C.I.T vs N.C.Budharaja And Co on 7 September, 1993

Equivalent citations: 1993 AIR 2529, 1994 SCC SUPL. (1) 280, AIR 1993 SUPREME COURT 2529, 1993 AIR SCW 3317, 1993 TAX. L. R. 1117, (1993) 5 JT 346 (SC), 1994 (1) SCC(SUPP) 280, 1993 KERLJ(TAX) 671, 1994 SCC (SUPP) 1 280, (1993) 70 TAXMAN 312, 1993 (5) JT 346, (1993) 117 TAXATION 267, (1994) 45 ECC 1, (1993) 114 CURTAXREP 420, (1993) 204 ITR 412

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, N Venkatachala

PETITIONER:
C.I.T.

Vs.

RESPONDENT:
N.C.BUDHARAJA AND CO.

DATE OF JUDGMENT07/09/1993

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
VENKATACHALA N. (J)

CITATION:
1993 AIR 2529 1994 SCC Supl. (1) 280
JT 1993 (5) 346 1993 SCALE (3)726

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J.- Two groups of appeals are placed before us for hearing. The first group involves the interpretation of identical words occurring in Section 80-HH and Section 84 viz., "manufacture or produce articles"

whereas the second group is concerned with the words "construction, manufacture or production of any article or thing" in Section 32-A of the Income Tax Act. Civil Appeal Nos. 4238-4240 of 1983 can be said to be representative of the first group whereas the second group of appeals comprise Civil Appeal Nos. 4239 to 4248 of 1992.

2.The first group of appeals is directed against the Judgment of a Division Bench of Orissa High Court answering the question referred to it under Section 256(2) in favour of the assessee. The question referred is to the following effect: "Whether on the facts found by the Appellate Tribunal, the assessee is entitled to the benefit provided under Section 80-HH of the Income Tax Act, 1961?" The assessment years concerned are 1974-75 and 1975-76. The respondent assessee is a firm of contractors constituted for the purpose of construction of a dam in Orissa. It was constituted under a partnership deed dated January 14, 1972. It was given the contract of constructing a dam in Dhenkanal District which is a notified backward district for the purpose of Section 80-HH. In proceedings for assessment of its income for the relevant years, the respondent claimed the relief under the said provision. The Income Tax Officer allowed the same. The Commissioner of Income Tax however revised the order of the ITO to the extent of grant of relief under Section 80-HH. He was of the opinion that the assessee, engaged in construction of a dam cannot be said to be engaged in manufacture or production of an article inasmuch as "a dam is constructed and not manufactured. It would be absurd to say that the assessee is manufacturing dam or the dam is capable of being sold. In short, the firm cannot be held as an industrial undertaking merely because it has to undertake certain manufacturing process in the course of construction of the irrigation project". He also referred to the fact that the assessee-firm was constituted only for the purpose of constructing a particular dam, on the completion of which work the firm would cease to exist automatically. The assessee preferred an appeal before the Income Tax Appellate Tribunal which was allowed on the following reasoning and findings:

(a) The activity of constructing a dam can be characterised as an industrial activity.

The work undertaken by the assessee-firm can, therefore, be called an "industrial undertaking".

(b) The word "articles" occurring in clause

(i) of sub-section (2) of Section 80-HH is not confined to moveables nor to small things produced in large quantities.

(c) The activity of construction of a dam can be characterised as processing as well as manufacturing.

3.At the instance of the Revenue the aforesaid question was referred for the opinion of the High Court. The High Court agreed with the Tribunal that the assessee-firm constituted for the purpose of constructing a dam for storing water can be called an "industrial undertaking". The High Court opined that the definition of "industry" in the Industrial Disputes Act can well be relied upon to ascertain the meaning of the expression "industrial undertaking", inasmuch as the said expression

has not been defined in the Act or the Rules. The High Court also agreed with the Tribunal that the word "article" need not be confined to mere moveables and that "there would be no justification to hold that a dam is not an article in that sense of the term". The correctness of the said view is questioned in these appeals.

