

COMMISSIONER OF INCOME TAX Vs INDIAN RESINS and POLYMERS

Court: High Court Of Kerala

Date of Decision: Aug. 6, 1997

Acts Referred: Income Tax Act, 1961 " Section 80HH, 80J

Citation: (1998) 148 CTR 143

Hon'ble Judges: S. Marimuthu, J; Mrs. K.K. Usha, J; K.K. Usha, J

Bench: Full Bench

Advocate: P.K.R. Menon and N.R.K. Nair, for the Assessee P. Balachandran, for the Revenue, for the Appellant;

Judgement

Mrs. K.K. Usha, J.

This reference, at the instance of the revenue, arises from a common order of the Tribunal Cochin Bench, in ITA Nos. 719(Coach)88 and

726(Coch)88 Relevant assessment year is 1983-84. Following are the questions referred for the opinion of this court :

1. Whether, on the facts and in the circumstances of the case, the assessee is entitled to exemption u/s 80HH of the Income Tax Act ?

2. Whether, on the facts and in the circumstances of the case, the assessee is entitled to exemption u/s 80J of the Income Tax Act ?

3. Whether, on the facts and in the circumstances of the case, the assessee derived any profit and gain from an industrial undertaking to claim to

benefit of sections 80HH and 80J?

2. The facts relevant are as follows: Assessee is a firm carrying on the business in export of cashew kernels and shell oil. Claiming that it owns an

industrial undertaking engaged in the manufacture or production of an article or thing, it put forward a claim for deduction u/s 80HH and u/s 80J of

the Income Tax Act. The assessing authority rejected the claim. On appeal, Commissioner (Appeals) upheld the claim u/s 80J but rejected the

relief sought u/s 80HH. Assessee as well as revenue filed appeals before the Tribunal as ITA Nos. 719/88 and 726/88, respectively. Tribunal took

the view that the assessee was entitled to deduction u/s 80HH as well as 80J of the Income Tax Act. It is the above finding, that is being

challenged by the revenue before this court.

3. Assessee purchased raw cashewnuts and after drying the same, it was entrusted with M/s Mineral Cashew Co (P) Ltd., for processing. The

processed cashew kernels were brought back to the assessee's unit and it was packed and exported. Assessee is also extracting oil from the

cashew shell and exporting the same. Assessing authority took the view that the assessee does not manufacture or produce the cashew kernels, it

plays only the role of a trader and, therefore, not entitled to claim deduction as per section 80HH. Assessee's claim u/s 80J was also declined by

this assessing authority taking the view that the assessee is not carrying on any activity of manufacture or production of any article.

4. When it came to the Commissioner (Appeals), it was held that the assessee is carrying on manufacturing activity. But, since the assessee had not

satisfied the conditions contained under clause (iv) of section 80HH(2) of the Income Tax Act, it was found not entitled to claim deduction u/s

80HH. As far as its claim u/s 80J is concerned, first appellate authority, finding that the assessee was carrying on manufacturing activity, allowed

the claim. In coming to the above conclusion, the first appellate authority found that the mere fact that the assessee did not directly process the

cashew kernels, will not be a reason to find that it was not carrying on manufacturing activity. The reason given by the Income Tax Officer for

rejecting the claim u/s 80J was not thus acceptable to the first appellate authority.

5. Tribunal has entered a factual finding that part of the manufacturing activity was carried on by the assessee, since drying the raw cashew in sun

light and ultimate packing were done by the assessee. Even though the assessee got the work of roasting and dehusking done by the third party, it

was found by the Tribunal that such work was being done under the direct supervision of the assessee. Reliance was placed by the Tribunal on the

decision of the Calcutta High Court in *Addl. Commissioner of Income Tax Vs. A. Mukherjee and Co. (P.) Ltd.*, . In coming to the conclusion that

processing of raw cashew into cashew kernels would amount to a manufacture or processing of goods, Tribunal relied on a decision of this court in

Commissioner of Income Tax Vs. Casino (Pvt.) Ltd., . In view of the above finding, the contention raised by the revenue in its appeal against the

grant of benefit to the assessee u/s 80J was rejected. The view taken by the first appellate authority was affirmed. As far as the claim regarding

deduction u/s 80HH was concerned, Tribunal took the view that the assessee had satisfied the condition contained under clause (iv) of section

80HH(2) of the Income Tax Act. According to the Tribunal, apart from the permanent workers, the other workers who were employed either on

a casual or temporary basis were also to be taken into consideration to examine whether the assessee had satisfied the condition contained under

clause (iv). Thus, the claim u/s 80HH was also allowed in favour of the assessee.

