

**(1994) 11 BOM CK 0061**

**Bombay High Court**

**Case No:** Income-tax Reference No. 65 of 1986

Fariyas Hotels Pvt. Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

**Date of Decision:** Nov. 23, 1994

**Acts Referred:**

- Income Tax Act, 1961 - Section 32A, 32A(1), 32A(2)

**Citation:** (1995) 126 CTR 363 : (1995) 217 ITR 390

**Hon'ble Judges:** S.M. Jhunjhunwala, J; B.P. Saraf, J

**Bench:** Division Bench

**Advocate:** Dilip Dwarkadas, for the Appellant; G.S. Jetley, for the Respondent

**Judgement**

Dr. B.P. Saraf, J.

By this reference u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law for the opinion of this court at the instance of the assessee :

"Whether the assessee-company is entitled to investment allowance u/s 32A of the Income Tax Act, 1961, on the basis that it had installed new machinery or plant in an industrial undertaking for the purpose of the business of manufacture or production of an article or thing?"

2. The assessee is a private limited company running a 4-star hotel in Colaba, Bombay, called "Fariyas Hotel". In its assessment for the assessment year 1978-79, the assessee claimed investment allowance of Rs. 27,600 u/s 32A of the Income Tax Act, 1961 ("the Act"), on plant and machinery used by it in its hotel. The Income Tax Officer rejected the claim of the assessee on the ground, inter alia, that the running of a hotel did not amount to "manufacture or production of any article or thing" as required by section 32A(2) of the Act. The appeals of the assessee to the Commissioner of Income Tax (Appeals) and the Tribunal were rejected and the order of the Income Tax Officer was upheld. Hence, this reference at the instance of the

assessee.

3. Mr. Jetley, learned counsel for the Revenue, submitted that the controversy in this case stands concluded against the assessee by the decision of this court in Commissioner of Income Tax Vs. Berry's Hotels Pvt. Ltd., where this court has held that the activity of running a hotel business was a trading activity and hence the assessee was not an industrial company.

4. Mr. Dilip Dwarkadas, learned counsel for the assessee, submitted before us that the decision of this court in the above case was rendered on an interpretation of the definition of "industrial company" as given in the Finance Act, 1973, where the benefit is available to an industrial company which is mainly engaged, *inter alia*, in the manufacture or processing of goods. According to Mr. Dwarkadas, it was in that context that this court held that the object of that Act was to give a concession in the rate of tax to manufacturing concerns and not to trading concerns. According to learned counsel, there is no such restriction u/s 32A which allows the benefit of investment allowance to every assessee in respect of "machinery owned and used for the purposes of the business carried on by him", irrespective of the fact whether it is an industrial undertaking or a trading company.

5. We have carefully considered the above submissions. We have perused section 32A of the Act and the decision of this court in Commissioner of Income Tax Vs. Berry's Hotels Pvt. Ltd.. We find that there is a fallacy in the above submission which is apparent from a conjoint reading of sub-sections (1) and (2) of section 32A. These two sub-sections read :

"32A. Investment allowance. - (1) In respect of a ship or an aircraft or 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 in which the ship or aircraft was acquired or the machinery or plant was installed. . . . 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 :

Provided that. . . .

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

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

(i) for the purposes of business of generation or distribution of electricity or any other form of power; or

(ii) for the purposes of business of construction, manufacture or production of any one or more of the articles or things specified in the list in the Ninth Schedule; or

(iii) in a small-scale industrial undertaking for the purposes of business of manufacture or production of any other articles or things.

Explanation. - For the purposes of this sub-section and sub-section (4), -.....

(2) an industrial undertaking shall be deemed to be a small scale industrial undertaking, if the aggregate value of the machinery and plant (other than tools, jigs, dies and moulds) installed, on the last day of the previous year, for the purposes of the business of the undertaking does not exceed ten lakh rupees

6. It is clear from a plain reading of these provisions that deduction is allowed on account of investment allowance u/s 32A only in respect of "machinery or plant specified in sub-section (2)". Sub-section (2) has only specified machinery or plant installed -

(i) for the purpose of business of construction, manufacture or production of any one or more of the articles specified in the list in the Ninth Schedule; and

(ii) in a small-scale industrial undertaking for the purposes of business of manufacture or production of any articles or things.

7. For the above purposes, an industrial undertaking is deemed to be a small-scale industrial undertaking if the aggregate value of the machinery or plant installed for the purposes of the business of the undertaking does not exceed ten lakh rupees.

8. Investment allowance u/s 32A of the Act is thus available subject to other conditions only in respect of machinery which is used for the "purpose of manufacture of articles or things". It is not available in respect of machinery installed for the purpose of business of the assessee which does not fall within the specification contained in sub-section (2).

9. The uncontested factual position in the present case is that the assessee is engaged in the business of running a hotel. This activity is essentially a trading activity. No manufacture or production of any goods or articles is involved in carrying out this activity. The machinery or plant installed by the assessee in its hotel business, therefore, cannot be termed "machinery or plant specified in sub-section (2)". That being so, no investment allowance u/s 32A(1) will be available in respect of such machinery or plant.

10. We are, therefore, of the clear opinion that the assessee-company is not entitled to investment allowance u/s 32A of the Act in respect of the machinery installed by it in its hotel.

11. The question referred to us is, therefore, answered in the negative and in favour of the Revenue.

12. Under the facts and circumstances of the case, there shall be no order as to costs.