4. The learned counsel for the Revenue, Shri J. Ramamurti attacked mainly the opinion of the High Court with respect to the meaning attached by it to the word "article". He submitted that the activity of constructing a dam cannot and does not fall within the words "manufacture or produce articles" in Section 80HH(2)(i). He relied upon the decisions in CIT v. N. U. C. Pvt. Ltd.'; CIT v. Shah Construction Co. Ltd.2; Chowgule & Co. Pvt. Ltd. v. Union of India3 and Delhi Cold Storage Pvt. Ltd. v. CIT4 in support of his submission. He submitted that the contrary view, taken in some of the decisions of the High Courts, does not represent the correct view. On the other hand, Shri B.B. Ahuja and Shri B. Sen, learned counsel appearing for the respondent-assessee supported the reasoning and conclusion of the High Court and the Tribunal. They relied upon and commended for our acceptance the reasoning in the order under appeal as well as the reasoning in CIT v. Pressure Piling Co. (India) Pvt. Ltd.5; Shankar Construction Co. v. CIT6 and in CIT v. Tiecicon Pvt. Ltd.7

5. Section 80-HH occurs in Chapter VI-A, which provides for "deductions to be made in computing the total income". Sub- section (1) of Section 80-HH provides that "Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of a hotel, to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof". Sub-section (2) says that Section 80-HH applies to any industrial undertaking which fulfills all the four conditions prescribed therein. It would be appropriate to set out sub- section (2) in its entirety:

> " (2) This section applies to any industrial undertaking which fulfills all the following conditions, namely:
>
> (i)it has begun or begins to manufacture or produce articles after the 31 st day of December, 1970 (but before the 1st day of April, 1990), in any backward area;
>
> (ii)it is not formed by the splitting up, or the reconstruction, of a business already in existence in any backward area:
>
> Provided that this condition shall not apply in respect of any industrial undertaking which is formed as a result of the reestablishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in Section 33-B, in the circumstances and within the period specified in that section;
>
> (iii)it is not formed by the transfer to a new business of machinery or plant previously used for any purpose in any backward area;

(iv) it employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

1 (1980) 126 ITR 377 (Bom) 2 (1983) 142 ITR 696: 1983 Tax LR 243 (Bom) 3(198 1) 1 SCC 653 1981 SCC (Tax) 51 :(1981) 47 STC 124 4 (1991) 4 SCC 239 (1991) 191 ITR 656 5 (1980) 126 ITR 333 (Bom) 6 (1991) 189 ITR 463 (Kant) 7 1988 Supp SCC 487 : 1988 SCC (Tax) 485 :

(1987) 168 ITR 744 Explanation.- Where any machinery or plant or any part thereof previously used for any purpose in any backward area is transferred to a new business in that area or in any other backward area and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause

(iii) of this sub-section, the condition specified therein shall be deemed to have been fulfilled."

6.Sub-section (4) provides that the deduction specified in sub-section (1) shall be allowed for a period of ten years beginning with the assessment year relevant to the previous year in which the industrial undertaking "begins to manufacture or produce articles". Sub-section (1) thus confers a substantial benefit. It provides for deduction for a period of ten years of an amount equal to 20 per cent from the profits and gains of an industrial undertaking which fulfills all the four conditions specified in sub- section (2). All the four conditions must be satisfied simultaneously. We are, however, concerned in these appeals with the first of the four conditions. It says that the industrial undertaking must have begun or begins to manufacture or produce articles after the 31 st day of December 1970 in any backward area. (By the Finance Act, 1990, the words "but before the 1st day of April, 1990" were inserted in the said clause, thus limiting the operation of the section till that date only.)

