

Additional Commissioner of Vs. New Nandi Seeds Corpn.

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Court : Income Tax Appellate Tribunal ITAT Ahmedabad

Decided On : Dec-30-2005

Reported in : (2006)99ITD702(Ahd.)

Judge : I Verma, A Gehlot

Appellant : Additional Commissioner of

Respondent : New Nandi Seeds Corpn.

Judgement :

1. In this appeal, the Revenue has objected to the Order of the CIT (Appeals)-II, Ahmedabad, dated 3-4-2001 passed for assessment year 1998-99 by way of following grounds:- 1. The Id. CIT(A) erred on facts and in law in allowing the claim of deduction under Section 80-I, relying on the decision in the case of ITO v. Navbharat Seeds (P.) Ltd. [1990] 32 ITD 703 (Ahd.), without appreciating that the facts of the said case are materially different from the facts of the assessee's case.

2. The learned CIT(A) erred on facts and in law in deleting the addition made on account of processing expenses, which includes processing expenses borne by the agriculturists and not by the assessee.

3.1 The brief facts relating to the issue involved in this ground are that the assessee is carrying on business of manufacturing/ processing certified seeds as well as labelled seeds for Bajra crops had filed its return of income for assessment year 1998-99 declaring an income of Rs. 2,68,24,810 on 2-10-1998. During the

course of assessment proceedings, the Assessing Officer noticed that the assessee's turnover of certified seeds was Rs. 2,10,19,072 and of labelled seeds was Rs. 60,01,92,742.

3.2 Since the assessee was manufacturing/processing certified seeds it had to procure a Certificate from Gujarat State Seed Certification Agency, a State owned Agency to supervise and control the production and manufacturing of certified seeds; had to provide foundation seed to farmers in addition to know-how, etc. and for that purpose was to get itself registered as co-producer. In this system of carrying on the business, the assessee was definitely to incur expenditure. It was, in view of these facts that the assessee had claimed the total processing charges at Rs. 50,80,976.

3.3 The Assessing Officer, considered that the sale of certified seeds (at Rs. 2,10,19,072) was only 25.88% of total sales, i.e., 25.88% of sales of certified seeds amounting to Rs. 2,10,19,072 + labelled seeds amounting to Rs. 60,01,92,742. In view of this fact, the Assessing Officer disallowed proportionate expenditure out of processing charges, i.e., proportionate expenditure attributable to sale of certified seeds and, consequently, disallowed a sum of Rs. 13,14,957- equal to 25.88% of total processing charges of Rs. 50,80,976.

3.4 On appeal by the assessee, the CIT (Appeals) allowed the assessee's claim after following his order in assessee's own case for assessment year 1997-98 by observing as under:- 12. Next ground is regarding disallowance in the ratio of sales of Rs. 13,14,957 out of processing expenses. The Assessing Officer has made the disallowance by holding that the detailed discussion on this issue has been made in assessment year 1997-98. Following the appellate order for assessment year 1997-98, wherein the issue has been dismissed in detail, the addition is deleted.

4. It was, in view of above facts and circumstances of the case, that the Id. DR has supported the order of the Assessing Officer, whereas the Id. Counsel for the assessee has submitted that similar issue had come up for consideration before the CIT (Appeals) in assessee's own case for assessment year 1997-98 and was decided in assessee's favour.

The Id. counsel for the assessee, further, submitted that since the CIT (Appeals), while deciding the assessee's appeal for assessment year 1998-99; i.e., appeal under consideration, simply followed his order for assessment year 1997-98 and Revenue's appeal against the order of the CIT (Appeals) for assessment year 1997-98 (ITA No. 1984/Ahd./2000) is still pending before the Tribunal, therefore, matter can be restored back to the file of CIT(Appeals) for deciding the matter afresh after passing a speaking order on the basis of final outcome of Revenue's appeal for assessment year 1997-98.

