

**(1998) 08 AP CK 0026**

**Andhra Pradesh High Court**

**Case No:** 24 August 1998 Reference Case No. 72 of 1990

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

ANDHRA PRADESH LIGHTINGS  
LTD.

RESPONDENT

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**Date of Decision:** Aug. 24, 1998

**Acts Referred:**

- Income Tax Act, 1961 - Section 263, 32A

**Citation:** (2000) 109 TAXMAN 337

**Hon'ble Judges:** T. Ranga Rao, J; S. V. Maruthi, J; Ms. S. V. Maruthi, J

**Bench:** Full Bench

**Advocate:** S. R. Ashok, for the Revenue, S. Ravi, for the Assessee, for the Appellant;

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**Judgement**

@JUDGMENTTAG-ORDER

Maruthi, J. -

At the instance of the revenue, the following question was referred for the opinion of this Court:

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that electric bulb was not a domestic electrical appliance appearing at Item No. 12 of the XI Schedule, entitling the assessee to Investment Allowances in respect of machinery employed in the manufacture of electric bulbs?"

2. The facts in brief are as follows :

The assessee is a company carrying on business in the manufacture of electric bulbs. The assessment year is 1979-80. The assessee claimed investment allowance at 25 per cent of the cost of the plant and machinery which was Rs. 92,81,994. The claim of investment allowance came to Rs. 23,20,498. The main contention of the

assessee is that the electric bulbs do not fall under Item No. 12 of the XI Schedule. The Income Tax Officer disallowed the investment allowance claimed by the assessee. On appeal, the Commissioner allowed the same, agreeing with the assessee that electric bulbs do not fall under Item No. 12 of the XI Schedule. For the assessment years 1980-81 and 1981-82, the Income Tax Officer allowed the claim of the assessee. The Commissioner revised the assessment u/s 263, on the ground that allowing the claim of the assessee for investment allowance u/s 32A of the Act is prejudicial to the revenue. On a further appeal by the department against the order of the Commissioner for the assessment year 1979-80 and by the assessee for the assessment years 1980-81 and 1981-82 the Tribunal held that electric bulbs are not domestic electrical appliances falling under Item No. 12 of the XI Schedule and, therefore, the plant and machinery of the assessee is eligible for investment

3. The question, therefore, is whether the assessee is entitled for investment allowance u/s 32A in respect of the plant and machinery involved in the manufacture of electric bulbs. To consider the issue, it is necessary to refer to section 32A and Item No. 12 of the XI Schedule Section 32A reads as follows:-

"Investment allowance.-(1) In respect of a ship or an aircraft or a 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 which the ship or 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 :

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(2) The ship or aircraft or machinery or plant referred to in sub-section (1) shall be the following, namely :-

(a) **\*\* \*\* \***

(b) any new machinery or plant installed after the 31<sup>st</sup> day of March, 1976,-

and (ii) **\*\* \*\* \***

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 list in the Eleventh Schedule:"

Item No. 12 of the XI Schedule reads as follows :

"12. Domestic electric appliances, not falling under any other item in this list.

Explanation.-"Domestic electrical appliances" means electrical appliances normally used in the household and similar appliances used in places, such as, hotels,

restaurants, hostels, offices, educational institutions and hospitals."

A reading of section 32A read with Item No. 12 of the XI Schedule makes it clear that investment allowance is not permissible in respect of Item No. 12 of the XI Schedule. In other words, an assessee is not entitled to claim investment if his plant and machinery is used for the manufacture of domestic electrical appliances. A domestic electrical appliance is explained as an electrical appliance normally used in the household and similar appliances used in places such as, hospitals, restaurants, hostels, offices, educational institutions and hotels. Therefore, if an electric bulb is normally used in the household and hotels, etc., then the plant and machinery will not be entitled for the allowances u/s 32A. The question, therefore, is whether the electric bulb is used as a domestic electrical appliance.

