

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2327 OF 2005

COMMNR. OF INCOME TAX, TRIVANDRUM

Appellant (s)

VERSUS

R. PRATHAP, SUN FOOD CORPORATION

Respondent(s)

Date: 29/11/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Appellant(s) Mr. Vikas Singh,ASG.
Dr. R.G.Padia,Sr.Adv.
Mr. T.A.Khan,Adv.
Mr. B.V. Balaram Das,Adv.

For Respondent(s) Mr. TLV Iyer,Sr.Adv.
Mr. Subramonium Prasad,Adv.
Mr. Jay Kishor Singh,Adv.
Mr. Vivek Gupta,Adv.

UPON hearing counsel the Court made the following
ORDER

The appeal is allowed with no order as to costs.

[SUMAN WADHWA] [MADHU SAXENA]
COURT MASTER COURT MASTER
Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2327 OF 2005

APPELLANT COMMNR. OF INCOME TAX, TRIVANDRUM ..

vs.

R.PRATHAP, SUN FOOD CORPORATION.. RESPONDENT

ORDER

This civil appeal is directed against the judgment of the
Division Bench of the High court of Kerala dated 9th June, 2003 in
ITA No.240 of 2002.

The short question which arises for determination in this

civil appeal is as follows:

"Whether on facts and circumstances of the case the assessee was entitled to claim deduction under Section 80 HH in respect of the profits derived by the assessee from processing of cashew in the factories owned by its sister concerns/outsideers?"

In this case we are concerned with the Assessment year 1994-95.

We quote hereinbelow the said Sec.80 HH(1):

"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,

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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 20%, thereof.

The above Section 80HH comes under Chapter VIA.

Chapter VIA is again divided into various sub-chapters. We are concerned with sub-chapter-C which refers to deductions in respect of certain Incomes. Under Sec.80HH(1) it is stipulated that where the gross total income of an assessee includes any profits and gains derived from industrial undertaking to which the Section applies then there shall be allowed in computing the total income of the assessee a deduction from such profits and gains of an amount equal to 20% thereof. Under Sec.80HH (2) certain conditions are required to be satisfied before an industrial undertaking can claim the benefit of deduction under Sec.80HH(1).

The object underlying enactment of Section 80HH(1) is to encourage setting up of new industrial undertakings in backward areas.

In the present case we are concerned with the case of an assessee who claims to be a processor of cashew kernels. At the

outset it may be stated that the said processing consists of various stages like drying followed by heating followed by decorticating which

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results in emergence of the kernel covered by the skin which is ultimately sold. The importance of setting out the process in detail is to demonstrate that if an assessee claims that he is the processor who has outsourced some of its activities to its sister concern then the nature of the activity undertaken by the industrial undertaking has got to be demonstrated by the assessee who claims deduction under Sec.80HH(1).

In the present case the assessee who has claimed deduction has not given any particulars regarding the activity undertaken by it, the activity outsourced by it to its sister concern, whether those sister concerns are located in or outside the back ward areas etc. There is no claim made by the assessee that its sister concerns are its job workers. No details have been given as to whether after the process stands undertaken by its sister concerns, whether or not, the material comes back to the assessee for further activities before export. There is no averment that the assessee is the principal manufacturer. In the circumstances we are of the view that the assessee was not entitled to claim the benefit of Section 80HH in the assessment year in question. However, we may add that the Department has given the benefit of 20% of the profits vis.-a-vis. the number of bags processed in the assessee's owned factory

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situated/located in the backward area and to that extent we do not wish to disturb the findings given by the AO as well as by the CIT (A).

None of the above aspects have been considered in the impugned judgment by the High Court. Even the Tribunal in the present case has merely stated in its order that the assessee is entitled to succeed in view of the judgment of the Kerala High Court in the case of CIT vs. Indian Resins and Polymers Ltd. reported in 235 ITR 5. We do not wish to comment or express our own view on the judgment of the Kerala High Court in the case of Indian Resins

and Polymers Ltd. (supra). However, even assuming for the sake of argument that the said judgment is applicable, still we are of the view that in the case of Indian Resins and Polymers Ltd. (supra) the assessee had stated in detail the entire process undertaken by it which fulfills the parameters mentioned hereinabove by us. However, in this case, on account of absence of any details regarding the process undertaken by the assessee and its sister concerns the Department is right in contending that the judgment of the Kerala High Court in Indian Resins and Polymers Ltd. (Supra) has no application.

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For the aforestated reasons we set aside the impugned judgments of the High Court and the Tribunal. We accordingly allow the appeal with no order as to costs.

(S.H. KAPADIA)J.

.....J.
(B.SUDERSHAN REDDY)

NEW DELHI;
November 29, 2007.