

A S.A. BUILDERS LTD .
V.
COMMISSIONER OF INCOME TAX (APPEALS)
CHANDIGARH AND ANR .

B DECEMBER 14 , 2006

[S.B. SINHA AND MARKANDEY KATJU , JJ .]

Income Tax Act , 1961 :

C Section 32AB - Claim for deduction under Section 32AB by assessee engaged in civil construction - Held : Not allowable .

D Section 32AB - Deduction under - Held : Allowable on fulfillment of certain conditions — Nothing on record to show that those conditions were fulfilled - Tribunal rightly rejected the claim for deduction .

E The appellant - assessee engaged in the business of civil construction , claimed deduction under Section 32AB of Income Tax Act , 1961. Tribunal rejected the claim on two grounds . First ground was that assessee was not carrying on any manufacturing activity and secondly that the deduction under Section 32AB was not automatic and was subject to various conditions laid down in that provision and whether those conditions were fulfilled or not , required examination into facts which were not on record . High Court upheld the order of Tribunal . Hence the present appeal .

F Dismissing the appeal , the Court

HELD : For both the reasons mentioned by the Tribunal in its order , the assessee was not entitled to the deduction claimed by it . [1093 - G]

G CIT v . N.C. Budharaja and Co. , (1993) 204 ITR 412 , referred to .

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5810 of 2006 .

From the final Judgment / Order dated 23.7.2004 of the High Court of Punjab and Haryana at Chandigarh in I.T.A. Nos . 8 and 9/2003 .

H 1092

S.A. BUILDERS LTD . v . COMMNR . OF INCOME TAX (APPEALS) CHANDIGARH

Nidhesh Gupta , Vinod Shukla , Deepak Goel and S. Janani for the A
Appellant .

Ravindra Srivastava , Ranvir Chandra , Shilpa Singh and B.V. Balaram Das
for the Respondents .

The Judgment of the Court was delivered by

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KATJU , MARKANDEY J. Leave granted .

This appeal has been filed against the impugned judgment dated 23.7.2004
of the Punjab and Haryana High Court in ITA Nos . 8-9 of 2003 .

Heard learned counsel for the parties and perused the record .

The appellant - assessee is a company engaged in the business of civil C
construction . It claimed for deduction under Section 32AB of the Income
Tax Act , 1961 , which was raised as an additional ground before the Income
Tax Appellate Tribunal , Chandigarh (hereinafter referred to as the ' Tribunal ')
In paragraphs 19-21 of its order dated 20.6.2002 the Tribunal has rejected the
claim of the assessee on two grounds . The first ground is that the assessee D
was engaged in the business of civil construction and was not carrying on
any manufacturing activity . Hence , the claim was not allowable in view of
the judgment of this Court in CIT v . N.C. Budharaja & Co. , (1993) 204 ITR
412. The second ground for rejecting the claim was that the claim was not
based on facts on record . The deduction under Section 32AB was not
automatic and was subject to various conditions laid down in that provision . E
Whether the assessee fulfilled those conditions for claiming the deduction or
not required examination into facts which were not on record . Even before
the Tribunal the assessee had not placed any material to show how the assessee
is entitled to such deduction . Hence the Tribunal rejected the assessee's
claim . By the impugned judgment the High Court has agreed with the view F
of the Tribunal .

We have also carefully considered the matter and we are fully in
agreement with the Tribunal as well as the High Court .

For both the reasons mentioned by the Tribunal in paragraphs 19-21 , of
its order , we are of the opinion that the assessee was not entitled to the G
deduction claimed by it . There is , thus , no merit in this appeal which is
accordingly dismissed .

D.G.

Appeal dismissed .