Andhra High Court
Commissioner Of Income-Tax vs Sree Krishna Pulverising Mills on 7 June, 1999
Equivalent citations: 2000 241 ITR 262 AP
Author: S Maruthi
Bench: S Maruthi, S A Reddy
JUDGMENT S.V. Maruthi, J.

1. The Tribunal referred the following four questions for the opinion of this court under Section 256(1) of the Income-tax Act, 1961 :

"1, Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that crushing barytes into powder is a manufacturing activity/production of article for the purpose of deduction under Sections 80HH and 80-I ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in directing the Income-tax Officer to allow deduction under Section 80HH or Section 80-I subject to the fulfilment of the other conditions specified therein ?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that non-maintenance of separate profit and loss account and balance-sheets for three units could be regarded as an exceptional circumstance for computation of profits and gains on a reasonable basis as envisaged under the proviso to Sub-section (6) of Section 80HH and Sub-section (7) of Section 80HH ?

4. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the difficulty of apportioning the profits and gains of an industrial undertaking set up in backward area should not be regarded as a disqualification for deduction under Section 80HH or Section 80-I ?"

2. The facts in brief are as follows :

The assessee was having three units and there was one profit and loss account and one balance-sheet. The Income-tax Officer felt that for the purpose of claiming deduction under Sections 80HH and 80-I of the Income-tax Act there should be a separate profit and loss account and balance-sheets in respect of each unit. Therefore, he disallowed the deduction under Sections 80HH and 80-I claimed by the assessee. The Income-tax Officer also felt that the assessee is not manufacturing or producing any article in any of its three units including the main unit as it was only crushing barytes into powder for hire and receiving the crushing charges. Therefore, it will not amount to manufacturing activity, nor can the powder be called a new article. On appeal, the Commissioner of Income-tax held that the assessee was not manufacturing any new article by powdering the barytes. On further appeal, the Tribunal held that the activity of converting the barytes into powder can be held to be a manufacturing activity, and it can be said that there is production of barytes powder out of barytes. This powder has got marketability as it is used in the manufacture of paint or in extracting crude oil in the oil refining industry. The Tribunal also held

that if the units set up in backward area qualify for deduction in respect of the other conditions prescribed in Section 80HH or Section 80-I, the difficulty of apportioning the profits and gains from such undertakings should not be viewed as a disqualification. In other words, the Tribunal held that irrespective of the fact that there is no division of accounts still they are entitled for the benefit of Sections 80HH and 80-I as having satisfied the conditions laid down under the said two sections.

3. At the instance of the Revenue, the questions set out in the earlier paragraph were referred for opinion of this court.

4. Learned counsel for the Revenue contended that since the profits of the three units cannot be divided the assessee is not entitled for the benefit of Sections 80HH and 80-I. We are unable to agree with the contention of learned counsel. The section does not contemplate the division of profits and gains in respect of a unit provided the industrial undertaking satisfies the criteria laid down under Section 80HH. The criteria laid down under Sections 80HH and 80-I are--(i) that it should be an industrial undertaking manufacturing or producing articles after December 31, 1970, (ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence in any backward area, (iii) it is not formed by the transfer to a new business of machinery, and (iv) it employs ten or more workers in the manufacturing process.

5. The proviso to Sub-section (6) of Section 80HH itself provides that in the opinion of the Assessing Officer, the computation of the profits and gains of the industrial undertaking presents exceptional difficulties, the officer may compute such profits and gains on such reasonable basis as he may deem fit. In other words, it empowers the Assessing Officer to ascertain the profits and gains of a particular unit and make assessment. Therefore, there is no substance in the contention of learned counsel for the Revenue, and the assessee is entitled for the benefit of Sections 80HH and 80-I provided the criteria laid down is satisfied.

6. The next contention of learned counsel is that conversion of barytes into powder does not amount to manufacture or production as no new article comes into existence. It is only powdering the barytes. Therefore, it is not eligible for the benefit of Sections 80HH and 80-I of the Act. It is not disputed that the barytes are made into powder by using power and the powder is a distinct separate article from barytes and the use of barytes powder is in the manufacturing of paints while the barytes are used in a different form for different purposes. Further the barytes powder is marketed as such. Therefore, barytes are distinct not only in form and name and also in use from barytes powder and barytes powder is distinct and a separate article produced from barytes. Therefore, it cannot be said that barytes powder is not an article produced from barytes.

7. It follows from the above that the questions referred by the Tribunal are to be answered in the affirmative and against the Revenue.

8. The reference is answered accordingly.