

**Cit Vs. Bajrang Enterprises**

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**SooperKanoon Citation :** [sooperkanoon.com/835485](http://sooperkanoon.com/835485)

**Court :** Chennai

**Decided On :** Aug-20-2002

**Reported in :** [2002]258ITR448(Mad)

**Appeal No. :** T.C. No. 665 of 1994 20 August 2002

**Appellant :** Cit

**Respondent :** Bajrang Enterprises

**Advocate for Pet/Ap. :** T. Ravikumar, *for the Revenue* None appeared, *for the Assessee*

**Judgement :**

**R. Jayasimha Babu, J.**

The question referred to us at the instance of the revenue is :

'Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee is entitled to investment allowance under section 32A in respect of dumpers used in the business of mining operation on contract ?'

The assessment year is 1980-81.

The assessee which owned dumpers was, during the relevant assessment year, using the same in terms of a contract for the purpose of mining, the contract being with the owner of the mine, Dalmia Magnesite Corporation Ltd. The claim for investment allowance on those dumpers by the assessee was negated by the assessing officer, but was allowed by the Commissioner and the Commissioner's order was upheld by the Tribunal. The Commissioner, in the course of his order, has referred to a circular issued by the Central Board of Direct Taxes and this is what the Commissioner has observed in relation to that circular :

'I find that the Central Board of Direct Taxes had occasion to consider the question of allowance of development rebate to dumpers and tippers though they were registered under the Motor Vehicles Act. In the Board's instruction F. No. 202/34/72-ITA-II, dated 15-3-1975, the Board had directed that the test as to whether a particular vehicle was a road transport vehicle or not would be the test of the use to which the vehicle is ordinarily put and not merely the fact that it is capable of moving on the roads. The Board expressed the view that dumpers and tippers could not be treated as road transport vehicles within the meaning of section 33(1) of the Act.'

By the standard laid down by the Board itself, it is clear that the dumpers in this case, which were being used for mining purposes and not merely for carrying goods on the roads were not required to be treated as motor transport vehicles. The investment in the dumpers having been made by the assessee and the dumpers having been used for the purpose of mining, investment allowance was clearly allowable and had rightly been allowed by the Commissioner and the Tribunal.

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