

G.K. CHOKSI & COMPANY
v.
COMMISSIONER OF INCOME TAX, GUJARAT

NOVEMBER 27, 2007

[ASHOK BHAN, HARJIT SINGH BEDI AND
V.S. SIRPURKAR, JJ.]

Income Tax Act, 1961: S.32(1)(iv):

Depreciation by way of deduction—Assessee-Firm of Chartered Accountants constructing a building for its employees—Claiming depreciation of 40% in terms of provision u/s 32(1)(iv)—Rejected by ITO on ground that benefit under the provisions applicable to an assessee carrying business and not available to professionals—Reversed by appellate authority—Tribunal restoring the order of ITO—Confirmed by High Court—On appeal, held, the word business appearing in s.32(1)(iv) cannot be construed so as to include “profession” as well—In terms of provisions under clause 32(1) legislature intended to restrict the benefit under the provisions to assessee carrying on business only—Inclusion of profession within the scope of expression business would be doing violence to provisions of the Act—Such an interpretation not permissible in law—Interpretation of Statutes—Legislative intendment—Construing of.

Words & Phrases:

‘Business’ and ‘Profession’—Meaning of in the context of S.32(1)(iv) of the Income Tax Act, 1961.

The question which arose for determination in the present appeal was as to whether in the facts and circumstances of the case the assessee-appellant, a Chartered Accountant’s firm would be entitled to deduction under Section 32(1)(iv) of the Income Tax Act, 1961.

A Appellant-Firm contended that Section 32 of the Income Tax Act relates both to “business” as also “profession”; that the assessee carrying on profession would be entitled to the depreciation under Section 32(1)(iv) though the word “profession” does not find mention in sub-clause (iv); That the words “business” and “profession” are defined separately under the Act; and the definitions under the Act are subject to the context and can be read interchangeably at least one term carrying on within its fold other term if the context so requires; That, the word “business” appearing in sub-clause (iv) of Section 32(1) in the context clearly refers to both “business” and “profession”; That, the word “business” is used in the context of employees and is clearly intended to cover both “business” as also “profession”; That Section 32(1) (iv) should be given a purposive interpretation to extend the benefit to the professionals as well; That if two opinions are possible, then the one in favour of the assessee should be adopted and that *Barendra Prasad Ray’s* case is clearly applicable to the facts of the present case and the High Court has erred in distinguishing the same.

E Revenue submitted that Section 32(1)(iv) of the Act cannot be made applicable to professionals, as there is no reference in this sub-clause to the assessee who are in profession; That sub-section (1) of Section 32 lays down general conditions or basic requirements on fulfillment of which an assessee shall become eligible for deduction as provided in the various clauses which follow; That, from the scheme of the section various clauses would operate on further specific conditions laid down in each such individual clause(s); That though Section 32(1) refers to both “business” and “profession”, the sub-sections, namely, (i) and (iv) would not be controlled by it; and That *Barendra Prasad Ray’s* case has no application to the facts of the instant case since in the said case, this Court was dealing with a situation arising under Section 9 of the Act which deals with income deemed to accrue or arise in India.

G Dismissing the appeal, the Court

H HELD: 1.1. Section 32(1) of the Income Tax Act does not help the appellant in any way to construe the word “business” appearing in sub-section 32(1)(iv) to include “profession” as well. The legislature intended

to have different scope for business and profession in Section 32(1). If A
the legislature had intended to include “profession” in the word
“business”, then there was no need to mention two different words, i.e.,
“business” or “profession” in Section 32(1) of the Act.

[Para 12] [569-C, D, E]

1.2. Section 32(1) of the Act stipulates that on buildings, machinery, B
plant or furniture which is owned by an assessee and used for the
purposes of “business or profession”, depreciation shall be available
by way of deduction. Section 32(1) uses the phrase “the following
deductions shall”, therefore it is apparent that the said sub-section is C
laying down general conditions or basic requirements, on fulfillment of
which, an assessee shall become eligible for deductions as provided in
the various clauses which follow. [Para 13] [569-E, F]

1.3. From the Scheme of Section 32(1) of the Act, it is discernible D
that various clauses shall operate on further specific conditions laid
down in each individual clause. [Para 13] [569-G]

