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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 6244 OF 2008
(arising out of SLP(C) No. 3802/07)

Krishak Bharati Cooperative Ltd. ... Appellant

versus

Joint Commissioner of Income Tax ... Respondent

ORDER

Leave granted.

In respect of assessment year 1993-94, CIT(A) held that since the receipt of service charges was not directly connected or linked with the manufacturing activity carried out in the industrial undertaking of the assessee, the service charges received by the assessee from the said activity of producing Heavy Water cannot be considered as the profit derived from its industrial undertaking so as to qualify for deduction under Section 80-I of the Income Tax Act, 1961 (for short, "the 1961 Act"). For the said reasons, the CIT(A) disallowed the assessee’s claim for deduction under Section 80-I. This view of CIT(A) has been affirmed by the judgment of the Tribunal as well as by the impugned judgment of Delhi High Court dated 15.11.2006 in ITA Nos. 1252/06, 1253/06 and 1254/06.

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Appellant is a multi-state Cooperative Society engaged in the business of manufacturing urea and ammonia at its Plant at Hazira. Appellant used to supply ammonia gas through pipe connections from its plant at Hazira directly to the Heavy Water Plant ("HWP") of the Heavy Water Board ("HWB"). The HWB is a Department of Atomic Energy. The HWP was located next to the appellant’s plant. In fact, it is in the precinct of the appellant’s plant.

On 14.9.1994, an agreement came to be executed between the appellant and HWB. Under that agreement, appellant was entitled to be reimbursed for the cost of ammonia manufactured by it and supplied to the Board and in addition thereto it was also entitled to receive service charges and incentives from HWB. In this case, there is no dispute regarding cost

reimbursements. The only dispute in this civil appeal is whether the service charges received by the appellant could be viewed as profits arising from the manufacturing activity of the appellant. As stated above, all the three authorities have decided the matter against the appellant, hence, this civil appeal.

As a preface, we may state that Heavy Water is employed as a coolant in pressurized Heavy Water Nuclear Reactors. Synthesis gas is produced at the Ammonia Plant of the appellant. It contains deuterium. Synthesis gas containing deuterium is taken to Heavy Water Plant, where deuterium is extracted in Extraction Towers and the balance synthesis gas is returned to the Ammonia Plant of the appellant. This is a brief process in the

manufacturing of heavy water. At this stage, it may be mentioned that the appellant's plant is known as Ammonia Plant from which synthesis gas flows to HWP at Hazira owned by the Department of Atomic Energy and which is known as Hazira Ammonia Extension Plant ("HAEP"). HAEP is an extension of the Ammonia Plant. This aspect is important for deciding the present civil appeal as it indicates the inseverability between the two plants.

According to the Department, receipt of service charges by the appellant accrued to the appellant only out of its own industrial activity and, consequently receipt of such service charges did not qualify as eligible profits under Section 80-I. It is this position taken by the Department, which we are required to examine in this case.

At the outset, it may be stated that this case is a stand-alone case. It is a unique matter. Heavy Water Plant is a national asset. In the changed scenario, when civil nuclear installations are going to play an important part, particularly in the context of electricity generation, one needs to examine the process in detail of manufacture of Heavy Water. Unfortunately, in this case, the appellant herein failed to place before the Tribunal, which is the highest fact finding authority under the Act, the relevant contracts and other data (which we shall refer to presently). In fact, the appellant has failed to produce the relevant contracts and the connected data before the Tribunal. Therefore, we do not find fault with the impugned judgment. Normally, we would have dismissed this civil appeal for lack of due diligence. However, looking to the importance of the matter and in view of special features of the contract, we

have decided to entertain the civil appeal by grant of special leave. In this case, appellant placed reliance only on agreement dated 14.9.1994 for Operation and Maintenance of Heavy Water Plant at Hazira. They failed to produce the contract dated 5.8.1986 and 11.7.1990. Be that as it may, we find the following salient features in the agreements between Heavy Water Board and the appellant herein. They are as follows.

Heavy Water Plant was constructed by the appellant for and on behalf of the Board. Ownership of the HWP vested during the assessment year 1993-94 in the Board. However, if one reads the above three agreements, prima facie one finds that the HWP (Hazira Ammonia Extension Plant) owned by the Board is an extension of the Ammonia Plant of the appellant. The peculiar features emerging from the above three agreements are that, synthesis gas flows through the pipes of Ammonia Plant to HAEP. Similarly, synthesis gas which is produced inside the Ammonia Plant and which contains deuterium is taken to the HAEP where deuterium is extracted with the help of a solution and the balance gas is once again returned to the Ammonia Plant of the appellant. This indicates two things. Firstly, that HAEP cannot survive without the feeder plant, namely, Ammonia Plant. Similarly, the Ammonia Plant cannot survive as far as the manufacture of Heavy Water is concerned without HAEP because after extraction of deuterium the balance quantity of synthesis gas is returned to the Ammonia Plant (see page 22 of Vol. I of the Paper Book). This aspect needed in-depth consideration by the Tribunal because the basic issue in this case is whether