5. After careful consideration of the rival submissions and facts and circumstances of the case, we are of the opinion that the matter deserves re-consideration at the end of the CIT (Appeals) keeping in view the Revenue's case that the assessee was not to incur any expenditure for certified seeds and also the final outcome in Revenue's appeal for assessment year 1997-98. Here, we would like to record that the Assessing Officer has just gone for disallowing proportionate expenditure without pointing out as to whether the assessee had claimed any expenditure with relation to certified seeds or not. The issue is, therefore, remanded back to the file of CIT (Appeals) with the directions that the same may be decided afresh in accordance with law and with a speaking order after allowing the assessee a proper opportunity of being heard and keeping in view the final outcome of Revenue's appeal for the assessment year 1997-98.

6. Coming to issue involved in ground No. 1, the Id. DR has supported the order of the Assessing Officer, after relying on the order of the ITAT Ahmedabad Bench 'A' in assessee's own case (ITA No.1110/Ahd./2004) for the assessment year 2000-01, dated 29-10-2004 wherein the Tribunal rejected the assessee's claim of deduction under Section 80-I by observing as under:- 5. After considering the rival submissions and going through the material on record, we find that the assessee is engaged in processing and distribution of agricultural seeds. The assessee purchases and supplies foundation seeds to growers and the same are cultivated by agriculturists in their fields and they are offered to assessee to purchase. Assessee purchases the seeds subject to his germination test. In case seeds are not up to the mark the same are returned back to the growers at their risk. Even transport charges are borne by the growers. It shows that assessee has no risk

sharing with the growers. Assessee purchases the seeds after his so called random test of germination. Fumigation is applied on seeds if these are to be stored for longer period. Prior to it seeds testing, seeds gradation, seeds drying is done which does not involve any manufacturing or production activity. As we have mentioned earlier that fumigation is done only on the seeds which are to be stored but even after fumigation it does not change the nature of seeds at all, it simply make them resistant to certain pest at storage level. As far as application of pesticide is concerned it is done so that seeds may not be damaged at germination level. But seeds remain the same. There is neither genetic or any other irreversible chemical change takes place in the seeds purchased by assessee. The various case laws relied on by assessee do not help the assessee because issue in those cases was that food grains were changed into seeds as held by the Hon'ble Supreme Court in the judgment dated 28-11-2003 in Case No. Appeal (Civil) 6301 of 2001 in the case of Krishi Utpadan Mandi Samiti v. Pilibhil Pantnagar Beej Ltd. It is undoubtedly true that food grains per se could be used as seeds for being sown and achieving germination, but in that form they retain the dual utility of being food grains as well as seeds.

By process of coating and applying insecticides, other chemicals and poisonous substances to the food-grain meant to be utilized as seeds, one of its basic character, i.e., its consumption as food by human beings or animals or for extraction for the like purpose, gets irretrievably lost and such processed seeds become a commodity distinct from food grains as commonly understood. That distinction was borne in mind by the High Court in allowing the writ petition of the respondents, and in our view rightly.' But in the instant case only seeds are purchased from farmers that too without any risk sharing at cultivation level with grower. In such a situation any agreement or arrangement on paper with agriculturists renders no help to assessee for allowing deduction under Sections 80-I and 80-IA. Assessee should produce different commodities out of raw materials with the help of systematic activity to be entitled to claim deductions under Sections 80-I and 80-IA of the Act, which has not been done by assessee in this case. In this case seed is raw material and end product is seed. Assessee is not purchasing food grains but only seeds are being purchased from growers so there is no question of any genetic or chemical irreversible change in raw material.

So the ratio of the decision of Hon'ble Supreme Court in the case of Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd. (supra) is of no help to the assessee. Various decisions based on the decision in the case of Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd. (supra) also do not help the assessee.

Even the contents of partnership deed of assessee firm, agreement entered by the assessee with agriculturists does not help the assessee. The details of salary and process render no help to assessee as far as allowability of deduction under Sections 80-I and 80-IA is concerned. It is only paper work. In view of the above discussion, we are of the view that no interference from our side is called for and the appeal is liable to be dismissed. We order accordingly.

