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Madhya Pradesh High Court

Case No: Miscellaneous I.T.A. No. 24 of 2000

D.P. Agrawal	APPELLANT
Vs	
Commissioner of Income Tax	RESPONDENT

Date of Decision: May 13, 2004

Acts Referred:

- Income Tax Act, 1961 - Section 80HH, 80HH(4), 80I

Citation: (2005) 193 CTR 297 : (2005) 272 ITR 118 : (2004) 3 MPLJ 338

Hon'ble Judges: N.S. Azad, J; Arun Mishra, J

Bench: Division Bench

Advocate: H.S. Shrivastava and Sandesh Jain, for the Appellant; Rohit Arya and Ajit Ade, for the Respondent

Final Decision: Dismissed

Judgement

Arun Mishra, J.

This appeal has been preferred by the assessee against the order passed by the Income Tax Appellate Tribunal on October 6, 1999, in I. T A. No. 545/Jab of 1997 relating to the assessment year 1994- 95.

The Income Tax Appellate Tribunal has allowed the appeal filed by the Commissioner of Income Tax holding that deduction u/s 80HH , and Section 80I of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), on the income arising from brass scrap obtained in the process of breaking and dismantling of guns is not an income derived from the industrial undertaking of iron rerolling and allowed the depreciation on truck at 25 per cent, as against 40 per cent, when the truck has been used for transporting the goods of others and hire charges amounting to Rs. 36,000 were received.

The assessee carries on the business of running a rerolling mill wherein rerolled products of iron and steel are manufactured. The assessee filed a return of income supported by an audit report from the chartered account- ant u/s 44AB of the Act. The income as per account has been accepted in the assessment. In the profit and loss account, a profit of Rs. 17,11,794 was shown to be included, income from sale of brass scrap at Rs. 9,98,006. This was shown separately during the course of survey conducted at his place on January 15, 1994, u/s 133A of the Act. The assessee had offered to pay tax on Rs. 10 lakhs in respect of the brass so obtained. During the course of assessment the assessee was asked to explain surrender of Rs. 10 lakhs. It was submitted that he had purchased 182 HOW Carrier Guns from Central Ordinance Depot (COD), Jabalpur, in an auction vide letter dated June 30, 1993. In breaking and dismantling of the guns brass scrap 10.96 MT in quantity was obtained and the balance was iron scrap. It was contended that this activity was production of goods, hence, income from industrial undertaking. The value of the brass was estimated at Rs. 10 lakhs and offered for taxation at the time of survey, this was sold for Rs. 9,99,006.

The Assessing Officer was not prepared to accept the amount of Rs. 10 lakhs as separate amount for comparison of gross amount, hence a reference was made to the Deputy Commissioner of Income Tax u/s 144A of the Act. The Deputy Commissioner directed vide letter dated March 27, 1995, to accept the position explained by the assessee in respect of gross profit explanation (A1) was submitted by the assessee. The Assessing Officer did not consider the income from sale of brass scrap as arising from industrial undertaking for purposes of allowing deduction under Sections 80HH and 80I of the Act and allowed the claim only in respect of other income, though he accepted the profits as per accounts. The assessment order (A2) was passed on February 21, 1997.

On appeal being preferred against the assessment order, the Commissioner of Income Tax (Appeals) accepted that income from brass scrap arose out of the industrial undertaking, i.e., the manufacturing business, on which deduction under Sections 80HH and 80I was allowable.

The Revenue filed an appeal against the order allowing the deduction under Sections 80HH and 80I before the Income Tax Appellate Tribunal (hereinafter referred to as the "ITAT"). The Income Tax Appellate Tribunal reversed the order (A3) passed by the Commissioner of Income Tax (Appeals), accepted the Revenue plea that the assessee had purchased guns and the income from brass scrap which could not be used for rerolling, thus, was not entitled to deduction under Sections 80HH and 80I of the Act.

