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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No.117 of 1987

Date of decision:15.1.2007

Mrs. P.Kropivnik **...Petitioner**

Versus

The Commissioner of Income Tax, Patiala **..Respondent**

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Pankaj Jain, Advocate for the petitioner
Mr.S.K.Garg Narwana, Advocate for the respondent.

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RAJESH BINDAL,J.

The following questions of law have been referred to this Court for opinion by the Income Tax Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal') arising out of ITA Nos.555/Chandi/84 relating to the assessment year 1980-81:-

1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that construction, manufacture or production of Ropeways was not the business of the assessee but it was only a means for transporting the timber etc. of a third party from one place to another and consequentially not entitled to investment allowance u/s 32A of the ITA, 1961?
2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that Ropeways were road transport vehicles as contemplated by proviso (b) to section

32A (1) and, therefore, not entitled to investment allowance?

At the time of hearing of the petition, petitioner sought to redraft the questions of law in the following manner:-

1. Whether under the facts and circumstances of the case the Tribunal was justified in upholding that the assembly of component is not manufacturing/industrial activity and hence not allowing the investment allowance on the plant and machinery installed in the factory premises of the applicant in Chandigarh for assembling/manufacturing of Ropeways?
2. Whether under the facts and circumstances of the case the order of the Tribunal is perverse in upholding that the respondent is not a Small Scale Industrial Undertaking for the purpose of eligibility of allowing of investment allowance u/s 32 A and not having any factory premises and not going into the facts of the matter in consequence of the conclusion reached by the Tribunal in question No.1 though the applicant is having a registration No.53 53 01509 PMT SSI dated 06.10.1975 and a regular factory at 57, Phase II, Industrial Area, Chandigarh?
3. Whether under the facts and circumstances of the case the Tribunal was justified in holding that Ropeways are road transport vehicles and covered u/s 32A in the Eleventh Schedule and hence do not qualify for allowing investment allowance on the plant and machinery?

To these proposed redrafted questions of law except at Sr.No. (1), counsel for the revenue does not have any objection. Accordingly, we permit the redrafting of the questions of law and proceed to consider the same. As far as question at Sr. No.(1) is concerned, the same does not arise out of order of the Tribunal, there being no factual matrix available on record.

The facts as noticed in the case are that the petitioner is

engaged in the business of manufacture of Ropeways and also from transport business carried on by installing the Ropeways during the year in question. The assessee entered into a contract with M/S Babu Ram and sons on September 12, 1979 whereby he agreed to put up a Ropeway in forest Gawas, UP 54 & 55, Kheshdhar Range of Rohroo Forest Division for the purpose of transportation of B.L.Timber Billets of all sizes belonging to M/S Babu Ram & Sons on contract basis on the terms and conditions agreed therein. For the purpose of putting up these Ropeways, the assessee purchased various material consisting of wire ropes, driving units (i.e. engines, differentials, gearboxes, brakes etc.), Lasso pulleys and hangers, rope hooks, tools and accessories. On this total investment the assessee claimed investment allowance under Section 32 A of the Income Tax Act, 1961 (for short "the Act) to the extent of 25% of the total investment. The claim made by the assessee was disallowed by the Assessing Officer with the observation that the machinery so installed by the assessee is not being used in the business of manufacture or production of any article or thing as required under Section 32 A of the Act and was merely being used for transportation of timber from jungle to motorable road through Ropeway transport.

In appeal against the order, the Commissioner of Income Tax (Appeals) (for short "the CIT(A)") accepted the plea of the assessee by observing that the timber so carried by the petitioner was finally utilized in manufacturing process even though not directly conducted by the assessee, the assessee would be entitled to the benefit thereof.

The Revenue being aggrieved by order passed by CIT(A) approached the Tribunal, who accepted the appeal of the Revenue by recording a finding that the assessee having not complied with the basic requirements of Section 32A of the Act will not be entitled to any benefit flowing therefrom as the assessee was not engaged in manufacture or production of any article or goods as contemplated under Section 32 A of the Act.

