used in different parts of the same section dealing with one and the same subject-matter, should mean the same thing and have the same meaning unless the context clearly indicates that it is not so. In this context, he referred us to 'Maxwell On The Interpretation of Statutes', 12th edition, page 278 AIR 1959 SC 422 and also Bindra's Interpretation of Statutes, (6th edition 1976), page 253. But there is no quarrel with this principle provided there is nothing in the context clearly indicating a different meaning even though the same word is used in different parts of the same section. We have already endeavoured to show how the meaning of the expression 'business' used in Sub-section (1) is different from the meaning of the same expression used in Sub-section (2). Since there is a difference in the meaning to be assigned to the word 'business', this principle of interpretation will-not be applicable.

14. Shri Rangaswamy, the learned standing counsel for the revenue then referred us to the Circular issued by the CBDT No. 229 dated 9-8-1977, where these provisions introduced had been explained. Shri Rangaswamy's argument is that this Circular mentions, very clearly, that the machinery and plant should be employed and used by the assessee in his own business. We are not able to find from this Circular that there is insistence that the new machinery or plant installed on which investment allowance is claimed, should also be used by the assessee.

This only says that under the new provisions introduced by the Finance (No. 2) Act, 1977, investment allowance will be allowed in respect of new machinery or

plant installed for the purposes of business of construction, manufacture or production of all articles or things except certain articles or things of low priority specified in the list. This again referred to the new machinery or plant installed only by way of description and not by way of requiring that the assessee must use it in his own business or construction, manufacture or production of all articles or things except articles or things of low priority. It has also laid down in this Circular that the burden of proving that the machinery or plant had been installed and used mainly for the purpose of construction, manufacture or production of an article or thing not falling in the Eleventh Schedule will be on the person claiming the benefit of the provision and that necessary evidence in support thereof will have to be adduced by him. This again does not say that the assessee should use it in his own business and as regards the evidence spoken of, here the assessee has led ample evidence and there is no dispute about that. The lease agreement provided that the leased out machinery and plant must be used for the purpose of construction, manufacture or production of articles or things not falling in the Eleventh Schedule and even certain penalties attach to non-user of the plant and machinery in the specified way. We do not find anything new in the Circular leading us to hold that a condition had been imposed by Section 32A(2) that the new plant and machinery should be used by the assessee in its business. Since leasing of machinery is also a mode of carrying on business, it must have been thought that installation of machinery by lessees is installation by the assessee. We do not therefore, find any clue in the circular issued by the CBDT, to accept the argument of the learned standing counsel.

15. Shri Rangaswamy has referred us to another clue which according to him will lead us to hold that the machinery to be installed should also be used by the assessee. This clue is primarily based upon the meaning to be assigned to the word 'installed' used in Section 32A(2)(b). The word 'installed' has also been used in Section 10(2)(iii) of the Indian Income-tax Act, 1922, for the purpose of granting of depreciation allowance. This word has been interpreted in CIT v. Sarasapur Mills Ltd. [1959] 36 ITR 580 (Bom.), as 'inducted or introduced'. The Madras High Court in the case of CIT v. Sri Rama Vilas Service (P.) Ltd. [1960] 38 ITR 25, held that 'installed' means to place an apparatus in position of service or use. Shri Rangaswamy's attempt is that this word 'installed' as judicially interpret-ed, should

mean that the assessee should put in position the machinery and plant in service or in use. In the absence of any specific condition that the assessee should instal in his business which meaning we are trying to arrive at, only by a process of substitution or inference, the word 'installed' can mean only putting the apparatus or the machinery in position of service or use, without reference to the person who should put it to such use.

This is also the contention of Shri Palkhivala. To our mind, it appeared that the word 'installed' used in Section 32A(1) or 32A(2) does not mean that it should be installed by the assessee.

16. Shri Rangaswamy also contended that the lease being one of the forms of 'transfer' and since a transfer of an asset in respect of which investment allowance has been allowed, disentitles the assessee to the claim of investment allowance by providing for its withdrawal, the very act of leasing would disentitle the assessee to the claim.

