****THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY***
***AND***
****THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM***
**<u>+I.T.T.A.Nos.211 & 242 of 2003</u>**

% Dated 15.10.2014
# Commissioner of Income Tax-III, Andhra Pradesh, Hyderabad
….Appellant

$ Singh Poultry Limited, Hyderabad.
….Respondent

! Counsel for the appellant : Sri S.R.Ashok
^ Counsel for respondent : Sri Y.Ratnakar

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> HEAD NOTE:

? Cases referred:
1. 262 ITR 278
2. (1948) 16 ITR 325 (PC)

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**<u>COMMON JUDGMENT:</u> (Per LNR,J)**

These two appeals are preferred by the Revenue, feeling aggrieved by the orders passed by the Hyderbad Bench of the Income Tax Appellate Tribunal in I.T.A.Nos.1951&1952/Hyd/96, referable to assessment years 1993-94 and 1994-95.

The respondent is a company undertaking the business in poultry. The principal activity is said to be hatcheries. The chicks of one day old, are supplied to the owners of poultry farms. In the returns submitted for the two assessment years referred to above, the respondent included the income, not only from the sale of chicks and other material, but also the income from the services rendered to the purchasers of the chicks.

Section 80JJ of the Income Tax Act (for short 'the Act'), as it stood then, provided for deduction of 1/3rd of the profits and gains derived from the business of poultry farming. For the assessment year 1993-94, the respondent claimed the benefit under Section 80JJ of the Act in respect of the income derived from the sale of chicks as well as the services rendered therefor. The Assessing Officer however restricted the benefit under Section 80JJ of the Act, only to the profits and gains derived from the sale of chicks. An appeal was preferred before the Commissioner. The appeal was allowed through order, dated 07.08.1996. The Department filed I.T.A.No.1951/Hyd/96 against the said order.

For the subsequent assessment year, the Assessing Officer took the view that the Commissioner was not posted with the correct facts, when he heard the appeal filed against the order referable to the assessment year 1993-94 and on that basis, he disallowed the inclusion of the income derived from after sale services, for the assessment year 1994-95 also. The respondent filed appeal against the said order. Following his own order pertaining to the previous assessment year, the Commissioner allowed the appeal. That resulted in filing of I.T.T.A.No.1952/Hyd/97, by the Department.

Through its common order, dated 28.10.2002, the Tribunal dismissed both the appeals. Hence, these two further appeals under Section 260-A of the Act.

Sri S.R.AShok, learned senior Standing Counsel for the appellant submits that the provision, as it stood then, enabled an assessee to deduct one-third of the profits and gains derived from the business of poultry farming and the income derived from the after sale services cannot form part of the same. He submits that the Parliament has employed the word “derived from” with an avowed objective and that the Commissioner and the Tribunal were not justified in ignoring the purport thereof. He contends that the rendering of after sales services is no part of the transaction or contractual obligation and the income derived therefrom does not qualify to be a component for extending the benefit under Section 80JJ of the Act. Placing reliance upon the judgment of the Hon’ble Supreme Court in ***Commissioner of Income Tax vs. Pandian Chemicals Ltd***., learned counsel submits that the view taken by the Commissioner and the Tribunal cannot be sustained in law.

Sri Y.Ratnakar, learned counsel for the respondent on the other hand submits that the hatcheries supply the chicks of one day old to the poultry farmers and the condition of the chicks so supplied is so delicate and precarious that unless specialized services are rendered, and periodical attention is paid, the expected result cannot be achieved. He submits that rendering of services is an integral part and component of the entire transaction and it cannot be viewed in isolation. He submits that the ratio of the judgment in ***Pandian Chemicals Ltd*** ‘s case (1 supra) does not apply to the facts of this case, since the income that was sought to be added for claiming the benefit under Section 80JJ of the Act in that case has no nexus whatever, with the principal activity. He contends that in the instant case, the income derived from the services is from the business of poultry farming and as such, it qualifies for extension of the benefit under Section 80JJ of the Act.

