Supreme Court of India
Commissioner Of Income-Tax vs Castle Rock Fisheries. on 23 April, 1997
Equivalent citations: 1998 231 ITR 304 SC, 1998 99 TAXMAN 9 SC
ORDER--Fulfilment of conditions for development rebate.

Ratio & Held :

Appeal of the petitioner was dismissed as the question of the eligibility of the assessee for grant of development rebate on the ground that conditions specified in section 33(1)(a) were not satisfied was not comprehended with the purview of the question referred by the Tribunal.

Case Law Analysis :

CIT v. Castlerock Fisheries (1980) 126 ITR 382 (Ker) affirmed.

Application :

Also to current assessment years.

A. Y. :

1969-70 Income Tax Act 1961 s.33 Income Tax Act 1961 s.256 JUDGMENT This appeal by certificate granted under section 261 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the judgment of the Kerala High Court dated February 26, 1980 (see [1980] 126 ITR 382), in Income-tax Reference No. 24 of 1978 which relates to the assessment year 1969-70.

The assessee is a registered firm dealing in sea foods having its head office at Cochin and a branch at Bombay. During the accounting year relevant to the assessment year 1969-70, the assessee had put up a freezing, cold storage and ice plant at their Bombay branch and the same was temporarily let out by them to a sister concern. The income derived by such letting was treated and assessed as the business income of the assessee for the relevant accounting year. The assessee claimed that they were entitled to development rebate in respect of the cold storage and ice plant at 35 per cent. as provided for under section 33(1)(b)(B)(i)(a) of the Act. The Income-tax Officer allowed development rebate at the rate of 20 per cent. on the ground that the assessee had not been using the plant for processing goods but had actually let it out. The said order of the Income-tax Officer was affirmed in appeal by the Appellate Assistant Commissioner. On further appeal by the assessee, the Income-tax Appellate Tribunal (hereinafter referred to as "the Tribunal") held that the assessee was entitled to development rebate at the rate of 35 per cent. The Tribunal referred the following question for the opinion of the High Court (page 383) :

"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is right in law in holding that in respect of the freezing and storage plant let out by the assessee, the assessee can claim development rebate under section 33(1)(b)(B)(i)(a) of the 1961 Act ?"

On behalf of the Revenue it was contended before the High Court that since the assessee had temporarily let out the plant and machinery in question in its branch at Bombay it cannot be said that the said machinery or plant is "wholly used for the purpose of the business carried on by him" as is mandatorily required under section 33(1) (a) of the Act for the purpose of eligibility for the grant of development rebate and that the Tribunal was not justified in holding that the assessee is entitled to the grant of development rebate at the rate of 35 per cent. The High Court has rejected the said contention urged on behalf of the Revenue on the ground that while making the assessment for the year concerned, the Income-tax Officer had proceeded on the explicit basis that despite the fact that the freezing plant, etc., in the Bombay branch of the assessee had been let out to a sister concern, the said plant and machinery wert none the less being used by the assessee for its business and treated the income derived by the assessee by such letting out as a business income of the assessee. The High Court has also observed that the Appellate Assistant Commissioner before whom the matter was carried by the assessee had confirmed the order of assessment made by the Income-tax Officer thereby impressing his stamp of approval on the view taken by the Income-tax Officer that the assessee was entitled to the grant of development rebate under section 33(1) and that if the Department had a case that no development rebate at all was admissible on the facts and circumstances obtaining in this case, the Department should have taken appropriate action to get the matter rectified either at the Appellate Assistant Commissioners level or by suo motu revision at the hands of the Commissioner, but no such action was taken and the assessment orders were allowed to become final. The High Court has also mentioned that in respect of the assessment year 1969-70, the Department had filed an appeal before the Tribunal but no ground was taken at all in the said appeal that the development rebate ought not to have been granted to the assessee. The High Court held that, since the grant of development rebate to the assessee as per the orders passed by the Income-tax Officer and the Appellate Assistant Commissioner had become final, it must be assumed that in respect of the assessment year in question the condition laid down in section 33(1) (a) that the machinery or plant is wholly used for the purpose of business carried on by the assessee is duly satisfied and it is on that basis that the court had to proceed to determine the rate of rebate that is admissible in this case. Proceeding on that basis, the High Court upheld the view of the Tribunal that the assessee was entitled to grant of development rebate at the rate of 35 per cent.

Dr. Gauri Shankar, learned senior counsel appearing for the Revenue, has sought to raise the question about the eligibility of the assessee for grant of development rebate on the ground that the conditions laid dawn in section 33(1)(a) are not satisfied. Apart from the reasons aforementioned given by the High Court for rejecting this contention we are also of the view that the question that was referred by the Tribunal does not comprehend within its scope, the said contention sought to be raised by learned counsel. We, therefore, do not find any merit in the appeal and the same is accordingly dismissed. But in the circumstances there will be no order as to costs.