receipt of service charges was or was not directly linked with the manufacturing activity carried out in the industrial undertaking of the appellant. If prima facie one finds that HAEP is an extension of the Ammonia Plant of the appellant then the question which arose before the Tribunal for determination was whether the above process constituted manufacturing activity carried out in the industrial undertaking of the appellant. Another feature to be noticed in this regard is that the Department of Atomic Energy entered into an agreement with the appellant to set up HAEP in the premises of the appellant’s Ammonia Plant. Therefore, the entire scheme was based on the principle of functional interdependence between the two plants.

Moreover, the contract shows that at a later date if the situation arises, the workers of the Ammonia Plant engaged in producing synthesis gas would be taken over by the Department of Atomic Energy (see clause 14.0). The most important aspect is funding. If one reads the Agreement dated 14.9.1994, it appears prima facie that the funding of operation and maintenance of HWP is by the Board to a very large extent (see clause 2.0 of the said Agreement dated 14.9.1994). Similarly, in the matter of construction of HWP, the funding is by the Board. One more aspect needs to be noticed. Under clause 10.0 of Agreement dated 14.9.1994, appellant is required to render to the Board accounts of expenditure incurred every month out of the funds placed at its disposal by the Board. Similarly, appellant is required to give details of assets created and liabilities incurred to the Board. Under clause 19.0, the Board absolves the appellant from any infringement of patent in connection

with operational maintenance of HWP. Further, the fees for service charges is based on the quantity produced by the appellant as indicated by clause 30.00. The most important aspect, in our view, is costing, pricing and sharing of revenue between the parties, which was required to be examined by the Tribunal. All these facts were relevant because in this case we are concerned with the issue, namely, receipt of service charges was or was not directly connected or linked with the manufacturing activity carried out in the industrial undertaking of the appellant. The exact meaning of the manufacturing carried out in the industrial undertaking of the appellant requires in-depth examination of various aspects indicated hereinabove. Prima facie it appears that, under the earlier dispensation, which prevailed at the relevant time, the HAEP was an extended link of the Ammonia Plant and in that context, as stated above, both the plants were interdependent on each other. This matter is also of some importance. It concerns not only the interdependence of the plants but it also gives rise to an important question of law as to the interpretation of Section 80-I in the context of Heavy Water Plant and the Ammonia Plant, particularly when it concerns synthesis gas flowing from Ammonia plant to the HWP, extraction of deuterium from synthesis gas and return of the balance synthesis gas to the Ammonia Plant. The diagram of the process is also given in Agreement dated 14.9.1994 (see page 21 of volume I of the Paper Book). This diagram indicates the process

of manufacturing of Heavy Water.

Before concluding, we may make it clear that the reasons given by us

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hereinabove are tentative observations made in the context of this case being a stand-alone case having no prior precedents. We have made tentative observations only to support our order remanding the case to the Tribunal. Therefore, we keep all contentions from both sides expressly open. As stated above, in this civil appeal the appellant has failed to produce relevant data before the authorities below. We permit the parties to do so. However, we direct the appellant herein to pay cost of Rs. 25,000/- as cost condition precedent to the hearing of the appeal by the Tribunal. The appellant herein to pay costs to the Department within eight weeks.

Before concluding we may clarify that the appellant do not wish to press the question regarding machinery hire charges and interest paid on loans to employees having regard to the amounts involved.

For the aforestated reasons, we set aside the impugned judgment and remit the case back to the Tribunal for reconsideration of the matter in accordance with law.

Subject to above, this civil appeal stands disposed of with no order as to costs.

.....J.
(S.H. Kapadia)

.....J.
(B. Sudershan Reddy)

New Delhi;
October 21, 2008.
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ITEM NO.2 COURT NO.5 SECTION IIIA

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).3802/2007

(From the judgment and order dated 15/11/2006 in ITA No.1252/-1254 of 2006 of The HIGH COURT OF DELHI AT N. DELHI)

KRISHAK BHARATI COOPERATIVE LTD. Petitioner(s)

VERSUS

JOINT COMMISSIONER OF INCOME TAX, N.D. Respondent(s)

(With appln(s) for permission to file additional documents and prayer for interim relief)(For final disposal)(For orders)

Date: 21/10/2008 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s) Mr. S. Ganesh, Sr.Adv.
Mr. P. Venugopal, Adv.for
M/S. K.J. John & Co.,Adv.

For Respondent(s) Mr. V. Shekhar, Sr.Adv.
Ms. Arti Gupta, Adv.
Mr. B.V. Balaram Das,Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.
The appeal is disposed of with no order as to costs.

(S. Thapar)
PS to Registrar

(Madhu Saxena)
Court Master

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The signed order is placed on the file.