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We have heard Shri Pankaj Jain, learned counsel for the assessee and Shri S.K.Garg Narwana, learned counsel for the Revenue.

Relevant provisions of Section 32 A of the Act, as existed at the relevant time are extracted below:-

> "**32A.**(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 or, if the ship, 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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> Provided that no deduction shall be allowed under this section in respect of-
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> (a) any machinery or plant installed in any office premises or any residential accommodation, including any accommodation in the nature of a guest-house;
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> (b) any office appliances or road transport vehicles;
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> (c) any ship, machinery or plant in respect of which the deduction by way of development rebate is allowable under section 33; and
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> (d) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year.
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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) a new ship or new aircraft acquired after the 31st day of March, 1976 by an assessee engaged in the business of operation of ships or aircraft;

(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) in a small-scale industrial undertaking for the purposes of business of manufacture or production of any article or thing; or

(iii) 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."

A perusal of the provisions of Section 32A of the Act shows that 25% of the actual cost of ship, aircraft, machinery or plant to the assessee is allowable as deduction by way of investment allowance. It further provides that in case of new machinery or plant installed after 31st day of March, 1976, the same should be in a small scale industrial unit for the purpose of business of manufacture or production of any article or thing.

The contentions raised by counsel for the assessee are that it is not disputed that the assessee is a Small Scale Industrial Unit. She purchased machinery, which was used for the purpose of business. The Ropeways which were installed with that machinery incidentally resulted in transport of timber. The manufacture of Ropeways does not fall in Schedule Eleven to the Act. Accordingly, the Tribunal was wrong in disallowing the claim made by the assessee for investment allowance under Section 32A of the Act. It is further contended that the assessee was engaged in the business of manufacture of Ropeways, which entitled her to claim

investment allowance. Perversity of findings recorded by the Tribunal are also challenged.

Learned counsel for the assessee relied upon **Commissioner of Income-Tax, Bombay City I Vs. Tata Locomotive & Engineering Co.Ltd. (1968) 68 ITR 325 (Bombay); Commissioner of Income-Tax Vs. Beehive Engineering Co. and Allied Industries (P.) Ltd. (1996) 221 ITR 561(Andhra Pradesh) and Commissioner of Income-Tax Vs. Elemech Industrial Constructions (1998) 229 ITR 503 (Andhra Pradesh)** to submit that even the business of assembly has been held to be covered under the term manufacture for the purpose of Section 32A of the Act. There is no quarrel with the proposition laid down in the above cases but the principles laid down herein are not applicable in the facts of the present case as the assessee in the present case is seeking benefit of Section 32A of the Act on the value of goods so assembled and not on the investment in machinery to manufacture. Rather the machinery so installed is resulting in business of transport, on which benefit admittedly is not available.

On the other hand, learned counsel for the Revenue submitted that there is a clear finding that the machinery so installed by the assessee was being used for the purpose of transport business and the same does not entitle the assessee to the benefit of investment allowance under Section 32A of the Act. To the contention of the counsel for the assessee that the findings recorded by the Tribunal are perverse, it was submitted that there is no material on record to take a view different to what has been taken by the Tribunal.

Having heard learned counsel for the parties, we find from the material on record that the assessee had sought to claim the benefit under Section 32A of the Act on the investment made on the value of plant and machinery installed for transport purposes and not for the purpose of manufacture or production of any article or thing. There is no material on record to even remotely suggest that the machinery was installed by the assessee for production of any article or thing or to enable the assessee to

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assemble any machinery. Once it is found that the assessee did not satisfy the conditions for grant of investment allowance as laid down under Section 32A of the Act, we do not find any reason to hold that the assessee is entitled to the same.

Accordingly, the questions referred to above are answered against the assessee and in favour of the revenue.

(Rajesh Bindal)
Judge

January 15 ,2007 **(M.M.Kumar)**
Pka **Judge**