6. Learned standing counsel for the revenue submits that the Tribunal has not considered the specific question whether the assessee was an

industrial undertaking. There is no definition of the term industrial undertaking under the Income Tax Act, 1961. But, according to learned standing

counsel for revenue, it must be something more than a unit engaged in manufacture or processing of goods. On the other hand, learned counsel for

the assessee would point out that the assessing authority itself had proceeded on the basis that the assessee was not entitled to claim deduction

under sections 80HH and 80J only for the reason that it was not engaged in manufacture or production of goods. Once the above finding is upset

by the Tribunal, the revenue cannot be heard to contend that something more than manufacture or production of goods is necessary to hold that the

assessee owns an industrial undertaking. Learned counsel pointed out that even the first appellate authority came to the conclusion that the

assessee satisfies the test of an industrial undertaking, and it was denied the benefit u/s 80HH only for the reason that it did not satisfy clause (iv) of

section 80HH(2).

7. We find no merit in the contention raised on behalf of the revenue. The question whether the assessee did own an industrial undertaking was

specifically considered by the Tribunal in paragraph 6 of its order in the following manner.

Another point raised by the revenue was that the assessee did not own any plant or machinery and that it has no industrial undertaking, for the

work of roasting and dehusking is got done by a third party".

Tribunal then proceeded to find that part of the manufacturing activity is carried on by the assessee directly and the other part was done through a

third party, but under the direct supervision of the assessee. In Commissioner of Income Tax Vs. Rajmohan Cashews (P.) Ltd., , this court had

occasion to consider a similar question, namely, whether an assessee engaged in the business of converting raw cashew into edible cashew kernels

and getting major portion of its work of processing done by outside agencies on its behalf, would come within the definition of industrial company

u/s 2(6)(c) of the Finance Act, 1972. The term industrial company was defined under clause (c) as follows :

(c) Industrial company means a company which is mainly engaged in the business of generation or distribution of electricity or any other form of

power or in the construction of ships or in the manufacture or processing of goods or in mining".

This court took the view that the assessee therein would be treated as engaged in the business of manufacture or processing of goods, even though

a major portion of the processing was being got done through other agencies under its supervision. Learned counsel for the assessee pointed out

that the above view taken by this court as also the Calcutta High Court relied on by the Tribunal, were affirmed by the Supreme Court in M/s.

Chillies Exports House Ltd. Vs. Commissioner of Income Tax, . It was also pointed out that the Supreme Court has finally taken the view in

Vijayalaxmi Cashew Company and Others Vs. Dy. Commercial Tax Officer and Another, that conversion of raw cashew into cashew kernels

would be manufacturing or processing activity.

8. It is true there is no definition of the term industrial undertaking in the Income Tax Act, 1961. But, it is defined under Wealth Tax Act, 1957.

Explanation to section 5(1)(xxxi) of the Wealth Tax Act defines the term as an undertaking engaged in the business of generation or distribution of

electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining. There is nothing in

the language of sections 80HH and 80J which would suggest that a different meaning is contemplated for the term industrial undertaking when it

relates to a unit engaged in manufacture or production. On the other hand, the conditions to be fulfilled by the industrial undertaking as provided

under sub-section (2) would indicate that a unit which is manufacturing or producing articles can be treated as an industrial undertaking without any

further qualification. Therefore, we find no merit in the contention raised by the revenue that in order to be an industrial undertaking, it should be

something more than an undertaking where manufacturing or production is carried on.

9. It is further submitted by the learned counsel for the revenue that in the light of the decision of the Supreme Court in M/s. Chillies Exports House

Ltd. Vs. Commissioner of Income Tax, , even an assessee which gets the entire manufacturing or production through the outside agency can get

the benefit of an industrial undertaking if it is held that in order to be an industrial undertaking, what is necessary is that the assessee is carrying on

manufacture or production of article. We do not think that it is necessary for us to consider such a contention in this case since the finding of the

Tribunal is that part of the manufacturing process is directly done by the assessee. In all the three cases, namely, Addl. Commissioner of Income

Tax Vs. A. Mukherjee and Co. (P.) Ltd., ; Commissioner of Income Tax Vs. Rajmohan Cashews (P.) Ltd., and M/s. Chillies Exports House Ltd.

Vs. Commissioner of Income Tax, supra, assessee was found carrying on part of manufacturing process directly.

10. In the light of the above discussion, we hold that the Tribunal was fully justified in taking the view that assessee was entitled to deduction under

sections 80HH and 80J of the Income Tax Act, 1961.

We, therefore, answer all the questions in the affirmative, in favour of the assessee and against the revenue.