IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 9TH DAY OF JULY 2012/18TH ASHADHA 1934

I.T.A.No.130 of 2000

[AGAINST THE ORDER IN ITA NO.206(COCH)/96 DATED 29.02.2000
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, ERNAKULAM]
(ASSESSMENT YEAR 1992-93).

APPELLANT:-

THE COMMISSIONER OF INCOME TAX,
COCHIN.

BY SENIOR COUNSEL FOR GOVERNMENT OF INDIA (TAXES) SRI.P.K.R.MENON &
STANDING COUNSEL FOR INCOME TAX SRI.JOSE JOSEPH.

RESPONDENT:-

M/S.PARRY AGRO INDUSTRIES LTD.,
WELLINGDON ISLAND, COCHIN.

BY ADVS.SRI.E.K.NANDAKUMAR (SENIOR ADVOCATE),
SRI.A.K.JAYASANKAR NAMBIAR (SENIOR ADVOCATE)
SRI.ANIL D. NAIR.

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 09-07-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

Thottathil B.Radhakrishnan &
K.Vinod Chandran, JJ.

I.T.A.No.130 of 2000

Dated this, the 9th day of July, 2012

JUDGMENT

K.Vinod Chandran,J:

The assessee/respondent, a Public Limited Company, deriving income mainly from the manufacture of tea, for the assessment year 1992-93 claimed deduction under Section 80HHC and 80-I of the Income Tax Act, 1961. The assessing officer allowed the deduction on the income from tea business as computed by applying Rule 8 of the Income Tax Rules, 1962. The Commissioner of Income Tax directed the officer to work out the deduction before applying Rule 8. The Tribunal, on appeal by the Department, confirmed the order of the first appellate authority. Essentially, in revision, the question is as to whether the deductions allowable under Section 80HHC and 80-I are to be computed before or after apportionment of business income **:** agricultural income in the ratio of 40 **:** 60 as provided under Rule 8 is employed. The

Revenue is in revision, raising the following questions of law:

> "A) Whether, on the facts and in the circumstances of the case, the assessee is entitled to claim deduction u/s.80HHC and 80-I before applying Rule 8 of the Income-tax Rules for allocation in regard to income from tea?
>
> B) Whether, on the facts and in the circumstances of the case and read with Rule 8 of the Income-tax Rules which brings only 40% of the income under the Central Income-tax, the assessee is entitled to claim deduction u/s.80HHC and 80-I on 60% of the agricultural income as well?"

2. The very same issue came up for consideration before the Hon'ble Supreme Court of India in CIT v. Williamson Financial Services [(2008) 297 ITR 17 (SC)], wherein the Apex Court considering the issue and held:

> "*In short, deductions under Chapter VI-A are deductions not from a particular head of income but from gross total income*. Therefore, section 80HHC is not part of the computation of income under the head "Business".
>
> For the aforestated reasons, we hold that section 80HHC deduction of the 1961 Act is required to be *after* apportionment of income under rule 8(1) of the 1962 Rules".

3. In the circumstances, respectfully following the above judgment of the Hon'ble Supreme Court, we allow the above appeal answering both the questions of law in favour of the Revenue and against the assessee. The Tribunal's order confirming the order of the first appellate authority to that extent shall be reversed and the order of the assessing authority shall revive.

The appeal is allowed, however, with no costs.

Sd/-
Thottathil B.Radhakrishnan
Judge

Sd/-
K.Vinod Chandran
Judge

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