

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(s). 6958 OF 2001

CIT, BANGALORE

Appellant (s)

VERSUS

M/S. KING FISHERIES (p) LTD.

Respondent(s)

Date: 26/04/2007 This matter was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Appellant(s) Dr. A.E.Chelliah, Sr.Adv.

Smt. Lakshmi Iyengar, Adv.for

Ms. Sushma Suri, Adv.

For Respondent(s)

Mr.M.P.Vinod, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeal is allowed. Question of law referred to is answered in the negative i.e. in favour of the Revenue and against the assessee.

(Parveen Kr. Chawla)

Court Master

[Signed Order is placed on the File]

(Kanwal Singh)

Court Master

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6958 OF 2001

CIT, Bangalore

Appellant(s)

Versus

M/s. King Fisheries (P) Ltd.

Respondent(s)

O R D E R

1. Commissioner of Income Tax, Bangalore (hereinafter referred to as

he 'the Act') has filed the present appeal against the decision of t

Karnataka High Court dated 6.1.1999 in ITR No. 123 of 1986,

whereby the High Court has answered the reference in the

affirmative i.e. in favour of the assessee and held that the

respondent-assessee (for short 'the assessee') is entitled to the

deduction under Section 80J of the Income Tax Act, 1961 (for short

'the Act').

2. The Assessment Year involved in the present case is 1978-79.

3. Assessee is engaged in the business of catching, purchasing, processing and export of fish.

4. The Income Tax Officer vide assessment order dated 5.8.1981

restricted the claim of the assessee for deduction under Section 80J

of the Act in respect of the cold storage only on the ground that

catching of fish could not be considered as an industrial activity.

On appeal, CIT (Appeals) held that the assessee was entitled to

deduction under Section 80J of the Act with reference to the capital

employed in the undertaking as a whole and directed the Income

Tax Officer to recompute the deduction under Section 80J of the

Act.

5. Not being satisfied, the Revenue filed an appeal before the Income

Tax Appellate Tribunal, Cochin (for short 'the Tribunal'). The

Tribunal confirmed the order of CIT(Appeals).

6. Thereafter, on an application made by the Revenue, Tribunal

referred the following question of law to the High Court for its

opinion:

"Whether the assessee-company which is engaged in the business of catching, purchasing, processing and exporting fish is entitled to claim deduction under Section 80J of the Act."

7. In Commissioner of Income Tax vs. Marwell Sea Foods (1987) 166

ITR 624 and CIT vs. Poyilakkada Fisheries (P) Ltd. (1992) 197 ITR

85 & 93, the Division Bench of the High Court of Kerala had answered

the similar question of law in favour of the assessee. Since the correctness

of this view was doubted, in view of the decision of this Court in CIT vs.

N.C. Budharaja & Co. & Others (1993) 204 ITR 412, the matter was

referred to a larger Bench. Accordingly, the Hon'ble Chief Justice of the

High Court constituted the larger Bench and the impugned judgment has

been passed by the Full Bench.

8. The High Court, following the decisions in Commissioner of Income

Tax vs. Marwell Sea Foods (1987) 166 ITR 624 and CIT vs.

Poyilakkada Fisheries (P) Ltd. (1992) 197 ITR 85 & 93 and

distinguishing the case of N.C.Budharaja on facts, has held that the assessee was carrying on industrial activity and, therefore, was entitled to the benefit of deduction under Section 80J of the Act.

9. The point involved in the present case is squarely covered in favour of the Revenue and against the assessee by a judgment of this Court

in Commissioner of Income Tax, Trivandrum vs. Relish Goods (1999) 3

SCC 167 wherein it has been held that the assessee, not being an industrial undertaking, would not be entitled to the benefit of deduction under Section 80HH of the Act. Deduction under Section 80J and Section

80HH can be claimed by an industrial undertaking only and since the catching, purchasing, processing and export of fish has been held to be not

an industrial activity, assessee is not entitled to deduction under Section

80J of the Act. This view was followed by this Court in Civil Appeal

Nos.3967-3971 of 1999 decided on 24th July, 2001. The judgment in

Marwell Sea Foods, followed by the High Court in the impugned

judgment, was distinguished.

10.The facts of the present case are similar to the facts of Relish Foods

(supra). Accordingly, respectfully following the dictum laid down by

this Court in Relish Foods (supra), we accept this appeal, set aside the

orders of the High Court, Tribunal and CIT(Appeals) and restore the order

of the Income Tax Officer. Question of law referred to is answered in the

negative i.e. in favour of the Revenue and against the assessee.

.....J.

(ASHOK BHAN)

New Delhi;

.....J.

April 26, 2007.

(DALVEER BHANDARI)