This appeal has been admitted by this court on the following substantial question of law :

"Whether, on the facts and circumstances of the case, the Income- tax Appellate Tribunal is justified in law in holding that the income from sale of brass scrap obtained by breaking and dismantling the guns is not derived from industrial undertaking so as to attract the provisions of Sections 80HH and 80I of the Income Tax Act ?"

Shri H. S. Shrivastava, learned senior counsel, appearing with Shri Sandesh Jain for the appellant, has submitted that the learned Income Tax Appellate Tribunal has erred in law in disallowing the deduction under Sections 80HH and 80I of the Act. The scrap was obtained by dismantling discarded guns, iron is used for the purpose of rerolling, brass was separated by dismantling of the guns by mechanical and manual process, thus, the same was a processing and process of manufacture. It was not necessary that the brass obtained should have been further used in rerolling mill, thus, disallowance of the claim for deduction under Sections 80HH and 80I of the Act is arbitrary and illegal.

Shri Rohit Arya, learned senior counsel, appearing with Shri Ajit Ade, for the Revenue, has submitted that the brass obtained on dismantling of the guns cannot be said to be income arising out of the industrial unit. He has further submitted that there is no substantial change in the matter, "manufacture" implies a change, every change is not a "manufacture". Thus, it cannot be said that the brass is an income from industrial undertaking, hence, no interference is called for in this appeal.

Section 80HH of the Act provides that deduction with respect to the "profits and gains derived from an industrial undertaking". Deduction is permissible equal to 20 per cent, of the profits and gains. Sub-section (2) of Section 80HH provides for fulfilment of certain conditions for applicability of Section 80HH of the Act. Sub-section (4) of Section 80HH provides that the deduction shall be allowed in computing the total income in respect of each of the ten assessment years beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or the business of the hotel starts functioning. Sub-section (1) and sub-section (4) of Section 80HH of the Act are quoted below :

"80HH. Deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas.-

(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, 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 twenty per cent, thereof. .. . .

(4) The deduction specified in sub-section (1) shall be allowed in computing the total income in respect of each of the ten assessment years beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or the business of the hotel starts functioning : Provided that,-

(i) in the case of an industrial undertaking, which has begun to manufacture or produce articles, and

(ii) in the case of the business of a hotel which has started functioning, after the 31st day of December, 1970, but before the 1st day of April, 1973, this sub-section shall have effect as if the reference to ten assessment years were a reference to ten assessment years as reduced by the number of assessment years which expired before the 1st day of April, 1974."

80I of the Act also provides for deduction from profits and gains of an amount equal to 20 per cent, thereof where the gross total income of an assessee includes any "profits and gains derived from an industrial undertaking" or a ship or the business of a hotel. Sub-section (2) of Section 80I of the Act provides the fulfilment of certain conditions for claiming deductions. Sub-section (1) of Section 80I is quoted below :

"80-I. Deduction in respect of profits and gains from industrial undertakings after a certain date, etc.-(1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel, or the business of repairs to ocean-going vessels or other powered craft, to which this section applies, 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 twenty per cent, thereof :

Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel, as if for the words "twenty per cent, the words "twentyfive per cent." had been substituted."

What is of significance under Sections 80HH and 80I of the Act is that deduction is allowable on the profits and gains arising out of an industrial undertaking. The question for consideration is whether brass scrap can be said to be profit or gain arising out of an industrial undertaking and as per process of manufacture.

It is clear from explanation (A1) filed u/s 133A of the Act by 13 the assessee that the assessee deals in steel scrap. It has been mentioned in para. 1 of the explanation that "But in this year the assessee has purchased 182 HOW/Carrier, i.e., guns, for Rs. 10,53,000 from COD, Jabalpur, vide auction letter dated June 30, 1993." It has been further mentioned in para. 2 of the explanation (A l) that the "assessee was unaware of the fact that there is a brass scrap inside the guns. The brass scrap 10.96 MT was found which was valued at Rs. 10 lakhs, was offered for taxation at the time of survey. This fact was disclosed in the statement." Para. 1 and relevant portion of para. 2 of reply (Al) is quoted below :

"1. The survey u/s 133A was conducted at the assessee"s premises on January 15, 1994. At the time of survey the assessec has surrendered the value of brass scrap estimated at Rs. 10 lakhs. It may further be submitted that the assessee generally deals in steel scrap. But in this year the assessee has purchased 182 HOW/Carrier, i.e., guns,

for Rs. 10,53,000 from COD., Jabalpur, vide auction letter dated June 30, 1993.

