

(4) On a consideration of the matter, we are of the opinion that the advance tax loses its identity the moment it is adjusted towards the tax liability created under the regular assessment and takes the shape of payment of tax in pursuance of order of assessment and in this case this happened on 27th January, 1977, when the regular assessment order was made and this happened after 31st day of March, 1975, and, therefore, section 244 (1A) was clearly applicable. Section 214 provides for payment of interest to an assessee on excess amount of advance tax with effect from the first day of April next following the said financial year to the date of regular assessment for the assessment year immediately following the said financial year. This further shows that after adjustment of advance tax at the time of regular assessment if some balance remains to the credit of the assessee, that balance is treated as payment of tax. The amount adjusted towards tax, if found refundable in pursuance of appellate order or other proceedings under section 244 (1A) of the Act, the assessee is entitled to interest thereon at a rate specified in section 244 (1) of the Act. Hence, the Tribunal was right in allowing payment of the interest to the assessee under section 244 (1A) of the Act on the amount which was found refundable on the basis of the appellate order.

(5) For reasons recorded above, we answer the second question in favour of the assessee in the affirmative. Question No. 1 does not arise in view of answer to question No. 2 and is returned unanswered. No costs.

P.C.G.

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

THE COMMISSIONER OF INCOME TAX, AMRITSAR,
Petitioner/Applicant.

versus

M/S S. WARRIAM SINGH COLD STORES, AMRITSAR,—
Respondent.

Income Tax Reference No. 70 of 1983

23rd February, 1989.

Income Tax Act (XLIII of 1961)—Section 32A (1) and 32A (2)
(ii)—*Installation of Plant and Machinery in a Cold Storage—‘Production’ and ‘Manufacture’—Concept of Marketability not included by the words ‘article’ or ‘thing’—Production of Cool Air—Whether can be covered under ‘Production’ or ‘Manufacture’ of ‘article’ or thing,—Whether—assessee entitled to deduction by way of Investment Allowance.*

The Commissioner of Income Tax, Amritsar v. M/s S. Warriam Singh Cold Stores, Amritsar (S. S. Sodhi, J.)

Held, that a plain reading of the provisions of section 32-A (2) (b) (ii) of the Act would show that the words 'production' and 'manufacture' are not in any manner qualified by the 'article' or 'thing' being marketable or being a commercial commodity. The concept of marketability is a wholly unwarranted intrusion into this provision. The assessee is thus entitled to deduction by way of investment allowance. (Para 5)

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 24th March, 1983. In ITA No. 115 (ASR)/1982, Assessment Year 1978-79.

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that machinery or plant installed for the purpose of business of a Cold Storage is covered under section 32A (2) (b) (ii) for the purpose of the admissibility of deduction under section 32A (1) by way of Investment Allowance ?"

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

S. S. Mahajan, Advocate, for the Respondent.

JUDGMENT

S. S. Sodhi, J.—

(1) The matter here pertains to the admissibility of investment allowance in respect of machinery or plant for a cold storage under section 32-A(2) (b) (ii) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

(2) During the assessment year 1978-79, the assessee M/s S. Warriam Singh Cold Stores claimed a sum of Rs. 64,399 in respect of machinery and plant installed in their Cold Storage business. This was declined by the Income Tax Officer and also in appeal by the Appellate Assistant Commissioner, but was accepted by the Commissioner of Income Tax (Appeals) whose decision was later upheld by the Tribunal. This is what led to the following question being referred for the opinion of this Court:—

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that machinery or plant installed for the purpose of business

of a Cold Storage is covered under section 32-A(2) (b) (ii) for the purpose of the admissibility of deduction under section 32-A(1) by way of investment Allowance ?”

(3) In dealing with this matter, counsel for revenue sought to rely upon the judgment of High Court of Calcutta in *S. B. Cold Storage Industries Pvt. Ltd. v. Commissioner of Income Tax* (1), where it was held that as the object of putting goods in cold storage was mainly to preserve their original condition and not to produce anything new and that by such preservation, no new marketable article is brought into existence, machinery or plant installed in the cold storage was not for manufacture or production of any article or thing and no investment allowance in respect thereof accrued under Section 32 of the Act.

(4) A similar view was taken by the High Court of Madhya Pradesh in *Mittal Ice and Cold Storage v. Commissioner of Income Tax* (2), where, it was observed, that the context in which the words ‘Manufacture’ and ‘Production’ occur in Section 32-A(2) (b) (ii) of the Act, they imply that what is manufactured or produced in the industrial undertaking is marketable and capable of being passed on from hand to hand as a new and distinct commercial commodity.

(5) With respect, we cannot concur with these views as a plain reading of the provisions of Section 32-A(2) (b) (ii) of the Act would show that the words ‘production’ and ‘Manufacture’ there are not in any manner qualified by the ‘article’ or ‘thing’ being marketable or being a commercial commodity. The concept of marketability is in our view a wholly unwarranted intrusion into this provision.

(6) The matter regarding Cold Storage came before this Court in *Commissioner of Income Tax, Patiala-II v. Yamuna Cold Storage* (3) in the context of its claim for depreciation on the plea that it fell within the definition of factory building. It was held that the process undertaken in a Cold Storage fell within the definition of ‘Manufacturing process’ in clause (k) (i) of Section 2 of the **Factories Act, 1948** in as much as it involved the production of cold air and therefore, a Cold Storage Building fell within the definition of ‘factory building’ and was thus entitled to depreciation.

- (1) (1987) 166 I.T.R. 646.
- (2) (1986) 159 I.T.R. 18.
- (3) (1981) 129 I.T.R. 728.

The Commissioner of Income Tax, Amritsar v. M/s S. Warriam Singh Cold Stores, Amritsar (S. S. Sodhi, J.)

(7) Next to note is the judgment of the High Court of Andhra Pradesh in *Commissioner of Income Tax v. Super Drillers* (4), where it was held that the drilling of tubewell results in the production of underground water for use on the surface of the ground and therefore, the firm purchasing a rig and compressor for digging borewells, was entitled to investment allowance under Section 31-A of the Act. Relying upon this judgment, counsel for the assessee laid great stress upon the fact that water underground and water on the surface of the ground remained the same substance, yet, it was held entitled to investment allowance in respect of the machinery purchased. On a parity of reasoning, it was contended that in a Cold Storage, the production of cold air must also be treated as 'production' or 'manufacture' of an 'article' or 'thing' in terms of Section 32-A of the Act.

(8) After giving our careful thought to the matter, we fully concur with the view expressed by the Tribunal, namely :

“— — Such a plant does fulfil the condition of producing an article or thing first and the thing produced is later on used for carrying on the business of preservation of articles and goods. Again the language of the relevant section will be fully satisfied, if in the production of an end product, several intermediate articles are produced. It will be obviously not possible to say that legislature intended to grant investment allowance only in respect of the machinery and plant used in the last process and no investment allowance will be available in respect of the intermediate processes of manufacture, which may be producing any article or thing.—”

(9) The reference is accordingly answered in the affirmative in favour of the assessee and against revenue. There will, however, be no order as to costs.

PCG.

(4) (1988) 174 I.T.R. 640.