7.Both the Tribunal and the High Court have held that the work undertaken by the assessee, or to put it differently, the assessee, which has undertaken the work of construction of a dam, can be characterised as an industrial undertaking. The counsel for the Revenue has not addressed any arguments on this aspect. We shall, therefore, express no opinion on the question whether the assessee/respondent or the work undertaken by it constitutes an industrial undertaking. We shall proceed on the assumption for the purpose of these cases that it does. The only question, therefore, is whether the assessee, has begun to manufacture or produce articles after the specified date in an area notified as a backward area. It is not in dispute that the assessee commenced its work after 31 st day of December 1970 and that the work carried on by it is in a notified backward area. In short, the limited question is whether the construction of a dam to store water (reservoir) can be characterised as amounting to manufacturing or producing an article or articles, as the case may be. The words "manufacture" and "production" have received extensive judicial attention both under this Act as well as Central Excise Act and the various Sales Tax Laws. The word "production" has a wider connotation than the word "manufacture". While every manufacture can be characterised as production, every production need not amount to manufacture. The meaning of the expression

"manufacture" was considered by this Court in Deputy CST v. Pio Food Packers8 among other decisions. In the said decision, the test evolved for determining whether manufacture can be said to have taken place is, whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity but is recognised in the trade as a new and distinct commodity. Pathak, J. as he then was, stated the test in the following words: (SCC p. 176, para 5) 8 1980 Supp SCC 174 1980 SCC (Tax) 319: (1980) 46 STC 63 "Commonly manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place."

8.The word "production" or "produce" when used in juxtaposition with the word "manufacture" takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the byproducts, intermediate products and residual products which emerge in the course of manufacture of goods. The next word to be considered is "articles", occurring in the said clause. What does it mean? The word is not defined in the Act or the Rules. It must, therefore, be understood in its normal connotation the sense in which it is understood in commercial world. It is equally well to keep in mind the context since a word takes its colour from the context. The word "articles" is preceded by words "it has begun or begins to manufacture or produce". Can we say that the word "articles" in the said clause comprehends and takes within its ambit a dam, a bridge, a building, a road, a canal and soon? We find it difficult to say so. Would any person who has constructed a dam say that he has manufactured an article or that he has produced an article? Obviously not. If a dam is an article, so would be a bridge, a road, an underground canal and a multi-storied building. To say that all of them fall within the meaning of word 'articles' is to over-strain the language beyond its normal and ordinary meaning. It is equally difficult to say that the process of constructing a dam is a process of manufacture or a process of production. It is true that a dam is composed of several articles; it is composed of stones, concrete, cement, steel and other manufactured articles like gates, sluices etc. But to say that the end product, the dam, is an article is to be unfaithful to the normal connotation of the word. A dam is constructed; it is not manufactured or produced. The expressions "manufacture" and "produce" are normally associated with moveables articles and goods, big and small but they are never employed to denote the construction activity of the nature involved in the construction of a dam or for that matter a bridge, a road or a building. The decisions of the Bombay High Court in CIT v. N. U. C. Pvt. Ltd. I and in CIT v. Shah Construction Co. Ltd.2 relied upon by Shri Murti are no doubt not decisions rendered under Section 80-HH or under Section 84 they arose under the relevant Finance Acts, the question being whether the assessees were industrial companies they do contain observations which tend to support the stand of the Revenue.

9.It may be that the petitioner is himself manufacturing some of the articles like gates, windows and doors which go into the construction of a dam but that makes little difference to the principle. The petitioner is not claiming the deduction provided by Section 80-HH on the value of the said

manufactured articles but on the total value of the dam as such. In such a situation, it is immaterial whether the manufactured articles which go into the construction of a dam are manufactured by him or purchased by him from another person. We need not express any opinion on the question what would be the position, if the petitioner had claimed the benefit of Section 80-HH on the value of the articles manufactured or produced by him which articles have gone into/consumed in the construction of the dam.

10.In the Judgment under appeal, the Orissa High Court has relied upon the meaning assigned to the word "article" in Shorter Oxford English Dictionary, to the effect "a commodity; a piece of goods or property". Since article means a piece of property, the learned Judges said, it can as well mean immovable property. Accordingly, they held, a dam is also an article. In our opinion, the High Court was not right in dissociating the said word from its context viz., the preceding words - which has led them to attach an unnatural meaning to the said word.