That the assessee was unaware of the facts that there is brass scrap inside the guns."

It is clear from the reply that the "appellant/assessee deals in the steel scrap", he was not aware that inside the guns there was brass scrap which was removed, thus, it is clear from the reply that "brass is not an ingredient used in the process of manufacture of industrial undertaking". The question is whether the purchase of guns by the petitioner containing the brass inside which was removed by dismantling the guns can be said to be in the process of manufacture and income derived out of an industrial under- taking. The assessee derived income from rerolling work. The assessee has shown total sale of Rs. 8,22,90,065. Survey u/s 133A was conducted in the assessee"s premises on January 15, 1994. At the time of survey the assessee had surrendered a value of brass scrap estimated at Rs. 10 lakhs.

In our opinion the brass scrap has no direct nexus with the appellant"s industrial undertaking. Brass is not the raw material connected with the manufacture activity of the industrial undertaking. It cannot be said that the brass scrap is a profit or gain which directly flows, neither it has close connection with the undertaking. By removal of the brass scrap which is not useful for steel rerolling work of industrial undertaking no different distinct article comes, it is incidental as apparent from the appellant"s reply (Al).

The apex court in Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore, has considered the question of profits, gains and deductions u/s 80HH of the Act. What is profit and gain derived from industrial undertaking. The apex court has held that there must be, for the application of the words "derived from", a "direct nexus" between the profits and gains with the industrial undertaking. In case nexus is not direct, only incidental, sale consideration therefrom cannot be held to constitute profits and gains derived from the assessee"s industrial undertaking. The apex court has held thus (page 584) :

"We do not think that the source of the import entitlements can be said to be the industrial undertaking of the assessee. The source of the import entitlements can, in the circumstances, only be said to be the Export Promotion Scheme of the Central Government whereunder the export entitlements become available. There must be, for the application of the words "derived from", a direct nexus between the profits and gains and the industrial undertaking. In the instant case, the nexus is not direct but only incidental. The industrial undertaking exports processed sea food. By reason of such export, the Export Promotion Scheme applies. Thereunder, the assessee is entitled to import entitlements, which it can sell. The sale consideration therefrom cannot, in our view, be held to constitute a profit and gain derived from the assessee"s industrial undertaking."

The apex court in Pandian Chemicals Ltd. Vs. Commissioner of Income Tax, has again considered the question of deduction u/s 80HH of the Act. The contention raised before the apex court was that since without electricity, its industrial undertaking could not run and since the making of "deposit" with the State Electricity Board was a statutory precondition for supply of electricity, the "interest on such deposit" should be treated as income derived from the industrial undertaking. The apex court held that although electricity may be required for the purposes of the industrial undertaking, the deposit required for its supply is a step removed from the business of the industrial undertaking. The derivation of profits on the deposit made with the Electricity Board cannot be said to flow directly from the industrial undertaking itself. There has to be a close connection with the industrial undertaking itself. The apex court has laid down thus (page 280) :

"The word "derived" has been construed as far back as 1948 by the Privy Council in CIT v. Raja Bahadur Kamakhaya Narayan Singh [1948] 16 ITR 325 when it said (page 328) :

"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."

This definition was approved and reiterated in 1955 by a Constitution Bench of this court in the decision of Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay, . It is clear, therefore, that the words "derived from" in Section 80HH of the Income Tax Act, 1961, must be understood as something which has direct or immediate nexus with the appellant"s industrial undertaking. Although electricity may be required for the purposes of the industrial undertaking, the deposit required for its supply is a step removed from the business of the industrial undertaking. The derivation of profits on the deposit made with the Electricity Board cannot be said to flow directly from the industrial undertaking itself.

