

(2004) 07 KL CK 0033

High Court Of Kerala

Case No: IT Appeal No"s. 134, 143 and 150 of 2001 and IT Ref. No. 179 of 1997

Commissioner of
Income Tax

APPELLANT

Vs

Kil Kothagiri Tea and
Coffee Estate Co. Ltd.

 Kil Kothagiri Tea
and Coffee Estate Co.
Ltd. Vs Commissioner
of Income Tax

RESPONDENT

Date of Decision: July 12, 2004

Acts Referred:

- Income Tax Act, 1961 - Section 32AB

Citation: (2004) 190 CTR 405 : (2005) 273 ITR 278

Hon'ble Judges: S. Sankarasubban, J; A.K. Basheer, J

Bench: Division Bench

Advocate: P.K.R. Menon and George K. George, for the Appellant; P. Balachandran and
Preetha S. Nair, for the Respondent

Final Decision: Allowed

Judgement

S. Sankarasubban, J.

In all the above cases, the assessee is the same, namely, The Kil Kothagiri Tea & Produce Co. Ltd. While IT Ref. No. 179 of 1997 deals with the asst. yr. 1987-88, the other three cases relate to the asst. yrs. 1988-89, 1989-90 and 1990-91. In IT Ref. No. 179 of 1997, the reference is at the instance of the assessee. In all the other three cases, the appeal is filed by the Department.

2. In IT Ref. No. 179 of 1997, the Tribunal took the view that u/s 32AB of the Income Tax Act (hereinafter referred to as the "IT Act") for the purpose of deduction of 20 per cent profit, only the income from business or profession should be taken into account, while in the other three cases, the Tribunal has taken up opposite view and

held that any income which is included in the P&L a/c under Parts II and III of Schedule VI to the Companies Act has to be taken into account. Thus the decision of the Tribunal in IT Ref. No. 179 of 1997 conflicts with the decisions in the other three cases. In IT Ref. No. 179 of 1997, the question of law referred is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the profits of eligible business computed in accordance with the requirements of Parts II and III of Schedule VI to the Companies Act, 1956, should be reduced by income from coffee, income from investments, interest and rent for the purpose of computing the deduction allowable under Sub-clause (ii) of Clause (b) to Section 32AB(1)?"

So far as the appeals are concerned, the questions of law raised before this Court are as follows :

"(i) Whether, on the facts and in the circumstances of the case, do items of income like rent, interest, agricultural income, etc. etc. are qualified to be considered as an integral part of the profits for the purpose of deduction u/s 32AB of the IT Act ?

(2) Whether, on the facts and in the circumstances of the case and in the light of the definition of "eligible business" obtained in Section 32AB, is not the order of the AO excluding certain items of income for the purpose of determining the benefit u/s 32AB in accordance with law ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal is right in directing to allow the deduction u/s 32AB without excluding the income from coffee produce, investments, agriculture and interest income and rent ?"

3. u/s 32AB(ii) of the IT Act, a sum equal to 20 per cent of the profits of eligible business or profession as computed in the accounts of the assessee audited in accordance with sub-section, will be allowed as deduction. "Eligible business" is defined under Clause (2) of Section 32AB of the IT Act. It is as follows :

"Eligible business or profession" shall mean business or profession, other than--

(a) the business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule carried on by an industrial undertaking, which is not a small-scale industrial undertaking as defined in Section 80HHA;

(b) the business of leasing or hiring of machinery or plant to an industrial undertaking, other than a small scale industrial undertaking as defined in Section 80HHA, engaged in the business of construction, manufacture or production of any article or thing specified in the Eleventh Schedule".

Section 32AB(3) of the IT Act states thus :

"(3) The profits of eligible business or profession of an assessee for the purposes of Sub-section (1) shall--

(a) in a case where separate accounts in respect of such eligible business or profession are maintained, by an amount arrived at after deducting an amount equal to the depreciation computed in accordance with the provisions of Sub-section (1) of Section 32 from the amounts of profits computed in accordance with the requirements of Parts II and III of the Sixth Schedule to the Companies Act, 1956, as increased by the aggregate of--".

So far as the Department is concerned, its contention is that in computing the profits of eligible business, the only income from profession or business as stated in the IT Act can be taken into consideration. On the other hand, learned counsel for the assessee submits that in granting concession of 20 per cent profit, every head of profit which is stated under Parts II and III of Schedule VI to the Companies Act shall be taken into consideration. The assessee claimed deduction u/s 32AB of the IT Act on its entire income including the income from coffee, income from investments, interest and also rent on buildings. Learned counsel submits that even though the source of the amount for deposit or purchase of the new machinery should come from income chargeable to tax under the head "profits and gains of business", the definition of "eligible business or profession" is in a sense wide. Deduction is allowable on an amount equal to 20 per cent of the profits of the eligible business. Clause (ii) of Section 32AB(2) coins the definition of the expression "eligible business or profession" for the purpose of the asst. yrs. 1987-88 to 1990-91 so as to mean and include business or profession but does not include the business or profession coming in Sub-clauses (a) and (b). According to the counsel, dividend from companies, interest on deposits and rental income from properties are all incomes credited in the P&L a/c and so all those items should be considered as part of the profit of the company. Further, the income from coffee also was credited to the P&L a/c prepared in accordance with the requirement of Parts II and III of the Sixth Schedule to the Companies Act and so, that income also should be considered as part of the eligible profit.

