

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). 102 OF 2002

M/S. DOWN TOWN HOSPITAL LTD.

Appellant (s)

VERSUS

COMMNR. OF INCOME TAX, GUWAHATI

Respondent(s)

(With office report)

Date: 01/03/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Appellant(s)

Mr. S.Ganesh, Sr. Adv.

Mrs. Anjali K. Verma, Adv.

Mr. Niraj Gupta, Adv.

Mr. Harish J. Jhaveri, Adv.

For Respondent(s)

Rr-Ex-Parte, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed.

No order as to costs.

[SUMAN WADHWA]
COURT MASTER

[MADHU SAXENA]
COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 102 OF 2002

DOWN TOWN HOSPITAL LTD.

.. APPELLANT

vs.

COMMNR. OF INCOME TAX,
GUWAHATI

.. RESPONDENT

O R D E R

A short question which arises for determination in this Civil

Appeal is whether the appellant-hospital is an industrial

undertaking entitled to the benefit of deduction under Sec.80 -HH of

the Income Tax Act, 1961. In this appeal we are concerned with

Assessment years 1994-95.

The appellant-assessee is a hospital having made

investment in plant and machinery. It operates a nursing home in Guwahati. As stated above, the assessee claimed deduction under Sec. 80-HH for Assessment years 1994-95. Vide Assessment Order dated 5.3.1997 the Assessing Officer (AO) held that the assessee was not an industrial undertaking, it was therefore not eligible for deduction and consequently the assessee's claim for deduction stood disallowed.

Aggrieved by the said order dated 5.3.1997, the matter was carried in appeal to the Commissioner (Appeals). Vide order dated 8.5.1998 the Commissioner (A) held that in view of two decisions of two separate High Courts, namely, Rajasthan High

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Court and Kerala High Court the assessee-hospital was an industrial undertaking entitled to deduction under Sec.80-HH. The above two decisions are reported in 225 ITR 178 (Rajasthan) in the case of C.I.T. vs. Trinity Hospital. The second judgment of the Kerala High Court is reported in 225 ITR 845 in the case of C.I.T. vs. Upasana Hospital.

Our attention is also invited to the judgment of the Guwahati High Court in the case of C.I.T. vs. Down Town Hospital (P) Ltd. reported in 267 ITR 439.

In order to constitute an industrial undertaking, be it under Section 32-A or under Section 80-HH, the important criteria to be

applied by the Assessing Officer is to identify the Item in question, the process undertaken by it and the resultant output. For example, if the Item is a data processing machine/computer, the question as to whether the print out from that computer is as a result of manufacture is one of the test to be applied in judging whether the undertaking which buys this article is an industrial undertaking or not. Unfortunately, in the present case there is no identification of the Items installed in the hospital by the Tribunal and therefore it is not possible for this Court to express any opinion as to whether the assessee was entitled to deduction under Sec.80-HH of the Income Tax Act.

For the aforesaid reasons the impugned order of Guwahati High Court is set aside. The matter is remitted to the

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Tribunal for deciding the case de novo in accordance with law.

Although the impugned order is concerning Assessment years 1994-

95, the point involved is an important question as far as the assessee-hospital is concerned since it arises in the subsequent assessment years.

Accordingly, the appeal is allowed with no order as to costs.

.....J.

(S.H. KAPADIA)

.....J.

(B.SUDERSHAN REDDY)

NEW DELHI;

MARCH 1, 2007.