Learned counsel appearing on behalf of the appellant has referred to several decisions of the Madras High Court in order to contend that the word "derived from" could be construed to include situations, where the income arose from something having a close connection with the industrial undertaking itself. All the decisions cited by the appellant have been considered by the Madras High Court in the case of Commissioner of Income Tax Vs. Pandian Chemicals Ltd., . We see no reason to disagree with the reasoning given by the High Court in Commissioner of Income Tax Vs. Pandian Chemicals Ltd., with respect to those decisions to hold that they do not in any way allow the word "derived" in Section 80HH to be construed in the manner contended by the appellant."

The apex court in Commissioner of Income Tax, Trivandrum Vs. Relish Goods, has considered the question of exemption u/s 80HH of the Act to industrial undertakings engaged in "manufacture" or "production". The apex court has held that mere buying of

shrimps, peeling and freezing them did not entitle the assessee to exemption u/s 80HH. When raw shrimps and prawns are subjected to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing, they do not cease to be shrimps and prawns and become other distinct commodities. The apex court has approved the decision of the Supreme Court in Sterling Foods v. State of Karnataka [1986] 63 STC 239. The apex court has held thus (page 61) :

"Apart therefrom, there is the judgment of this court, in Sterling Foods v. State of Karnataka [1986] 63 STC 239 where it has been held that the processed or frozen shrimps and prawns are commercially regarded as the same commodity as raw shrimps and prawns. When raw shrimps and prawns are subjected to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing, they do not cease to be shrimps and prawns and become other distinct commodities. There is no essential difference between raw shrimps and prawns and processed or frozen shrimps and prawns. In common parlance, they remain known as shrimps and prawns. This judgment in Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram Vs. State of Karnataka and Another, has been rightly applied by the Bombay High Court, in the case of Commissioner of Income Tax Vs. Sterling Foods (Goa), to a claim u/s 80HH of the Income Tax Act and it has been held that the activity of processing of prawns is not an activity of manufacture or production."

The claim of the assessee u/s 80HH of the Act was rejected in Commissioner of Income Tax, Trivandrum Vs. Relish Goods, .

In Commissioner of Income Tax Vs. Gem India Manufacturing Co., the apex court has held that when raw and uncut diamond is subjected to a process of cutting and polishing which yields the polished diamond, but that is not to say that the polished diamond is a raw article or thing which is the result of manufacture or production. Therefore, the apex court has held that the activity of the assessee engaged in cutting and polishing of diamond amounted to manufacture or production of goods and on that basis the assessee was not entitled to deduction u/s 80I of the Act. The apex court has considered the question thus (page 308) :

"The High Court, as aforestated, concluded that the case was covered by its decision in the case of Commissioner of Income Tax Vs. London Star Diamond Co. (I) Ltd., . It was not pointed out to the High Court that the question in that case was whether the assessee was an industrial company within the meaning of Section 2(8) of the Finance Act, 1975, and that, in answering that question, the High Court had held that raw diamonds and cut and polished diamonds were different and distinct marketable commodities having different uses ; therefore, a company engaged in cutting and polishing raw diamonds for the purpose of export was engaged in the "processing of goods" to convert them into marketable form. The question that the High Court and we are here concerned with is whether, in cutting and polishing diamonds, the assessee manufactures or produces articles or things.

There can be little difficulty in holding that the raw and uncut diamond is subjected to a process of cutting and polishing which yields the polished diamond, but that is not to say that the polished diamond is a new article or thing which is the result of manufacture or production. There is no material on the record upon which such a conclusion can be reached."

In Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, the apex court has considered the words "production" or "produce" when used in juxtaposition with the word "manufacture" takes in bringing into existence new goods by a process which may or may not amount to manufacture. The apex court has held that when a dam is constructed, it is not manufactured or produced. The apex court has held that though Section 80HH is intended to encourage establishment of industrial undertakings in backward areas, liberal interpretation which advances the purpose and object has to be adopted, the same cannot be carried to the extent of doing violence to the plain and simple language used in the enactment. The apex court has held that (page 423) :

""The word "production" or "produce" when used in juxtaposition with the word "manufacture" takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the by-products, intermediate products and residual products which emerge in the course of manufactured goods. The next word to be considered is "articles", occurring in the said clause. What does it mean ? The word is not defined in the Act or the Rules. It must, therefore, be understood in its normal connotation-the sense in which it is understood in the commercial world. It is equally well to keep in mind the context since a word takes its colour from the context. The word "articles" is preceded by the words "it has begun or begins to manufacture or produce." Can we say that the word "articles" in the said clause comprehends and takes within its ambit a dam, a bridge, a building, a road, a canal and so on ? We find it difficult to say so. Would any person who has constructed a dam say that he has manufactured an article or that he has produced an article ? Obviously not. If a dam is an article, so would be a bridge, a road, an underground canal and a multi-storeyed building. To say that all of them fall within the meaning of the word "articles" is to overstrain the language beyond its normal and ordinary meaning. It is equally difficult to say that the process of constructing a dam is a process of manufacture or a process of production. It is true that a dam is composed of several articles ; it is composed of stones, concrete, cement, steel and other manufactured articles like gates, sluices, etc. But to say that the end-product, the dam, is an article is to be unfaithful to the normal connotation of the word. A dam is constructed ; it is not manufactured or produced. The expressions "manufacture" and "produce" are normally associated with movables-articles and goods, big and small-but they are never employed to denote the construction activity of the nature involved in the construction of a dam or for that matter a bridge, a road or a building. The decisions of the Bombay High Court in Commissioner of Income Tax Bombay City-I Vs. N.U.C. Private Ltd., and in CIT v. Shah Construction Co. Ltd. [1983] 142 ITR 696 relied upon by Sri Murthy, are no doubt

not decisions rendered u/s 80HH or u/s 84-they arose under the relevant Finance Acts, the question being whether the assessees were industrial companies- but they do contain observations which tend to support the stand of the Revenue. . . .

It is submitted by counsel for the respondent-assessee that since Section 80HH is intended to encourage establishment of industrial undertakings in backward areas for the reason that such establishment leads to development of that area besides providing employment, we must adopt a liberal interpretation which advances the purpose and object underlying the provision. The said principle, however, cannot be carried to the extent of doing violence to the plain and simple language used in the enactment. It would not be reasonable or permissible for the court to rewrite the section or substitute words of its own for the actual words employed by the Legislature in the name of giving effect to the supposed underlying object. After all, the underlying object of any provision has to be gathered on a reasonable interpretation of the language employed by the Legislature." (at page 426)

In Indian Poultry Vs. Commissioner of Income Tax, a Division Bench of this court has considered the meaning of "manufacture" for the purpose of Sections 80HH and 80I of the Act. The assessee company carried on the business of rearing chicks to broilers by applying a scientific process and technology. The chicks are reared for few days thereafter they become broilers. This court held that even if the chicks which develop into broilers and they are dressed and sold in the market, they still continue to be chicks only. Therefore, there is no substantial change in the matter. "Manufacture" implies a change, but every change is not manufacture and yet every change in an article is the result of treatment, labour and manipulation and docs not necessarily mean that on account of certain treatment and manipulation, a new identity has come to be acquired. Hence, it was held that it was not an income for industrial undertaking entitled to deduction under Sections 80HH and 80I of the Act. In Commissioner of Income Tax Vs. Buildwell Assam (P.) Ltd., a Division Bench of the Guwahati High Court has held that the assessee was entitled to get rebate u/s 80HH of the Act only to the extent of any profits or gains derived from an industrial undertaking, and if the assessee carried on some other business no deduction was available on such profits and gains, therefore, deduction u/s 80HH was disallowed.