11.Mr Sen relied upon the decision of the House of Lords in Longhurst v. Guildford Godalming and District Water Board9 to support the view taken by the High Court. The question in that case was whether the pump house wherein water was stored under pressure after being filtered and chlorinated in the filter house can be called a "factory" within the meaning of Factories Act, 1937. "Factory" was defined in the said Act in the following words:

> "Subject to the provisions of this section, the expression 'factory' means any premises in which, or within the close or cartilage or precincts of which, persons are employed in manual labour in any process for or incidental to any of the following purposes, namely:- (a) the making of any article or of part of any article; or (b) the altering, repairing, ornamenting, finishing, cleaning, or washing, or the breaking up or demolition of any article; or (c) the adapting for sale of any article; being premises in which, or within the close or cartilage or precincts of which, the work is carried on by way of trade or for purposes of gain and to or over which the employer of the persons employed therein has the right of access or control:.....

12.It was argued that the water which was filtered and chlorinated and then put under pressure in the pump house is an article. The House of Lords held that though the water in the filter beds was an "article" for the purpose of the definition of the factory and the filter house can thus be called a factory, yet the pump house which pumped water to the consumers was not a part of the factory. We are unable to see how the principle of the said decision is of any help to the assessee herein.

13.It is submitted by the counsel for the respondent- assessee that since Section80-HH is intended to encourage establishment of industrial undertakings in backward areas for the reason that such establishment leads to development of that area besides providing employment, we must adopt a liberal interpretation which advances the purpose and object underlying the provision. The said principle, however, cannot be carried to the extent of doing violence to the plain and simple language used in the enactment. It would not be reasonable or permissible for the Court to rewrite the section or substitute words of its own for the actual words employed by the legislature in the name of giving effect to the supposed underlying object. After all, the underlying object of any

provision 9 (1961)3 All ER 545: (1961) 3 WLR 915 has to be gathered on a reasonable interpretation of the language employed by the legislature.

14.For all the above reasons, we are of the opinion that it is not possible to accede to the contention that the activity of construction of a dam can be characterised as manufacture or producing of article or articles, as the case may be, within the meaning of Section 80-HH(2)(i) of the Act.

15.Another set of appeals in the first group (Civil Appeal Nos. 5865-5866 of 1983) are preferred against the judgment of the Bombay High Court in CIT v. Pressure Piling Co. (India) Pvt. Ltd.-' The respondent-assessee in these appeals is engaged in the business of laying foundations for buildings and other structures by a specialised patented method known as pressure piling. For the assessment years 1963-64 and 1964-65, it claimed the benefit under Section 84 of the Income Tax Act, 1961 on the ground that it is a newly established industrial undertaking within the meaning of the said provision. The ITO denied the said relief on the ground that the assessee did not satisfy the condition in Section 84(2)(iii). In other words, he was of the opinion that the assessee was not engaged in manufacture or production of articles. The assessee's appeal to AAC was dismissed, whereupon he carried the matter in further appeal to the Tribunal. There, a difference of opinion arose between the Accountant Member and Judicial Member who heard the appeal. The Accountant Member was for allowing the appeal whereas the Judicial Member was for its dismissal. The matter was referred to a third member, who agreed with the Accountant Member. Thereupon the Revenue applied for and obtained reference of the following question under Section 256(1) of the Income Tax Act:

> "Whether, on the facts and in the circumstances of the case, the assessee- company was engaged in the 'manufacture' or 'production of articles' within the meaning of Section 84(1) of the Income Tax Act, 1961, for the assessment year 1963-64, and relief under Section 84(1) and Section 101 for the assessment year 1964-65?"

16.The High Court examined the process by which the assessee carried out its workand held that it can be characterised as manufacture or production of an article. Accordingly it answered the question referred in the affirmative i.e., in favour of the assessee and against the Revenue. The correctness of the said view is questioned in these appeals.