The provision, as it stood then, reads as under:

> **Deduction in respect of profits and gains from business of poultry farming:**
>
> **80JJ.** Where the gross total income of an assessee includes any profits and gains derived from business of poultry farming, there shall allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to thirty-three and one-third percent thereof.

The respondent is a hatchery. By creating special circumstances and through scientific means, eggs are hatched in matter of hours and the resultant chicks are packed in a special manner, when they are just one day old and supplied to the poultry farmers. If the matter were to have ended there, things would have been different altogether. The purchasers of the one day old chicks need to be guided by the hatchery itself, in the context of providing feed, administering medicines and taking various precautionary measures, so that optimum result is procured. If chicks are egg yielding, the growth is required to be in a particular way and if they are grown for yielding meat, steps are to be taken to ensure that it gains more weight in the least possible time. These are the techniques, which involve lot of scientific research, and administration of the relevant products, from time to time.

In his order, dated 07.08.1996, the Commissioner has taken note of some salient features in this process and enlisted them as under:

1. Vaccination
2. Training in Debeaking & Vaccination
3. Technical advice through our doctors and executives – Day-to-day Farm Management
4. Disease diagnostic facilities at the laboratory
5. Supply of Farm Management through printed literature like Management Manuals and cyclostyled guidelines
6. Arrangement of technical Seminars & Farmers' get-together of educate farmers
7. Providing training through entrepreneurs fro starting poultry farms
8. Consultancy facilities for starting poultry and co-ordination with financial institutions
9. Advices on formulation of feed

By no means, these can be said to be alien or unrelated to the activity of poultry farming, undertaken by the respondent. The same reasoning weighed with the Tribunal and both the appeals were dismissed.

Heavy reliance is placed upon the judgment of the Supreme Court in ***Pandian Chemicals Ltd*** 's case (1 supra). The activity undertaken by the assessee in that case was manufacture of chemicals and it qualified for deduction provided for under Section 80HH of the Act. The assessee sought to add to the profits and gains, the interest that was paid by the electricity supply undertaking on the deposits made by it for guaranteed supply of power. The Hon'ble Supreme Court took the view that the income of that nature does not at all fall into the one, referable to Section 80HH of the Act. Further, their Lordships referred to the following passage from the judgment of the Privy Council in ***CIT v. Raja Bahadur Kamakhaya Narayan Singh*** :

> "The word 'derived' is not a term of art. Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered. In the genealogical tree of the interest land indeed appears in the second degree, but the immediate and effective source is rent, which has suffered the accident of non-payment. And rent is not land within the meaning of the definition."

In the instant case, if we commence an enquiry into the genealogy of the income in question, the enquiry stops at the answer to the first question itself. To be precise, if the question is as to what is the source of income, the answer would be "remuneration for the services rendered to the chicks that were sold to the poultry farms". Thus the link is established in the 1st degree itself.

The Supreme Court proceeded to explain the purport of "derived from" and held that it is only when "direct and immediate" nexus between the two is established that it can be said to be "derived from". If the principal activity that qualifies deduction under Section 80HH of the Act was the manufacture of chemicals, by no stretch of imagination, the interest on the deposits made in the continued supply of power can be treated as part of it. The link is so remote that it can be established only when 3 or 4 questions are put. In contrast, the income derived from after sale services rendered by a hatchery to the poultry farmers, who purchase the chicks from them cannot at all be treated as heterogeneous or unconnected to that of the sale proceeds of the chicks.

We do not find any basis to interfere with the orders passed by the Commissioner and the Tribunal. Therefore, the appeals are dismissed and the questions raised in these appeals are answered against the appellant.

The miscellaneous petitions filed in these appeals shall also stand disposed of. There shall be no order as to costs.

**L.NARASIMHA REDDY, J**

**CHALLA KODANDA RAM, J**

**Date: 15.10.2014**
Note: L.R.Copy to be marked.
**JSU**

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