Shri H. S. Shrivastava, learned senior counsel for appellant, has placed reliance on a decision of the Division Bench of this court in Girdharilal Nannelal Vs. The Commissioner of Sales Tax, This court considered the question under the Madhya Pradesh General Sales Tax Act, 1958, of the process of manufacture. In the context of the facts, the taxing authority came to the conclusion that Yelmele Cotton Company had purchased raw cotton for purposes of manufacture and converted it into ginned, pressed and packed cotton capable of being used in mills and thus the company was engaged in a process of manufacture and had purchased the cotton for consumption, they charged the assessee at a rate applicable to sales for consumption. The process of converting the raw cotton into marketable cotton is a process of manufacture. The ratio has no application to the

instant case as the business of the appellant/assessee is of rerolling of steel scrap, brass is not the material remotely connected with the process of rerolling of steel scrap in which the appellant/assessee is involved.

Learned counsel for appellant has further relied upon a decision of the apex court in Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, . The question involved was whether blending of ore in the course of loading it into the ship through the mechanical ore handling plant constituted manufacture or processing of ore ? The meaning of the word "processing" has been considered by the apex court. It was held that when chemical and physical compositions of each kind of ore which goes into the blending is changed, there can be no doubt that the operation of blending would amount to "processing". The apex court has held thus (page 130) :

"The point which arises for consideration under the first question is as to whether blending of ore in the course of loading it into the ship through the mechanical ore handling plant constituted manufacture or processing of ore. Now it is well-settled as a result of several decisions of this court, the latest being the decision given on May 9, 1980, in Civil Appeal No. 2398 of 1978- Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, -that the test for determining whether manufacture can be said to have taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity, but is recognised in the trade as a new and distinct commodity. This court speaking through one of us (Pathak J.) pointed out : "Commonly, manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place " The test that is required to be applied is : does the processing of the original commodity bring into existence a commercially different and distinct commodity ? On an application of this test, it is clear that the blending of different qualities of ore possessing differing chemical and physical composition so as to produce ore of the contractual specifications cannot be said to involve the process of manufacture, since the ore that is produced cannot be regarded as a commercially new and distinct commodity from the ore of different specifications blended together. What is produced as a result of blending is commercially the same article, namely, ore, though with different specifications than the ore which is blended and hence it cannot be said that any process of manufacture is involved in blending of ore.

It still remains to consider whether the ore blended in the course of loading through the mechanical ore handling plant can be said to undergo processing when it is blended. The answer to this question depends upon what is the true meaning and connotation of the

word "processing" in Section 8(3)(b) and Rule 13. This word has not been defined in the Act and it must therefore be interpreted according to its plain natural meaning. Webster"s Dictionary gives the following meaning of the word "process" : "to subject to some special process or treatment, to subject (especially raw material) to a process of manufacture, development or preparation for the market, etc., to convert into marketable form as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurising, fruits and vegetables by sorting and repacking." Where therefore any commodity is subjected to a process or treatment with a view to its "development or preparation for the market", as, for example, by sorting and repacking fruits and vegetables, it would amount to processing of the commodity within the meaning of Section 8(3)(b) and Rule 13. The nature and extent of processing may vary from case to case ; in one case the processing may be slight and in another it may be extensive; but with each process suffered, the commodity would experience a change. Wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. The nature and extent of the change is not material. It may be that camphor powder may just be compressed into camphor cubes by application of mechanical force or pressure without addition or admixture of any other material and yet the operation would amount to processing of camphor powder as held by the Calcutta High Court in Sri Om Prakas Gupta v. Commissioner of Commercial Taxes [1965] 16 STC 935. What is necessary in order to characterise an operation as "processing" is that the commodity must, as a result of the operation, experience some change. Here, in the present case, diverse quantities of ore possessing different chemical and physical compositions are blended together to produce ore of the requisite chemical and physical compositions demanded by the foreign purchaser and obviously as a result of this blending, the quantities of ore mixed together in the course of loading through the mechanical ore handling plant experience change in their respective chemical and physical compositions, because what is produced by such blending is ore of a different chemical and physical composition. When the chemical and physical composition of each kind of ore which goes into the blending is changed, there can be no doubt that the operation of blending would amount to "processing" of ore within the meaning of Section 8(3)(b) and Rule 13. It is no doubt true that the blending of ore of diverse physical and chemical compositions is carried out by the simple act of physically mixing different quantities of such ore on the conveyor-belt of the mechanical ore handling plant. But to our mind it is immaterial as to how the blending is done and what process is utilised for the purpose of blending. What is material to consider is whether the different quantities of ore which are blended together in the course of loading through the mechanical ore handling plant undergo any change in their physical and chemical compositions as a result of blending and so far as this aspect of the question is concerned, it is impossible to argue that they do not suffer any change in their respective chemical and physical compositions."