17.The process adopted by the assessee for laying pressure piles has been set out in the statement of the case in the following words:

> "Pressure piles are cast in site and piles are formed in bore holes previously excavated by suitable boring plant at each pile position. The borings are sunk to suitable bearing stratum and concrete is then introduced into the holes under applied air pressure. This, when set, forms a permanent pile giving a very high surface friction in addition to the bearing value obtained at the foot of the pile. The method adopted of sinking pressure piles is as under: A boring is first made for each pile, the hole being bored with steel tubes. As the boring proceeds, these steel tubes are sunk in the ground, the soil being excavated through the tube itself in the manner employed by

well bores. In this way the underlying soil is thoroughly explored, samples of the succeeding strata being obtained as each hole is sunk. This permits the correct depth of boring to be determined in every case. If necessary, steel reinforcements of any required design can then be lowered down the casing and fixed in a correct position so that the rods will be properly embedded when concrete is added. If the bore hole is dry, concrete is introduced to the casings and compressed air is admitted. The air pressure forces the concrete down the casing and presses it into the interstices of the bottom part of the bored hole from which the casing is withdrawn. In this way, the actual diameter of the pile is made to exceed that of the casing itself and it also forms a rough surface that bonds into the strata penetrated by the pile. As each section of the tube is raised above ground, it is unscrewed and further batch of concrete is added. This process is continued until the pile is completed."

18. Section 84 insofar as it is relevant for our purpose reads thus:

"84. Income of newly established industrial undertakings or hotels.-

(1) Save as otherwise hereinafter provided, Income Tax shall not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking or hotel to which this section applies as do not exceed six per cent per annum on the capital employed in the undertaking or hotel, computed in the prescribed manner.

(2)This section applies to any industrial undertaking which fulfills all the following conditions, namely:

(i) it is not formed by the splitting up, or the reconstruction of, a business already in existence;

(ii)it is not formed by the transfer to a new business of a building, machinery or plant previously used for any purpose;

(iii)it has begun or begins to manufacture or produce articles in any part of India at any time within a period of eighteen years from the 1st day of April, 1948, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking.....

19.It would be noticed that the language of Section 84(2)(iii), insofar as it is relevant, is identical with the relevant language in Section 80-HH. In the light of our discussion hereinbefore, can it be said that the assessee herein is engaged in manufacture or production of articles? We find it difficult to say so. According to the statement of case, the process adopted by the assessee, in short, is this: in the first instance holes are bored into earth at the site of construction with steel tubes; as the boring proceeds, these steel tubes are sunk into the ground; the soil is excavated through the tube itself; after reaching the correct depth, concrete is poured into the casings and compressed air is admitted; the air pressure forces the concrete down the casing and presses it into interstices; if necessary, steel

re-enforcements are also provided to keep the rods in correct position. In this manner a strong foundation is laid. Upon that foundation further construction whether it is a building, bridge, dam or any other structure is raised. Can it be said that the said activity is one of manufacturing or producing articles? If the construction of a dam, a bridge or a building as a whole does not amount to manufacture or production of an article, it is difficult to see how the laying of foundation or foundations for such dam, bridge or building can be characterised as manufacturing or production of articles. The process of laying foundation is an integral part of the construction of a dam, bridge or building. Each such structure requires a foundation. The assessee does no more than lay the foundation(s) by a technologically innovative method, which lends to the strength of the foundation. It cannot be said that if a person constructs the entire dam including the foundation, he is not manufacturing or producing an article but where he merely lays the foundation for such dam he is manufacturing or producing an article. The piles, which the assessee lays by his particular method become a fixture in the earth. It ultimately becomes an integral part of the dam, bridge or building, as the case may be. It is not as if the assessee supplies prefabricated piles, which are bored into the earth by the contractor or owner, as the case may be. The work is done on the spot and it is a works-contract. It is no different from any other works contract which is done on the spot and becomes a part and parcel of a larger construction. In such matters one has to look to the precise activity and decide whether it can be said to amount to manufacturing or producing an article. For the above reasons and those given hereinbefore in Budharaja, these appeals are also liable to succeed.

