

SUPREME COURT OF INDIA

Commissioner of Income-Tax

Vs.

Mysore Minerals Ltd.

(S.P. Bharucha, Y.K. Sabharwal and S.N. Variava JJ.)

17.08.2000

ORDER

1. The Revenue is in appeal against the refusal by the High Court to call for a reference under section 256(2) of the Income-tax Act, 1961, of the following question proposed by it :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that investment allowance is allowable on the machinery employed in the process of extraction of granite from quarry, cutting the same into various sizes and polishing them ?"

2. The High Court declined to call for a reference because the answer to it was covered by its decision in the case of the assessee itself--CIT v. Mysore Minerals Ltd. [1994] 205 ITR 461 (Kar). The judgment of the High Court in the earlier case, in turn, was based on its earlier decision in Shanhar Construction Co. v. CIT [1991] 189 ITR 463 (Kar). That, as the name indicates, was a company engaged in the business of construction and it was the principle of that judgment which the High Court applied.

3. We think, in the circumstances, that a question of law arises that requires the consideration of the High Court.

4. Accordingly, the civil appeal is allowed. The order under appeal is set aside. The Tribunal is directed to refer to the High Court for its consideration the question set out above, having drawn up a statement of case,

5. No order as to costs.