1.4. In clause (iv) of S.32(1) of the Act, the legislature has used
the word “business” only. It means that the legislature was conscious
of the fact that the business and profession are different and separate E
and they cannot be used interchangeably. It is a pointer to the fact that
the Legislature under clause (iv) intended to restrict the benefit to the
assessee carrying on business only. In sub-clause (ii) the legislature
has specifically extended the benefit of depreciation to the assessee
carrying on “business” as well as “profession” whereas in sub-section F
(iv), the legislature has restricted the benefit to the assessee carrying
on “business” only. [Para 13] [570-A, B]

1.5. The wording of two provisions, i.e., Section 9(1) and Section G
32 of the Act are quite different and the interpretation put on the words
“business connection” while interpreting Section 9(1), cannot be applied
to a fact situation under Section 32(1)(iv) to hold that the expression
“business” occurring in Section 32(1)(iv) would include “profession”
as well. [Para 15] [570-G; 571-A]

Barendra Prasad Ray v. Income Tax Officer, [1981] 2 SCC 693, held
inapplicable.

A **1.6. Part D of the Act consists of Sections 28 to 43 of the Act which deals with profits and gains of business or profession. Though the phrase has been used in certain sections as “business or profession”, but nowhere has the phrase been used as the “business and profession”. In fact, wherever the legislature intended that the benefit of a particular**
B **provision should be for both business or profession, it has used the words “business or profession” and wherever it intended to restrict the benefit to either business or profession, then the legislature has used the word either “business” or “profession”, meaning thereby that it intended to extend the benefit to either “business” or “profession”, i.e., the one**
C **would not include the other. [Para 17] [571-C, D, E]**

1.7. In view of the settled law, if two interpretations are possible, then the one in favour of the assessee should be adopted. But, in the present case two interpretations are not possible as the word “business”
D **occurring in clause (iv) of Section 32(1), by no stretch of imagination, can be said to include “profession” as well. [Para 18] [571-E, F]**

1.8. There is nothing in Section 32(1)(iv) which envisages the scope of word “business” to include in it “profession” as well. If the expression “business” is interpreted to include within its scope “profession” as well,
E **it would be doing violence to the provisions of the Act. Such interpretation would amount to first creating an imaginative lacuna and then filling it up, which is not permissible in law.**

F **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7486 of 2001.**

From the final Judgment and Order dated 16.8.2001 of the High Court of Gujarat at Ahmedabad in I.T.R. No. 194/1986.

G Sameer Parekh, Ranjeeta Rohtagi and Deeksha Rai (for Parekh and Co.), for the Appellant.

V. Shekhar, T.A. Khan, Zangpo Sherpa, V. Gulati Abhigya and B.V. Balaram Das for the Respondent.

The Judgment of the Court was delivered by

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BHAN, J. 1. The present appeal has been directed against the final judgment and order dated 16th August, 2001 passed by the High Court of Gujarat at Ahmedabad in Income Tax Reference No. 194/86 whereby the High Court has upheld the order passed by the Tribunal to the effect that the assessee was not entitled to deduction under Section 32(1)(iv) of the Income Tax Act, 1961 (for short "the Act").

2. The question involved in the present appeal relates to the correct interpretation of Section 32(1)(iv) of the Act and that whether in the facts and circumstances of the present case the assessee-appellant, a Chartered Accountant's firm would be entitled to deduction under the said section.

3. The brief facts are as under:

The assessee (hereinafter referred to as "the appellant") is a firm of Chartered Accountants in Ahmedabad. The Assessment relates to the Year 1984-85 for the financial year ending on 31.03.1984. During the relevant year the appellant constructed a building for the purpose of residence for its low paid employees and claimed initial depreciation @ 40% under Section 32(1)(iv) of the Act amounting to Rs.43,505/- on the actual cost of the building i.e. Rs.1,08,757/-. The Income Tax Officer (ITO) vide its order dated 15.1.1985 rejected the claim of the assessee-appellant on the ground that the said provision is applicable to an assessee carrying on "business" and the same is not available to a professional.

