

The Commissioner of Income Tax, Amritsar v. M/s. Partap Steel Rolling Mills (Asr.) (P.) Ltd., Amritsar

and the proviso further provides that where the assessee is a company, so much of the aggregate of expenditures referred to in clauses (a) and (b) thereof in respect of an employee or a former employee, being a director or a person who has a substantial interest in the company or a relative of the director or of such person, as is in excess of the sum specified, shall in no case be allowed as a deduction. Clause (b) of the proviso is again significant. It refers to the expenditure and allowance referred to in sub-clauses (i) and (ii) of clause (c) of Section 40 of the Act. Therefore, when we have a case of a director, who is also an employee of the company, section 40A(5) of the Act would be applicable and this in turn makes reference to section 40(c) of the Act regarding expenditure and allowances referred to in sub-clauses of that provision. But vice versa is not true. Accordingly, we are in agreement with the view taken by the Kerala High Court in *Travancore Rayons Ltd's case* (supra) and dissent from the view taken by the Gujarat High Court in *Tarun Commercial Mills's case* (supra), and hold that the Tribunal was not right in law in holding that the provisions of section 40A(5) of the Act and sub-section (c) thereof are not applicable for the purposes of disallowing expenditure incurred by the assessee company for the benefit of an employee, who is also director of the company. The correct provision applicable to the facts and in the circumstances of the case is Section 40A(5) of the Act. Accordingly the question is answered in favour of the Revenue, that is in the negative and since none had appeared on behalf of the assessee in spite of service, there will be no order as to costs.

P.C.G.

Before Gokal Chand Mital and S. S. Sodhi, JJ.

THE COMMISSIONER OF INCOME TAX, AMRITSAR,—Applicant.

versus

**M/S. PARTAP STEEL ROLLING MILLS (ASR) (P.) LTD.,
AMRITSAR,—Respondent.**

Income Tax Reference No. 114 of 1986

March 21, 1989.

Income Tax Act (XLIII of 1961) Section 32-A—Investment Allowance—Assessee engaged in Manufacture of Iron and Steel—Claim for deduction of amount spent on purchasing Oxygen plant—Oxygen used in manufacture of Iron and Steel—Such deduction—Whether can be claimed under Investment Allowance ?

Held, a plain reading of the provisions of Section 32-A of the Act leaves no manner of doubt that the interpretation thereof, in the context of circumstances here clearly entitle the assessee to the investment allowance as claimed by it in respect of the Oxygen Unit set up by it.

(Para 3).

Held, the Tribunal rightly observed "in the modern techniques of manufacture various intermediate, processes are involved in an industry, which are performed by separate units of machinery but which are merely a chain in the process of producing the final item. The same is the case about the Oxygen Gas in the assessee's case and it is merely an intermediate article utilised for the production of Iron and Steel, an item specified in the list in the Ninth Schedule."

The provisions of Section 32-A of the Act clearly entitle the assessee to the investment allowance claimed in respect of Oxygen Unit set up by it.

(Para 3).

Reference under Section 256(1) of the Income-tax Act, 1961 by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar to the Hon'ble High Court of Punjab and Haryana for opinion of the following questions of law arising out of the Tribunal's order dated 6th January, 1986 in R. A. No. 55 (ASR)/1986 in ITA No. 412(ASR)/1981, Assessment Year 1977-78 :

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in confirming the order of the C.I.T. (A) allowing deduction of Investment Allowance of Rs. 10,98,089 under section 32-A of the Income-tax Act, 1961 in respect of new machinery installed by the assessee in the Gases Division ?"

L. K. Sood, Advocate, for the applicant.

S. C. Sibal, Advocate and K. D. Singh, Advocates, for the respondent.

JUDGMENT

S. S. Sodhi, J.

(1) The assessee—Messrs Partap Steel Rolling Mills (Asr) (P) Ltd, Amritsar is engaged in the business of manufacture and sale of steel. During the accounting period, ending on September 30, 1976, an investment allowance of Rs. 10,98,089 was claimed under Section

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32-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), in respect of a new Oxygen Plant installed for its Gas Division. This claim was disallowed by the Inspecting Assistant Commissioner on the ground that Oxygen was a saleable commodity in itself separate from iron and steel and that the new machinery purchased produced Oxygen and not Iron and Steel although the production of Oxygen had been undertaken primarily for the manufacture of Iron and Steel.

(2) The Commissioner of Income Tax (Appeals), however, returned the finding that the Oxygen Unit had been set up as a Captive Unit for the supply of Oxygen to the assessee's iron and steel plant and that since its inception 80 to 90 per cent of the Oxygen was being supplied to the Steel Plant and in fact the very reason for putting up the Oxygen Unit was that it was an essential article for the production of Iron and Steel and therefore, even if Oxygen was an article by itself independent from Iron and Steel and was otherwise a saleable commodity, the setting up of this Unit was an integral part of the assessee's Iron and Steel manufacturing plant and it must consequently be considered to have been installed for the purpose of manufacture or production of one or more of the articles or things specified in the Ninth Schedule. The investment allowance, as claimed, was consequently allowed. This was later up-held on appeal by the Tribunal.

At the instance of revenue, the following question of law has, in this context, been referred for the opinion of this Court :—

“Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in confirming the order of the C.I.T. (A) allowing deduction of Investment Allowance of Rs. 10,98,089 under Section 32-A of the Income Tax Act, 1961 in respect of new machinery installed by the assessee in the Gases Division ?”

(3) A plain reading of the provisions of Section 32-A of the Act leaves no manner of doubt that the interpretation thereof, in the context of the circumstances here, clearly entitle the assessee to the investment allowance as claimed by it in respect of the Oxygen Unit set up by it. The Tribunal rightly observed, “In the modern techniques of manufacture various intermediate, processes are involved in an industry, which are performed by separate units of

machinery but which are merely a chain in the process of producing the final item. The same is the case about the Oxygen Gas in the assessee's case and it is merely an intermediate article utilised for the production of Iron and Steel, an item specified in the list in the Ninth Schedule."

(4) The reference has thus clearly to be answered in the affirmative in favour of the assessee and against revenue. There will, however, be no order as to costs.

P.C.G.

Before Sukhdev Singh Kang and J. S. Sekhon, JJ.

JOGINDER SINGH and others,—*Petitioners*
versus
 HARYANA KHADI AND VILLAGE INDUSTRIES BOARD,
 PANCHKULA and others,—*Respondents.*

Civil Writ Petition No. 5112 of 1984.

March 29, 1989.

Punjab Land Revenue Act (XVII of 1887) Sections 67, 3(8) Punjab Khadi and Village Industries Board Act, 1955, Section 32-A—Loans advanced, interest, cost by Punjab Khadi and Village Industries Board, becoming due—Whether can be recovered as arrears of Land Revenue—Immovable properties mortgaged—Resort to coercive measures like arrest and detention—Whether proper at first instance.

Held, it provides in clear and categorical terms that the loans given by the Board or interest or costs in respect thereof, becoming due to the Board, shall be recoverable as arrears of land revenue. It matters little that the Board is a corporate body and is not government. In order to make the Board an effective vehicle of social change by providing facilities to artisans and other persons of limited means for setting up industries and workshops, the Board was advancing loans. These loans had to be returned in instalments. The money so returned was advanced to other needy persons. If the loanees made default in the repayment of the loans, then the work of the Board was likely to suffer and the purpose for which the Board was set up was likely to be defeated. In order to meet this situation, Section 32-A was inserted in the 1955 Act so that the loan, interest or costs in respect thereof can be recovered as arrears of land revenue.

(Para 7)