20.We may now take up the second group of appeals comprising Civil Appeal Nos. 4239-4248 of 1992. These appeals are preferred by the Commissioner of Income Tax against the decision of the Karnataka High Court in CIT v. Shankar Construction Co.6 Shankar Construction Company is the respondent-assessee in all these appeals. For the relevant assessment years, the respondent claimed deduction on account of investment allowance in terms of Section 32-A. Sub-section (1) of Section 32-A provides inter alia that in respect of machinery or plant specified in sub-section (2), owned by the assessee and wholly used for the purposes of the business carried on by him, he shall be allowed a deduction in respect of the previous year in which the machinery or plant was installed a sum equal to 25 per cent of the actual cost of the machinery or plant by way of investment allowance. Sub-section (1) provides for such an allowance even in the case of a ship or aircraft. Sub- section (2) specifies the ship or aircraft or machinery or plant referred to in sub-section (1). Having regard to its relevance, sub-section (2) may be set out hereinbelow submitting the portions not necessary to be noticed for the purpose of these appeals:

> " (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 31 st 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:"

21. The claimfor the said allowance was disallowed by the Assessing officer. On appeal, the CIT appeals accepted the assessees' claim against which the department went up in appeal to the Tribunal. The Tribunal allowed the Revenue's appeal following the decision in I.T.A. No. 715/Bang/1982 (pertaining to Shankaranarayana Construction Company). The assessee thereupon applied for and obtained a reference under Section 256 of the Income Tax Act. The question referred for the opinion of the High Court reads thus: "Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in upholding the disallowance of investment allowance?" With a view to pinpoint the controversy, the High Court reframed the question in the following terms: "Whether, on the facts and in the circumstances of the case, the allowance provided for under sub-clause (iii) of clause (b) of sub-section (2) of Section 32-A of the Act will enure to the benefit of the assesses?"

22.Respondent-assessee is a registered firm, carrying on business in the manufacture and sale of tiles and in construction work on a large scale. It has specialised in the construction of dams and canals. The question before us is whether the assessee is entitled to investment allowance on the actual cost of the machinery and plant installed for the purpose of its business pertaining to construction of dams and canals. In other words, the question is whether such machinery or plant can be said to have been installed "for the purposes of business of construction, manufacture or production of any article or thing" and further whether the assessee or the work undertaken by it can be called an "industrial undertaking" within the meaning of sub-clause

(iii) of clause (b) of sub-section (2). The sub-clause specifies three requirements which must have been satisfied viz., (1) The new machinery or plant must be installed in an industrial undertaking after the 31 st day of March 1976. (2) The machinery on plant must have been installed for the purposes of business of construction manufacture or production of an article or thing; and (3) the article or thing should not be one of those specified in the Eleventh Schedule to the Act.

23.There is no dispute about the third requirement. The controversy is only about the first and second requirements. Even here, the learned counsel for Revenue, Shri Murti concentrated only upon the second requirement. He did no address any arguments with respect to the first, for which reason we do no propose to express any opinion thereon. We shall confine ourselves to the question whether the new machinery or plant installed by the assessee for the purpose of construction of a dam or irrigation canals is entitled to investment allowance. It would be noticed immediately that sub-clause (iii) of clause (b) on sub-section (2) of Section 32-A employs certain words which are not

found in Section 80-HH(2)(i) or in Section 84(2)(ii). The relevant words in those two sections are "manufacture or produce articles"

> whereas the relevant words in Section 32-A are "construction, manufacture or production of any article of thing". Because the sub-clause in Section 32-A employs the additional words "construction" and "thing", it is argued for the assessee that the scope of the sub-clause is wider than the relevant sub-clauses in Section 80-HH and Section
>
> 84. It is submitted that the sub-clause concerned in these appeals speak expressly of the construction of a thing. The expression "thing", it is argued, wider than the expression "article" and takes in immovable properties like dams, bridges, roads and canals. If it is not so construed, it is argued, the words "construction" and "thing" in this sub- clause would be rendered super flour Learned counsel brought to our notice the meanings given to the said word various dictionaries, namely from the Lexicon Webster Dictionary, The Conci, Oxford Dictionary of Current English, Black's Law Dictionary and Stroud's Judicial Dictionary. So far as the first two dictionaries are concerned, the said word does not take in immovable property like buildings etc. within its ambit. However, in Black's Law Dictionary, the following meanings are assigned to the expression "things":
>
> "Things.- The objects of dominion or property as contra-distinguished from 'persons'. Gayer v. Whelan10. The object of a right; i.e., whatever is treated by the law as the object over which one person exercises a right, and with reference to which another person lies under a duty.
>
> Such permanent objects, not being persons, as are sensible, or perceptible through the senses. Things are distributed into three kinds: (1) Things real or immovable, comprehending lands, tenements, and here determents; (2) things personal or moveable, comprehending goods and chattels; and (3) things mixed, partaking of the characteristics of the two former, as a title- deed, a term for years. The civil law divided things into corporeal (tangi possunt) and incorporeal (tangi non possunt)."