When the ratio of the above decision is applied to the instant case no sustenance is provided to the cause espoused by the appellant/assessee. The composition of brass

scrap is not at all changed, that is only removed as that is not useful to the assessee for the activity of manufacturing which it is carrying on of steel rerolling. Brass is not by-product in the process of manufacture. There is no nexus between brass and steel rerolling.

Learned counsel has further relied upon a decision of the apex court in CST v. Rewa Coal Fields Ltd. [1999] 32 VKN 538. The question which arose for consideration was what can be treated as raw material consumed in the process of manufacture. The assessee operated a coalmine. The apex court has held that kerosene oil was required for lanterns for illumination purposes and not as a fuel to power any machine. Hence, it could not be treated as a raw material consumed in the process of manufacture. Dry cells, torches and cells and electrical bulbs were held not to be qualified to be articles consumed in the process of manufacture or consumed in the mining of the coal. They may be used for purposes incidental to the mining, but are not integral thereto. So far as drilling bits are concerned, it was held that they are consumed in the mining of coal, to that extent the assessee''s submission was upheld. In the instant case, brass is not at all put in the process of manufacture of steel rerolling. It is not a raw material at all for the process of rerolling in which the assessee is involved. It was purely incidental that brass was found inside guns which were purchased in that year.

Learned counsel for the appellant has also relied on a decision of the 27 Allahabad High Court in Commissioner of Wealth-tax Vs. Syed Amjad Ali, . The word "processing" in the context of the Wealth-tax Act has been considered. It has been held that if a commodity is subjected to an operation with a view to developing it or making it marketable and if, by such operation, the commodity experiences a change and brings about the result sought to be achieved from the operation carried out on it or in regard to it, then such operation would amount to processing. The assessee/firm purchased tobacco leaves which were subjected to the operation of crushing and separating stems and dust therefrom. Such operation would amount to processing u/s 5(l)(xxxii) of the Wealth-tax Act, 1957. The ratio of the decision is not attracted as iron and brass by the very nature have no connection, they are different ores. It was only a fortuitous circumstance that in the relevant assessment year, the assessee had purchased the guns without the knowledge that brass scrap was inside which was separated as mentioned in explanation (Al) by the assessee. It cannot be said to be a by-product obtained in the process of manufacture.

Learned counsel for the appellant has further relied upon a decision of 28 the Bombay High Court in Ship Scrap Traders, Ispat Traders and Bansal Brothers Vs. Commissioner of Income Tax, , wherein the Division Bench has considered the question of deduction u/s 80HHA and Section 80I of the Act, the meaning of "industrial undertaking", "manufacture" and "produce". It has been held that ship breaking needs expertise and results in production of articles, the same amounts to manufacture. The assessee engaged in ship breaking is entitled to special deduction under Sections 80HHA and 80I of the Act. The ratio of the case has a different field to operate in as in the instant case dismantling of the guns is not an activity of the assessee. Only incidentally the guns were purchased in the