4. The learned standing counsel appearing for the revenue relying on [Star Radio Electric Co. Vs. Commissioner of Sales Tax, Gujarat](#), contended that as long as the bulb is capable of rendering the desired service, it is a domestic electrical appliance and constitutes a domestic electrical appliance and, consequently the assessee is not entitled for the investment allowance.

5. He also relied on a judgment of the Gujarat High Court in [Vishwa and Co. Vs. State of Gujarat](#), wherein electric fans were held to be domestic electrical appliances within the meaning of Entry 52 of Schedule B of the Bombay Sales Tax Act, 1953.

6. Before considering whether the electric bulbs are domestic electrical appliances within the meaning of Item No. 12 of the XI Schedule, we will deal with the judgments relied on by the learned standing counsel for the revenue.

7. In Viswa & Co.'s case (supra), the Gujarat High Court was interpreting Entry 52 of Schedule B of the Bombay Sales Tax Act which was defined in the following manner : "domestic electrical appliances other than torches, torch cells and filament lighting bulbs". Since Entry 52 of Schedule B excludes filament lighting bulbs, the judgment is not relevant for deciding the instant case. Further, there is no explanation as in the case of XI Schedule. Therefore, the judgment in Viswa & Co.'s case (supra) is not applicable to the facts of this case.

8. In Star Radio Electric Co.'s case (supra), while considering whether the fluorescent tube without a choke and a starter is a domestic electrical appliance within the meaning of Entry 52 of Schedule B to the Bombay Sales-tax Act, 1953, the Gujarat High Court held as follows:

"if a starter and a choke are found essential for obtaining the desired service, namely, the dispelling of darkness and the supply of fluorescent light through the fluorescent tube, then a fluorescent tube without a starter and a choke cannot fall within Entry 52 of Schedule B to the Bombay Sales Tax Act, 1953, as amended, but if it is found that a starter and a choke or either of them are not essential for achieving the desired object through the fluorescent tube, then the presence of both or the

one which is not essential for achieving the desired object would not be necessary to bring the fluorescent tube within the ambit of Entry 52." In our view, this judgment is not relevant. It is not enough if the article is capable of rendering the desired service in order to fall within the meaning of Item No. 12 of the XI Schedule. It has to satisfy the other condition, viz., that it is a domestic electrical appliance.

9. We have already referred to Item No. 12 of the XI Schedule in the earlier paragraph. The Explanation to Item No. 12 says "domestic electrical appliances" means electrical appliances normally used in the household and similar appliances used in places such as, hotels, restaurants, hostels, offices, educational institutions and hospitals. It is neither the case of the revenue nor the assessee that an electric bulb is used only in the household as it is not only used in the household, hotels, restaurants, hostels, offices, educational institutions and hospitals but also in the streets, other industrial areas, factories and various other places. The intention of the Legislature under the Explanation is to exclude only those electrical appliances which are normally used in the household and similar other appliances. Therefore, an electric bulb is used not only in the houses but in other places, other than those places which are enumerated in the Explanation, therefore, it cannot be said that it is a domestic electrical appliance. In order to qualify to be a domestic electrical appliance, an appliance should satisfy the condition that it should be used exclusively as a domestic appliance. The meaning of "domestic" as given in Chambers Dictionary (New Edition) reads as follows:

"belonging or relating to the home or family, remaining much at home enjoying or accustomed to being at home. ..."

10. The meaning of the expression "domestic" makes it clear that it should be confined to home only. Therefore, the intention of the Legislation in using the expression "domestic electrical appliance" appears to confine the explanation only to those electrical appliances which are exclusively used for domestic purposes and used for similar purposes in the places enumerated in the said Explanation.

11. We are, therefore, of the view that the Tribunal is right in its view in holding that the assessee is entitled for investment allowance u/s 32A, in respect of the plant and machinery used in the manufacture of electric bulbs. We, therefore, answer the question referred in the affirmative, in favour of the assessee and against the revenue. The reference is answered accordingly.