Z0ITEM NO.101 COURT NO.8 SECTION IIIA
PH

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6571 OF 2005

M/S. JANATHA CASHEW EXPORTING CO. Appellant (s)

VERSUS

COMMISSIONER OF INCOME TAX, TRIVANDRUM Respondent(s)

(With office report)

Date: 13/11/2007 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. C.N. Sree Kumar,Adv.
Mr. P.R.Nayak,Adv.

For Respondent(s) Mr. Mohan Parasaran,ASG.
Mr. R.K.Shukla,Adv.
Mr. Y.P.Mahajan,Adv.
Mr. D.K.Singh,Adv.
Mr. Pradeep Shukla,Adv.
Mr. Sanjay Kumar,Adv.
Mr. B.V.Balram Das,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 NO. 6571 OF 2005

M/S. JANATHA CASHEW EXPORTING CO. ..
APPELLANT

vs.

COMMNR. OF INCOME TAX, TRIVANDRUM ..
RESPONDENT

ORDER

The short question which arises for determination in this civil appeal filed by the assessee is as follows:

Whether the assessee was entitled to the benefit of the proviso to Section 80 HHC (3) of the Income Tax Act 1961 as it stood at the relevant time?

In this Civil Appeal we are concerned with the Assessment year 1992-93. Assessee is a cashew exporter. It had made direct and indirect exports for the Assessment-year 1992-93 and had claimed total deduction of an amount of Rs.97,54,515/- under Sec.80 HHC (1) and Sec. 80 HHC (1A) of the Income Tax Act. The Assessing Officer granted deduction under Sec.80 HHC (1) and 80 HHC (1A) in respect of direct and indirect exports in all amounting to Rs.91,10,306/- as against the claim of Rs.96,54,515/-. However, while granting deduction under the proviso to Sec.80 HHC (3) the Assessing Officer excluded sales to export houses from export turn over and he re-worked the relief at Rs.12,63,532/-.

Aggrieved by the said order the assessee took up the matter before Commissioner of Income Tax (Appeals). The order of the Assessing Officer was upheld on the ground that export turn over included only direct exports since Sec.80 HHC (3) dealt with quantification of deduction in the case of direct exports and the quantum of deduction had to be computed only on the basis of direct export turn over. The Commissioner of Income Tax (Appeals) also took note of the deduction separately granted on indirect exports under Sec.80 HHC (1A) of the Act. However, when the assessee carried the matter in appeal to the Tribunal it took the view that in the case of Eastern Leather Products (P) Ltd. reported in 68 ITD 358 the Assessing Officer should recompute the income of the assessee and allow benefits admissible to the export house if such export house had issued a disclaimer certificate. Aggrieved by the said decision the Department moved the High Court by way of appeal under Sec.260-A of the Income Tax Act. The decision of the Tribunal was however set aside by the High Court which took the view that since Sec.80 HHC (1) read with Sec.80 HHC (3) provided for computation and deduction of profit and direct exports only the assessee was not entitled to the benefit in that regard qua indirect exports made through the export house. The

High Court also proceeded on the basis that the sales turn over from sales

effective by the assessee to the export houses did not answer the description of export turn over and therefore the assessee was not entitled to take the indirect exports into account while calculating sales turn over in the formula mentioned in Sec.80 HHC (3).

In the present case we are of the view that for the following reasons the matter needs to be remitted to the Assessing Officer. Firstly, in this case there is no factual finding recorded by the High Court as to whether the sales made through the export houses by the assessee is supported by a disclaimer certificate from such export houses. Under the provisions of Sec.80 HHC (3) if the assessee is a supporting manufacturer on his producing such disclaimer certificate the assessee would be entitled to claim the benefit of deduction under the said Section. Secondly, fresh computation is now required to be done in view of three subsequent judgments, namely, the judgment of this Court in the case of C.I.T., Thiruvananthapuram vs. K.Ravindranathan Nair pronounced on 13/11/2007 in C.A.....@ SLP(C) No. 24617/2003; A.M.Moosa vs. Commnr. of Income Tax reported in 2007 (294) ITR 1 and the judgment of the Special Bench of the Tribunal (Delhi) in the case of Lalsons Enterprises vs. C.I.T., Delhi reported in 2004 (89) ITD 25 (Delhi).

Accordingly, the impugned judgment is set aside and the matter is remitted for fresh computation by the Assessing Officer in terms of the above judgments. The Appeal is accordingly allowed with no order as to costs.

.....J.
(S.H. KAPADIA)

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

NEW DELHI;
November 13, 2007.