4. According to the assessee, in calculating the profits, all the profits shown under the Companies Act should be taken into consideration. On the other hand, learned counsel for the Department submitted that so far as the income is concerned, only the profit and gains from profession can be taken into account and not the profit and gains of the company as a whole should be taken into account. According to them, mention made in Clause (iii) of Section 32AB of the Act is that the income shown as profession or business in the balance sheet can be taken into consideration and not all the other.

5. This Court had occasion to interpret the profits of eligible business u/s 32AB of the IT Act. In [Commissioner of Income Tax Vs. Appollo Tyres Ltd.](#), it is stated thus :

"Section 32AB provides that where an assessee, whose total income includes income chargeable to tax under the head "profits and gains of business or profession", has, out of such income utilised any amount during the previous year for the purchase of

new machinery or plant, the assessee shall be allowed a deduction of a sum equal to twenty per cent of the profits of "eligible business" as computed in the account of the assessee audited in accordance with Sub-section (5). A reading of Section 32AB and the Circular No. 461, dt. 9th July, 1986 makes it clear that the benefit of the said section will be available to all business income derived from whatever sources other than those mentioned in Sub-clauses (a) and (b) of Clause (i) of Sub-section (2) of the said section. Sub-section (1) of Section 32AB itself contemplates that the total income of an assessee may consist of other incomes also. When it comes to the deduction part, such a distinction is not made. The deduction available under the said sub-section is an amount equal to twenty per cent of the profits of the eligible business. So what is required for fixing the quantum of deduction is to find out the profits of eligible business from out of the total income. By virtue of the definition contained in Clause (i) of Sub-section (2) of Section 32AB, "eligible business" means business other than those provided in Sub-clauses (a) and (b) thereof. Admittedly, the activity of purchase and sale of units of Unit Trust of India does not fall under the said two sub-clauses. Therefore, it has to be held that the business of buying and selling of units of the Unit Trust of India is an eligible business and the profits thereof qualifies for inclusion for determining the quantum of deduction available under the said sub-section. Sub-section (3) of Section 32AB is attracted only in a case where the assessee's total income consists of income from eligible business as well as non-eligible business".

The above case was taken up in appeal before the Supreme Court in [Commissioner of Income Tax Vs. M.L. Mahajan](#), . In the above decision, the Supreme Court held thus: "the business of the assessee-company of buying and selling of units was an "eligible business" as contemplated u/s 32AB, and the income earned from its investment in the units of the UTI had to be included in computing the profits of "eligible business" u/s 32AB. The fact that the income was shown under a different head of income did not deprive the assessee-company of the benefit u/s 32AB so long as the investment in the units was in the course of its "eligible business".

6. Before the Madras High Court, a similar question arose in the decision reported in [Commissioner of Income Tax Vs. Tamil Nadu Mercantile Bank Ltd.](#), . It was held thus :

"Section 32AB of the IT Act, 1961, provides a benefit to the assessee. The benefit so provided is an incentive to an assessee, who deposits any amount in a development bank before the expiry of six months from the end of the previous year or before furnishing the return of his income, whichever is earlier. That incentive is also available if the assessee utilises any amount during the previous year for the purchase of any new ship, new aircraft, new machinery or plant, without depositing any amount in the deposit account with a development bank, The benefit is given by way of deduction, such deduction being allowed before the loss, if any, brought forward from earlier years, is set off u/s 72 of the IT Act, 1961, (i) of a sum equal to

the amount or the aggregate of the amounts so deposited and any amount so utilised; or (ii) of a sum equal to twenty per cent of the profits of eligible business or profession as computed in the accounts of the assessee audited in accordance with Sub-section (5), whichever is less. The manner in which the profits of the business should be computed is dealt with in Sub-section (3), which requires computation to be in accordance with the requirement of Parts II and III of Schedule VI to the Companies Act, 1956. The computation so made is to be increased by the aggregate of the amount set out in Sub-clauses (i) to (vii), therein. It is thereafter to be reduced by any amount or amounts withdrawn from reserves or provisions if such amounts are credited to the P&L a/c. It is thus amply clear that it is the computation made in accordance with Sub-section (3) of Section 32AB which is to be the basis for determining the twenty per cent of the profits of the business for the purpose of Section 32AB(1)(ii). The computation of income under the provisions of the IT Act is of no relevance for the purpose of determining the extent of benefit u/s 32AB (1) or (2)".

7. In the light of the above decision, we are of the view that the income from eligible business including the income from all the sources except those which are exempted has to be taken into consideration. In the above view, every income which is computed under the Companies Act has to be taken into consideration. Hence, so far as IT Ref. 179 of 1997 is concerned, the question of law is answered in the negative and in favour of the assessee. So far as the other three cases are concerned, we dismiss the same.

S. Sankarasubban, J.

12th July, 2004

This review petition is filed against the common judgment in ITA Nos. 134, 143 and 150 of 2001. By the judgment, we had dismissed all the appeals. The review petition is filed pointing out that the profits which the respondent/assessee included in the return includes agricultural income. Agricultural income does not come within the IT Act. Hence, we delete the agricultural income from considering the profits of the assessee.

The review petition is allowed.