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C.A.No. 3545 OF 1998
.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp
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ITEM No.120 COURT No. 2 SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.3545 of 1998@@
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Commissioner of Income Tax, Andhra Pradesh-II Appellant

VERSUS

M/s. C.B.R. Hatcheries (P) Ltd. Respondent
(With office report)

Date : 17/07/2001 This appeal was called on for hearing today

CORAM :
HON'BLE MR. JUSTICE S.P. BHARUCHA
HON'BLE MR. JUSTICE Y.K. SABHARWAL

For Appellant (s) Mr. B.B. Ahuja, Sr. Adv.
Ms. Sunita Sharma, Adv.
Ms. Sushma Suri, Adv.

For Respondent(s) Ex-parte

UPON hearing counsel the Court made the following
O R D E R

.....L.....I..T.....T.....T.....T.....T.....T.....T.....T.....J
The civil appeal is allowed.

No order as to costs.

(T.I. Rajput) (Shelly Sengupta)
Court Master Court Master

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Commissioner of Income Tax, A.P.-II ...Appellant (s)

Versus~

M/s. C.B.R. Hatcheries (P) Ltd.Respondent (s)

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The respondent has been served but has not chosen to put in an appearance.

The High Court declined to refer to itself the following two questions:

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.SP1

"1. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding that the assessee was entitled to investment allowance under Section 32-A of the Income Tax Act in respect of setters and incubators installed in the assessee's business?

2. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding that the assessee was entitled to investment allowance on the setters and incubators, treating them as 'Plant and Machinery'?"

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.SP2

It did so because they were covered by its earlier decision in Commissioner of Income Tax vs. Sri Venkateswara Hatcheries@@
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(P) Ltd. (174 I.T.R. 231). The decision of the High Court@@
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in the said case of Sri Venkateswara Hatcheries (P) Ltd. has been set aside by this court in Commissioner of Income Tax vs.@@
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Venkateswara Hatcheries (P) Ltd. (237 I.T.R. 174).@@
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Accordingly, the civil appeal is allowed. The order under challenge is set aside. The Tribunal shall refer to the High Court the two questions set out above for its decision in accordance with law.

No order as to costs.

.SP1

.....J.
(S.P. Bharucha)@@
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.....J.
(Y.K. Sabharwal)@@
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New Delhi,
July 17, 2001.