

Cit Vs. Premier Export International

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Court : Kerala

Decided On : Nov-07-2003

Reported in : [2004]134TAXMAN339(Ker)

Appeal No. : IT Reference No. 163 of 1999 7 November 2003

Appellant : Cit

Respondent : Premier Export International

Advocate for Pet/Ap. : P.K.R. Menon and George K. George, *for the Revenue*
Thampan Thomas and Shaffie Thomas, *for the Assessee*

Judgement :

Radhakrishnan, J.

The Income Tax Appellate Tribunal in compliance with the direction of this court in O.P. No. 12081 of 1998, has referred the following questions of law:

'1. Whether, on the facts and in the circumstances of the case, did processing of prawns amount to production of an article and is not the finding of the Tribunal wrong and against the decisions of the Supreme Court in Sterling Foods and Bhudiraja

2. Whether, on the facts and in the circumstances of the case, the assessee, a processor of sea foods, is entitled to investment allowance under section 32A of

the Income Tax Act ?'

The assessee is doing business in export of sea foods. While completing the assessment for the assessment year 1985-86, the assessing officer disallowed the claim for investment allowance to the extent of Rs. 1,87,000 on the ground that the assessee is not a manufacturer entitled to the grant of investment allowance. Assessee took up the matter in appeal before the Commissioner (Appeals). Appeal was allowed and the assessee's claim for investment allowance was granted. In allowing the claim of the assessee under section 32A, the Commissioner relied on the decision of this court in the case of CIT v. Elite Sea Foods : [1989]179ITR85(Ker) . department took up the matter in appeal before the Tribunal. The appeal was dismissed. Though two questions were referred, we need answer only the second question.

2. When the matter came up for hearing learned Standing counsel appearing for the department brought to our notice the decision of the Apex Court in CIT v. Kala Cartoons (P) Ltd. : [2001]252ITR658(SC) . The question involved in that case was whether purchasing, peeling, freezing and exporting of shrimps would involve production or manufacture. The Apex Court held that the assessee had not established that the activities would amount to manufacture or production. Counsel also referred to the decision of a Division Bench of this court in CIT v. Poyilakada Fisheries (P) Ltd. : [1999]240ITR445(Ker) . The question arose in that case was whether assessee is entitled to special deduction for processing and export of shrimps. Following the decision of the Apex Court in Sterling Foods v. State of Karnataka : 1986(26)ELT3(SC) it was held that the processed or frozen shrimps and prawns are commercially regarded as the same commodity as raw shrimps and prawns. It was held that when raw shrimps and prawns are subjected to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing, they do not cease to be shrimps and prawns. In common parlance they remain the same and continue to be known as shrimps and prawns. In this connection, we may also refer to the decision of another Division Bench of this court in CIT v. Poyilakada Fisheries (P) Ltd. : [2001]252ITR661(Ker) . It was held in that decision that the assessee was not entitled to investment allowance on the plant and machinery used in its activity of processing fish.

3. We are of the view, the principle enunciated in the above mentioned decisions would apply in the instant case as well. In this case, assessee is exporting prawns and shrimps after subjecting to various treatment like deveining, peeling etc. When raw prawns are subjected to process of deveining and peeling they did not cease to be prawns and become other distinguished commodity. There is no essential difference between raw prawns and processed prawns. They continue to be known as prawns. This being the position, we are of the view, the Tribunal is not justified in holding that the assessee is entitled to investment allowance under section 32A of the Income Tax Act. We, therefore, answer the question in favour of the revenue and against the assessee. Reference is answered accordingly.

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