

Cit Vs. Janta Cold Storage

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Court : Allahabad

Decided On : Oct-15-2004

Reported in : [2005]146TAXMAN402(All)

Appeal No. : IT Reference No. 161 of 1989 15 December 2004

Appellant : Cit

Respondent : Janta Cold Storage

Advocate for Pet/Ap. : A.N. Mahajan *for the Assessee* Shashi Kant and Rajiv Gupta *for the Revenue*

Judgement :

1. The Income Tax Appellate Tribunal, Delhi, has referred following question of law under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for opinion to this Court:

'Whether on the facts and in the circumstances of the case, the Income tax Appellate Tribunal was right to cancel the order passed by the Commissioner of Income-tax under section 263 of the Income Tax Act, 1961, by holding that the process of manufacture was there in the cold storage ?'

Briefly stated the facts involved in the present case are as under:

2. The present reference relates to the assessment years 1981-82 to 1983-84. The respondent-assessee runs a cold storage. It claimed a benefit of deduction under section 80HH of the Act which was allowed by the Income Tax Officer. The Commissioner of Income-tax on an examination of the relevant records came to the conclusion that the deduction under section 80HH of the Act was not permissible. He accordingly initiated proceedings under section 263 of the Act and after giving an opportunity of hearing to the respondent-assessee had set aside the assessment order to the extent of allowing the benefit under section 80HH of the Act. The deduction was withdrawn.

3. Feeling aggrieved the respondent- assessee preferred separate appeals before the Tribunal. The Tribunal had held that the respondent-assessee was producing cold air and it is not required that new product should be manufactured for qualifying for deduction under section 80HH of the Act. it was of the view that though the chemical composition of the cold air and the normal air which was the raw material for producing the cold air remained the same but the process of manufacture was there though it did not produce a chemical composition whose atomic or integral structure was different. The Tribunal accordingly cancelled the order passed by the Commissioner under section 263 of the Act,

We have heard Sri AN Mahajan, learned Standing counsel for the revenue, Shri Shashi Kant and Shri Rajiv Gupta have filed their appearance on behalf of the respondent-assessee.

4. In view of the decision of the Apex Court in the case of Delhi Cold Storage (P.) Ltd. v. CIT : [1991]191ITR656(SC) in a cold storage no new commodity comes into existence and a cold storage is not engaged in the business of manufacturing or processing any article, it is not an industrial undertaking and no manufacturing takes place. Therefore, deduction under section 80HH of the Act was not admissible. The Commissioner was right in withdrawing the deduction.

5. In view of the foregoing discussion, we answer the question referred to us in negative, i.e., in favour of revenue and against the assessee. However, there shall be no order as to costs.