24.In Stroud's Judicial Dictionary the following meanings are assigned to the word "thing":

> "Thing.- (1) 'Thing' in such a phrase as 'building, erection, or thing', in a statutory prohibition, will generally be read ejusdem generis; thus, a lot of stones placed one upon another in the bed of a river but not fastened or cemented together was not a 'thing' within such a phrase (Colbran V. Barnes11). (2)'Other matter or thing': see Winsborrow v. London Joint Stock Bank12."

25.Learned counsel for the assessee, Shri Mohan Vellapally, relies particularly upon the meanings assigned in Black's Law Dictionary and contends that in the sub- clause concerned herein construction of a thing does certainly mean and take in construction of dams, irrigation canals,

buildings, bridges and roads.

26.Mr Murti, learned counsel for the Revenue, disputes the correctness of the assessees' submission. According to him sub-section (2) of Section 32-A must be interpreted and understood in the following manner: Clause (a) speaks of acquisition of a new ship or aircraft while clause (b) speaks of new machinery or plant installed (i) for the purposes of business of generation or distribution of electricity or any other form of power, (ii) in a small scale industrial undertaking for the purposes of business of manufacture or production of any article or thing, and (iii) in any other industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing; if an assessee installs any new machinery or plant for the construction of ships he can claim investment allowance only under clause (b)(iii); he cannot claim it under clause (a) for the reason that clause (1) is confined only to an assessee who acquires i.e., who purchases a new ship or a new aircraft after the specified date and the investment allowance is granted on the actual cost of ship or aircraft; the meaning of the word "construction" as well as the word "thing"

0 59 Cal App 2d 255 : 138 P. 2d 763, 768 1 (1861) 11 CB (NS) 246: 142 ER 791 2 (1903) 88 LT 803: 19 TLR 500 must be determined having regard to the context in which the said words occur viz., machinery or plant installed in an industrial undertaking for production of any article or thing; the word "construction" in the sub-clause is thus akin to manufacture or production; similarly the expression "thing" is used as interchangeable with the expression article; a perusal of the list in the Eleventh Schedule reinforces this submission inasmuch as the articles and things mentioned in the Eleventh Schedule are all moveables; it would not be correct to associate the word "construction" with the word "thing"; the appropriate way to read them is in the order in which they occur in the sub-clause says the learned counsel.

27.Though at first sight, the use of the words "construction" and "thing" appear to lend some substance to the contention of the learned counsel for the assessee, a deeper scrutiny and in particular the legislative history of the relevant provisions militates against the acceptance of his submission. Subclauses (ii) and (iii) of clause (b) of sub-section (2) of Section 32-A were substituted by Finance Act (No. 2) of 1977 with effect from April 1, 1978. Prior to the said amendment, the sub-clauses read as follows-

> "(ii) for the purposes of business of construction, manufacture or production of any one or more of the articles or things specified 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."