relevant year for the purpose of rerolling as per explanation (A1) of the assessee. In our opinion, there is no direct nexus in the activity of separation of brass scrap from the guns which were purchased for utilisation in rerolling of steel scrap. In the activity of ship breaking, several articles were obtained ; viz. ; ferrous metals, non-ferrous metals which includes brass. The meaning of the word "manufacture" has been considered which implies a change but every change is not a manufacture. There must be a transformation of kind and a new different item should have been emerged having different features. The word "manufacture" does not mean merely some change in the substance, but the expression "manufacture" has in ordinary acceptation a wide connotation : it means making of articles, or material commercially different from the basic components, by physical labour or mechanical process. The word "production" has a wider connotation than "manufacture". Scrap iron and steel which were obtained by the assessee by dismantling and breaking up of the ship must be regarded as a different commercial commodity from the ship itself, and hence the activity would amount to manufacture. The goods manufactured would be scrap iron and steel obtained or manufactured by the dismantling and making up of the ship, and the goods used in the manufacture of this scrap iron and steel would be the ship itself. Thereafter commercial commodities were obtained as such it was held to be a process of manufacture. In the instant case, guns may have several components, sometime brass or some other articles which may not be connected at all with the manufacturing process of an industrial undertaking of steel rerolling. There was nexus in the above case of scrap to the process of dismantling of the ship which was the main activity of the assessee which nexus is not available in the instant case. Hence, the decision renders no support to the submission advanced.

Learned counsel for the assessee has further relied upon a decision of the apex court in M/s. Chillies Exports House Ltd. Vs. Commissioner of Income Tax, . The apex court has considered the meaning of "industrial company", "processing" and "fumigation". A series of activities were undertaken including fumigation. The apex court has held that whether the effect of various activities including "fumigation" is processing, required proper evaluation from technical persons so as to ascertain whether the various activities carried on by the assessee to render the chillies purchased locally as one of the export quality can be termed as "carrying on the business of processing of goods." The decision is distinguishable as the main activity of processing of chillies was itself to be considered whether it was processing. The question involved was different. Chillies itself was the product marketable for the purpose of export which required fumigation and the matter was remitted to the High Court for reconsideration of the question in accordance with law. Learned counsel for the appellant has further relied upon a decision of the apex court in M/s. B.P. Oil Mills Ltd. Vs. Sales Tax Tribunal and Others, . The apex court has considered the definition of "manufacture" in Section 2(e-1) of the U. P. Trade Tax Act. The apex court has held that when any commodity is subjected to a process or treatment with a view to its development or preparation for the market it would amount to processing. In each process suffered, the commodity would experience a change. The process to which the crude oil is subjected to make it refined oil brings the latter within the

meaning of the expression "goods manufactured" in Section 3 of the Act. The apex court has held that there is a radical change when crude oil undergoes change as marketable refined oil.

Learned counsel has further relied upon a decision of the apex court in COLLECTOR OF CENTRAL EXCISE, CALCUTTA-II Vs. EASTEND PAPER INDUSTRIES LTD. COLLECTOR OF CENTRAL EXCISE, BHUBANESHWAR v. ORIENT PAPER MILLS AND OTHERS., . The apex court has considered the question of law on raw material or component part under the Central Excise Rules, 1944. The apex court has held that excise duty is a duty on manufacture. Manufacture is the process or activity which brings into existence new, identifiable and distinct goods. Anything required to make the goods marketable, must form part of the manufacture and any raw material or any materials used for the same would be a component part for the end-product. As already mentioned above, brass is not a raw material for steel rerolling and cannot be said to be a component part for the main product. The decision is not attracted to the facts of the instant case as brass cannot be said to be having any nexus with the activity in which the assessee''s industrial undertaking is involved.

In our opinion, there is no nexus with the brass scrap obtained on dismantling of the guns in the main activity of the appellant of steel rerolling. Gun is not the essential raw material of the appellant industrial unit, in any case brass is not at all connected with steel rerolling. Thus, separation of brass cannot be said to be in the process of manufacture or a product or a by-product of the activity of the assessee''s industrial undertaking. There is no direct nexus with the separation of the brass from the guns to the main activity, thus, considering the provisions of Sections 80HH and 80I of the Act, it cannot be said to be profit and gain derived from industrial undertaking. Thus, deductions on profits and gains under Sections 80HH and 80I of the Act are not admissible and have been rightly disallowed by the Income Tax Appellate Tribunal.

Resultantly, the appeal sans merit, the same is hereby dismissed. Parties to bear their own costs as incurred of this appeal.