Here again, we are not able to walk along with Shri Rangaswamy, because when leasing itself is the business carried on by the assessee and in this business of leasing, there is no question of transfer of the asset as is referred to in Section 32A(5). Section 32A(5) would come into operation only when the investment allowance had been originally allowed and those assets are later transferred or sold during the specified period. The question of withdrawing the allowance would not thus arise unless it is originally granted. Moreover, merely because there is a provision for withdrawal, it does not justify its invocation, merely on the ground of lease of machinery which may include a transfer, if this interpretation is right, it would mean that the assessee ceased to be the owner of the plant and machinery. Since that is not the position obtaining here, this argument is not available to the revenue. Secondly, the assessee cannot be said to have been knocked out at the threshold on the ground of transferring the machinery by letting out on hire because the assessee continues to remain the owner of the machinery during the period of the lease. Here, the argument advanced by Shri Palkhivala that what was provided for in the agreement was only a licence and not a lease, is very relevant and should commend itself for acceptance. By going through the entire

agreement, we are of the view that what the assessee had been attempting was only hiring machinery by allowing the hirer to use it for the specified purposes and it will not be strictly leasing. There cannot, therefore, be a transfer of machinery or plant by the assessee to the hirer when the assessee entered into agreement and placed the machinery at the disposal of the hirer for use. Shri Rangaswamy referred us to the decision of the Bombay High Court in the case of Capsulation Services (P.) Ltd. v. CIT [1973] 91 ITR 566 and that of the Madras High Court in the case of A.R. Krishnamurthy (supra) for the view that the lease is also a form of transfer and that the transfer does not mean or is not confined to only transfer of the totality of the transfer of interest. It is true that these two decisions are interpreting the word 'transfer' but in the context in which it was used for the purpose of levy of capital gains tax. Here, the context in which the word 'transfer' has been used in Section 32A(5) is totally different. The word 'transfer' occurred in the context of the machinery or plant on which investment allowance has been granted had been sold.Interpreting it, on the principle of ejusdem generis, we think the words 'transfer' must mean a total transfer in the sense it is equal to sale and not to a case where for the purpose of exploitation of the assets in business the assets are leased out or hired. Though the word 'transfer' my include any one of modes of transfer referred to in the Transfer of Property Act, (i.e.) sale, mortgage, lease, gift or exchange, still, it must be a transfer equal to sale whereunder the title to the property must cease. Otherwise, if machinery is mortgaged to a bank for the loan taken to carry on business, if it amounts to a transfer, then the whole benefit is lost. That is not the intention of the Legislature. We have several cases where it has been held by the highest authority that exploitation of business asset by leasing it out would also amount to business carried on by an assessee entitling the assessee to all the benefits that a person who has been carrying on business is normally entitled to under the Act. If leasing out of machinery which is a business asset is held to be exploitation of the business asset for the purpose of the business, it is difficult to say that leasing out of machinery in the course of exploitation for business amounts to transfer. We are, therefore, unable to say, as contended for by the learned standing counsel, that the existence of Section 32A(5) negatives the application of Section 32A to a mere lessor of machinery like the assessee and that the assessee is disentitled to Section 32A allowance by the

very act of leasing.

17. For the above reasons, we are of the opinion that the assessee is entitled to the investment allowance.

18. But in a case of leasing of machinery, the ITO may have to face one or two hurdles. One is, he must ensure that the machinery had been utilised for the purposes of the business referred to in Section 32A(2). In the case of leasing of machinery the only way the ITO could satisfy him-self is by insisting upon the assessee to produce certificates from the hirers that these machineries were put to the specified purposes. If the ITO wants to verify the correctness of those certificates for himself, he may have to embark upon correspondence which may be time-consuming and indirect. The second is the lessees must continue to utilise the machinery and plant for the specified purposes. If there is any violation of Section 32A(2) by the lessees, the ITO may be justified in withdrawing the allowance by treating it as a mistake invoking the provisions of Section 32A(5) as relied upon by Shri Rangaswamy. But, how does the ITO ensure that the machinery and plant continue to be used for the specified purposes except relying upon the certificate given by the assessee which again is based upon the certificates given by the various hirers. There may be a difficulty in enforcing this particular section to the satisfaction of the ITO.But the difficulty in enforcing a section may not come in the way of granting the allowance to the assessee and may not deny to the assessee the benefit of this allowance. This is, perhaps, one of the easiest ways by which small industries, without risking its own scarce capital, or having to find capital for investment in machinery and plant, may embark upon the business specified in Sub-section (2), by taking machinery on hire and help rapid industrialization of the country, produce more of desired goods and achieve the object for which this concession is intended.

19. Upon a consideration of the above, we arrived at the conclusion that the Legislature did not intend to deny the benefit of investment allowance to an assessee whose business is hiring out machinery and plant to be used for the purpose of business specified in Sub-section (2) of Section 32A. We, therefore, allow the claim of the assessee.