Cit Vs. Ajay Builders

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SooperKanoon Citation : sooperkanoon.com/748095

Court : Gujarat

Decided On : Jul-03-2002

Reported in : [2002]123TAXMAN842(Guj)

Appeal No. : IT Reference No. 196 of 1990 3 July 2002

Appellant : Cit

Respondent : Ajay Builders

Advocate for Pet/Ap. : Manish R. Bhatt, *for the Revenue*

Judgement :

K.A. Puj, J.

At the instance of the revenue, following question of law is referred for the opinion of this court :

'Whether the Tribunal is right in law and on facts in allowing the claim for investment allowance on plant and machinery engaged in the business of construction ?'

2. The assessment year involved is 1983-84. The respondent in this case is a. registered firm engaged in the business of construction. The Income Tax Officer in the course of the assessment proceedings, rejected the claim on account of investment allowance.

3. The Commissioner (Appeals), however, directed the Income Tax Officer to allow the claim. This he did relying upon the two decisions of the Ahmedabad Benches of the Tribunal, namely, Ranjit Construction Co. [IT Appeal No. 127 (Ahd) of 1984, dated 9-11-1984] and Shah Engg. Co. [IT Appeal No. 870 (Ahd) of 1983, dated 24-1-1984].

4. The Tribunal confirmed the order of the Commissioner (Appeals).

5. Heard Mr. Manish Bhatt, the learned senior standing counsel appearing for the revenue. No one appears on behalf of the respondent-assessee though the notice was duly served. At the time of hearing of this reference, our attention is drawn to the decision of the Supreme Court in the case of CIT v. N. C. Budharaja & Co. : [1993]204ITR412(SC) wherein it is held that the assessee is not entitled to investment allowance under section 32A because that provision did not comprehend within its ambit construction of dam, bridge, road or canal or other similar construction. It is further observed by the Supreme Court that particularly in view of the legislative history of the relevant provisions and the context, it is not possible to read the word 'construction' in section 32A(2)(b)(iii) as referring to construction of dams, bridges, buildings, roads or canals. Since the issue involved in the present reference is directly covered by the above decision of the Supreme Court, we hold that the Tribunal is not right in allowing the claim of the assessee for investment allowance for plant and machinery engaged in the business of construction.

6. We, therefore, answer the question referred to us in, negative, that is, in favour of the revenue and against the assessee.

7. The reference is, accordingly, dispose of with no order as to costs.