28.The unmended sub-clause (ii), which corresponds to present sub-clause (iii), was thus confined to the "articles and things" in the IXth Schedule. The IXth Schedule, since omitted, contained as many as 33 items. Item 15 therein related to "ships". All the items referred only to moveables; none of them refers to an immovable object like a building, factory or bridge. Since the appropriate word in the case of ships is "construction" in common parlance one speaks of construction of ships and not manufacture of ships the legislature used the expression "construction" in unamended

sub-clause (ii). The said sub-clause also referred to "articles or things", which is the heading of the IXth Schedule After amendment, sub-clause (ii), which became sub-clause (iii) underwent a certain change. Not only were the words "in any other industrial undertaking' were added at the beginning of the sub-clause, the applicability of the sub. clause was extended to all articles and things except those articles and thing., mentioned in the Xlth Schedule. The heading of Xlth Schedule is again "list of articles or things", but the list does not include 'ships'. In other words, sub clause (iii), after amendment, continues to apply to ships. Ships are among the articles or things to which the present sub-clause

(iii) applies. And that in precisely the reason the word "construction" is retained in amended sub-clause (iii) the sub-clause corresponding to unamended sub-clause (ii). So far as the use of the word "thing" is concerned, it has no special significance inasmuch a the IXth Schedule and the Xlth Schedule both contain a list of articles or thing,, Both the IXth Schedule, to which alone the unamended sub- clause (ii) applies as well as the Xlth Schedule, the articles and things wherein are excluded from the purview of amended sub-clause (iii), refer only to moveable objects called articles or things. In this background, it is not possible or permissible to read the word "construction" as referring to construction of dams, bridge,, buildings, roads or canals. The association of words in former sub-clause (ii) and the present sub-clause (iii) is also not without significance. The words are:

> "construction, manufacture or production of any one or more of the articles and things..... and "construction, manufacture or production of any articles and things..... respectively. It is equally evident that in these sub- clauses as well as in the IXth Schedule and Xlth Schedule, the words "articles" and "things" are used interchangeably. In the scheme and context of the provision, it would not be right to isolate the word "thing", ascertain its meaning with reference to Law Lexicons and attach to it a meaning which it was never intended to bear. A statute cannot always be construed with the dictionary in one hand and the statute in the other. Regard must also be had to the scheme, context and as in this case to the legislative history of the provision. We are, therefore, of the opinion that sub-clause (iii) of clause (b) of sub-section (2) of Section 32-A does not comprehend within its ambit construction of a dam, a bridge, a building, a road, a canal and other similar constructions.

29.So far as the decision of the High Court under appeal is concerned, it appears to have concentrated more upon the meaning of the word "industrial undertaking" and answered the question in favour of the assessee, holding that the assessee is an industrial undertaking within the meaning of the said subclause. Unfortunately, it has not adverted to the other requirement of the said sub-clause even though the Tribunal had referred to this aspect and had disagreed with the view taken by the Orissa High Court in N.C. Budharaja & Company. It must be remembered that the sub-clause is attracted only if all the requirements therein are satisfied besides the other requirements in other provisions of the section.

30.So far as the question whether the assessee herein or the work undertaken by it can be characterised as an "industrial undertaking" as held by the High Court is concerned, we may

reiterate that no arguments have been addressed by the learned counsel for the Revenue questioning the view taken by the High Court. We do not, therefore, propose to express any opinion on the said aspect.

31.SLP No. 16839 of 1992 is preferred against the Judgment of the Karnataka High Court extending the benefit of Section 32-A to the new machinery employed in digging bore wells. For the reasons given hereinabove, leave is granted and the appeal is allowed.

32.For the above reasons we allow Civil Appeal Nos. 4238 to 4240 of 1983, C.A. No. 4881 of 1993 (arising from SLP No. 3219 of 1993) (wherein leave is granted herewith) and Civil Appeal Nos. 5865-5866 of 1983. No costs.

33.Similarly, Civil Appeal Nos. 4239-4248 of 1992 (CIT v. Shankar Construction Co.), C.A. No. 3859 of 1992, (CIT v. Mysore Construction Co.), C.A. No. 3405 of 1991 (CIT v. Suresh Malpani & Co.) and C.A. No. 2685 of 1992 (CIT v. Buildment Pvt. Ltd.) are allowed. No costs. C.A. No. 5381 of 1992 delinked. SLP (C) No. 16838 of 1992 also delinked. Post separately after 4 weeks.