4. The Commissioner of Income Tax (Appeals) [for short CIT (A)] by its order dated 30.4.1985 reversed the order of the Income Tax Officer relying upon the judgment of this Court in *Barendra Prasad Ray v. Income Tax Officer*, [1981] 2 SCC 693, and allowed the claim of the appellant with the further direction to the Income Tax Officer to grant initial depreciation @ 40% for the building erected by the appellant for the residential purposes of its employees.

5. Being aggrieved by the order passed by the CIT(A), Revenue filed an appeal before the Income Tax Appellate Tribunal (for short "the Tribunal"). The Tribunal reversed the order passed by the CIT (A) and restored the order passed by the ITO. It was held that the appellant was not entitled to the relief claimed. That the judgment in *Barendra Prasad*

- A under Section 32(1) (iv) though the word “profession” does not find mention in sub-clause (iv). That the words “business” and “profession” are defined separately under the Act; “business” has been defined under Section 2(13) and “profession” under Section 2(36) and both the definitions are inclusive. That, Section 2 specifically reads “in this Act,
- B unless the context otherwise requires” and therefore the definition under the Act are subject to the context and can be read interchangeably at least one term carrying on within its fold other term if the context so requires. That, the word “business” appearing in sub-clause (iv) of Section 32(1) in the context clearly refers to both “business” and “profession”.
- C That, the word “business” is used in the context of employees and is clearly intended to cover both “business” as also “profession”. It was contended that Section 32(1) (iv) should be given a purposive interpretation to extend the benefit to the professionals as well. That if two opinions are possible, then the one in favour of the assessee should be adopted.
- D 10. It is submitted that in *Barendra Prasad Ray*’s case (supra), this Court in the context of Section 9 of the Act, has construed the words ‘business connection’ to include professional connection as well. It was observed that the expression “business” does not necessarily mean trade or manufacture only and the same is used as including within its scope
- E professions, vocations and callings from a long time. It is further submitted that *Barendra Prasad Ray*’s case (supra) was clearly applicable to the facts of the present case and the High Court has erred in distinguishing the same.
- F 11. As against this Mr. V. Shekhar, learned senior counsel appearing for the Revenue, submits that Section 32(1)(iv) specifically refers to and meant for assesseees who are in business. The same cannot be made applicable to professionals, as there is no reference in this sub-clause to the assesseees who are in profession. According to him, the assesseees who
- G are carrying on profession would be deemed to be excluded by the Statute. That the assesseees who are not in profession are entitled to the benefit of Section 32(1) of the Act which is meant for the assesseees carrying on business only. According to the learned counsel, sub-section (1) of Section 32 lays down general conditions or basic requirements on
- H fulfillment of which an assessee shall become eligible for deduction as

provided in the various clauses which follow. That, from the scheme of the section various clauses would operate on further specific conditions laid down in each such individual clause(s). It is further submitted that though Section 32(1) refers to both “business” and “profession”, the sub-sections, namely, (i) and (iv) would not be controlled by it. That *Barendra Prasad Ray’s* case (supra) has no application to the facts of the instant case. According to the learned counsel, in the said case, this Court was dealing with a situation arising under Section 9 of the Act which deals with income deemed to accrue or arise in India. That the said Section operates in an entirely different field while Section 32 including the surrounding section and sub-sections operate in different field. That the ratio of the said judgment cannot be imported to the fact situation in the present case and the High Court has rightly distinguished the same.

12. We do not find much substance in the submissions advanced by the learned counsel for the appellant. Section 32 (1) of the Act does not help the appellant in any way to construe the word “business” appearing in sub-section 32(1) (iv) to include “profession” as well. The legislature intended to have different scope for business and profession in Section 32 (1). If the legislature had intended to include “profession” in the word “business”, then there was no need to mention two different words, i.e., “business” or “profession” in Section 32 (1) of the Act.

