
(1989) 03 KL CK 0061

High Court Of Kerala

Case No: Income-tax Reference No. 488 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Elite Sea Foods

RESPONDENT

Date of Decision: March 9, 1989

Acts Referred:

- Income Tax Act, 1961 - Section 32A, 32A(2)

Citation: (1989) 77 CTR 190 : (1990) 2 ILR (Ker) 230 : (1989) 179 ITR 85

Hon'ble Judges: K.S. Paripoornan, J; K.A. Nayar, J

Bench: Division Bench

Advocate: P.K.R. Menon, for the Appellant; P. Radhakrishnan, for the Respondent

Judgement

K.S. Paripoornan, J.

At the instance of the Revenue, the Income Tax Appellate Tribunal (in short "the Tribunal") has referred the following two questions of law for the decision of this court;

"(1) Whether, on the facts and in the circumstances of the case, the assessee is entitled to investment allowance u/s 32A on the "plant freezer" ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding that the assessee must be considered to have been engaged in the production of an article ?"

2. The respondent is an assessee to Income Tax. We are concerned with the assessment year 1978-79. The respondent-assessee purchases seafood, namely, shrimps, and subjects them to various processes like de-heading, peeling, de-veining and freezing. Thereafter, the sea-food is exported. For the above purpose, the respondent has installed a "plant freezer". He claimed investment allowance of Rs. 39,500 being 25% of the cost of the freezer in the sum of Rs. 1,58,000. The deduction claimed was disallowed by the Income Tax Officer. He held

that the new machinery was not installed for the purpose of construction, manufacture or production of any one or more of the articles or things specified in the Ninth Schedule to the Income Tax Act (in short "the Act"). In appeal, the assessee relied on Section 32A(2)(b)(iii) of the Income Tax Act and pleaded that in the light of the modified provision, which is applicable for the year 1978-79, the assessee may be allowed the deduction. The Appellate Assistant Commissioner accepted the said plea. He took the view that the amendment of Section 32A took effect from April 1, 1978. The Revenue took up the matter in appeal before the Appellate Tribunal. It was contended that the assessee is not entitled to the investment allowance since the assessee was not manufacturing or producing any article or thing. Ignoring this vital aspect, the only question considered was whether there was exclusion of the product from the Ninth Schedule to the Act. That led to the erroneous finding. The Tribunal, however, relying on the decision of this court in [Commissioner of Income Tax Vs. Castlerock Fisheries](#), and the decisions of the Calcutta and Allahabad High Courts -- [Commissioner of Income Tax Vs. Radha Nagar Cold Storage \(P.\) Ltd.](#), and [Addl. Commissioner of Income Tax Vs. Farrukhabad Cold Storage \(P.\) Ltd.](#), --held that taking into account the processes carried on by the assessee, it should be considered to have been engaged in the production of an article. The Tribunal referred to the decision in [Commissioner of Income Tax Vs. Marwell Sea Foods](#), and held that the assessee must be considered to have been engaged in the production of an article and so the order of the Appellate Assistant Commissioner does not merit interference. Thereafter, on a motion by the Revenue, the two questions of law, extracted hereinabove, have been referred for the decision of this court.

3. We heard counsel for the Revenue, as also counsel for the respondent-assessee. In view of the decision of this court in [Commissioner of Income Tax Vs. Marwell Sea Foods](#), it cannot be denied that the processing of prawns amounts to production of an article. The crucial words occurring in Section 32A(2)(b)(iii) shows that investment allowance by way of deduction is permissible in the case of machinery or plant in an 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 list in the Eleventh Schedule. It is common ground that the article in the instant case is not one which is specified in the list in the Eleventh Schedule. In the light of the decision in [Commissioner of Income Tax Vs. Marwell Sea Foods](#), the processing of prawns amounts to production of an article. If so, the deduction claimed directly falls within Section 32A(2)(b)(iii) of the Act. The assessee is entitled to the deduction claimed by him. The Tribunal was justified in holding so. Therefore, we answer question No. (1) in the affirmative, against the Revenue and in favour of the assessee. We answer question No. (2) in the affirmative, against the Revenue and in favour of the assessee.

4. A copy of this judgment under the seal of this court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.