13. Section 32 (1) stipulates that on buildings, machinery, plant or furniture which is owned by an assessee and used for the purposes of “business or profession”, depreciation shall be available by way of deduction. Section 32 (1) uses the phrase “the following deductions shall”, therefore it is apparent that the said sub-section is laying down general conditions or basic requirements, on fulfillment of which, an assessee shall become eligible for deductions as provided in the various clauses which follow. The learned counsel appearing for the Revenue has rightly contended that from the Scheme of the Section it is discernible that various clauses shall operate on further specific conditions laid down in each individual clause. Clause, (i) deals with case of ships other than ships ordinarily plying on inland waters, clause (ii) pertains to buildings, machinery, plant or furniture, other than ships and is applicable to both business and profession in regard to the claim for depreciation in respect

A of the building, machinery, plant or furniture. In clause (iv) the legislature has used the word “business” only. It means that the legislature was conscious of the fact that the business and profession are different and separate and they cannot be used interchangeably. It is a pointer to the fact that the Legislature under clause (iv) intended to restrict the benefit
B to the assessee carrying on business only. In sub-clause (ii) the legislature has specifically extended the benefit of depreciation to the assessee carrying on “business” as well as “profession” whereas in sub-section (iv), the legislature has restricted the benefit to the assessee carrying on “business” only.

C 14. This Court rendered the decision in *Barendra Prasad Ray’s* case (supra) in the context of Section 9 (1), wherein the Court, after discussing the case laws, definitions, dictionary meanings, concluded as under:

D “The word “business” is one of wide import and it means an activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. We are of the view that in the context in which the expression “business connection” is used in s.9(1) of the Act, there is no warrant for giving a restricted meaning to it excluding “professional
E connections” from its scope.”

F 15. In *Barendra Prasad Ray’s* case (supra), this Court was interpreting the expression “business connection” as used in Section 9 (1) of the Act and held that there was no warrant for giving a restricted meaning to it to exclude “professional connections” from its scope. Section 9 (1) deals with a different situation. It occurs in Chapter II of the Act, while Section 32 occurs in Part D of Chapter IV of the Act. This decision was rendered on the peculiar facts and circumstance of the said case and has to be restricted to the situation prevailing therein. It cannot be applied
G to every case irrespective of its facts. Section 32 finds place in Chapter IV, Part D of the Act which deals with “profits and gains of business or professions. The wording of two provisions, i.e., Section 9 (1) and Section 32 of the Act are quite different and the interpretation put on the words “business connection” while interpreting Section 9(1), cannot be applied
H to a fact situation under Section 32(1)(iv) to hold that the expression

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“business” occurring in Section 32(1)(iv) would include “profession” as well. A

16. As already observed, Section 32(1) lays down the general conditions or basic requirements on fulfillment of which an assessee shall become eligible for deduction as provided under various clauses which follow. Clauses (i), (ii) and (iv) operate in different fields and deal with different set of assesseees for the purposes of claiming depreciation. In our opinion *Barendra Prasad Ray's* case (supra) has no application in the present case. B

17. Part D consists of Sections 28 to 43 of the Act which deals with profits and gains of business or profession. Though the phrase has been used in certain sections as “business or profession”, but nowhere has the phrase been used as the “business and profession”. In fact, wherever the legislature intended that the benefit of a particular provision should be for both business or profession, it has used the words “business or profession” and wherever it intended to restrict the benefit to either business or profession, then the legislature has used the word either “business” or “profession”, meaning thereby that it intended to extend the benefit to either “business” or “profession”, i.e., the one would not include the other. C D E

18. We agree with the submission made by the counsel for the appellent that in view of the settled law, if two interpretations are possible, then the one in favour of the assessee should be adopted. But, we are of the view that in the present case two interpretations are not possible as the word “business” occurring in clause (iv) of Section 32 (1), by no stretch of imagination, can be said to include “profession” as well. If the expression “business” is interpreted as including within its scope “profession”, it would not mean that the lacuna has been made good by giving a wider interpretation to the word business. There is nothing in Section 32(1) (iv) which envisages the scope of word “business” to include in it “profession” as well. If the expression “business” is interpreted to include within its scope “profession” as well, it would be doing violence to the provisions of the Act. Such interpretation would amount to first creating an imaginative lacuna and then filling it up, which is not permissible F G H

A in law. The contention of the counsel for the appellant that Section 32 (1) (iv) should be given purposive interpretation to include “profession”, has thus to be rejected.

19. For the foregoing reasons, we do not find any merit in the appeal and dismiss the same, leaving the parties to bear their own costs.

B

S.K.S.

Appeal dismissed.