6.1 The Id. DR further submitted that the seed is grown in the fields by the farmers and the assessee is carrying on only job of grading, which do not amount to manufacturing or processing so as to make a new thing or article. According to him, manufacturing or processing can be said to have been done if the final product cannot be brought back to the original product, i.e., if the process is irreversible, otherwise not and so far as assessee's case was concerned, the seed already was in existence.

It was further submitted that simply treating the seeds with some chemicals do not amount to manufacturing or processing an article or thing. Reliance was placed on the following decisions:- (i) Divisional Dy. CST v. Bherghat Mineral Industries [2000] 246 ITR 230 (SC) (ii) CIT v. Gem India Mfg. Co. [2001] 249 ITR 307 (SC) : 117 Taxman 368 (iii) Sacs Eagles Chicory v. CIT [2002] 255 ITR 1782 (SC) : 123 Taxman 221 (i) That, so far as Tribunal's order (supra) in assessee's own case for assessment year 2000-01 which is dated 29-12-2004 is concerned, the same is no more a good decision for following two reasons:- (a) That, the facts stated by the Hon'ble Tribunal in this order, to the effect that the assessee was not providing foundation seeds to the farmers was not correct and, consequently, the Tribunal had gone wrong in arriving at the findings that the assessee was not co-producer and that too solely on the ground that the assessee having recovered price of foundation seeds from the farmers, was carrying on a trading activity. According to Id. Counsel for the assessee, once the assessee got registration from Gujarat

State Seed Certification Agency, which was not disputed by the Tribunal as well as the Revenue, the findings/observations of the Tribunal were absolutely unfounded.

(b) The Id. Counsel for the assessee, further submitted that Tribunal's decision in assessee's own case for assessment years 1992-93, 1993-94 and 1995-96 in TTA Nos. 399, 400 and 401/Ahd./1999 being of a later date, i.e., dated 1-6-2005, the judicial propriety requires that this decision which should be followed.

(c) The Id. Counsel for the assessee, further submitted that without prejudice to the aforesaid submissions, since facts of the assessee's case were similar to the fact in case of ITO v. Navbharat Seeds (P.) Ltd. [1990] 32 ITD 703 (Ahd.) and the order of Tribunal in that case for assessment year 1983-84 allowing the deduction under Section 80-I and under Section 80HHA of the Act having been confirmed by the Hon'ble Apex Court, there is no necessity to enter into the arguments as to which of the Tribunal's order (in assessee's case) be followed. According to him, it is well-settled law relating to precedent and judicial propriety that facts and circumstances remaining the same, it is the decision of Jurisdictional High Court or of the Apex Court, which has the binding precedent and is to be followed - irrespective of conflicting decision of the Tribunal or High Courts - if there is decision of Apex Court; and since in the present case, the issue is covered in favour of Assessee and against the Revenue by the decision of Hon'ble Supreme Court of India in the case of Navbharat Seeds (P.) Ltd. (supra). The order of the CIT (Appeals) on this point may be confirmed.

(ii) further, the Id. Counsel for the assessee, has supported the order of the CIT (Appeals) by relying on the following decisions:- (a) Decision of ITAT Ahmedabad Bench 'D' in assessee's own case for assessment years 1992-93, 1993-94 and 1995-96 in ITA Nos. 399 to 401/Ahd./1999 (Alongwith CO Nos. 49 to 51/Ahd./2002), dated 1-6-2005 wherein the Hon'ble Tribunal dealt with the issue in paragraph Nos.

3 and 4 of its order, which are in the following terms:- 3. Before CIT(A) it was argued on behalf of the assessee that the assessee firm is engaged in production, processing and distribution of agricultural seeds used for sowing. It was stated that the seeds in agricultural sowing are totally different from the commercial seeds

though the same could not be differentiated from the physical appearance. The main feature of seeds used for sowing is genetic purity which could not be tested or looked upon, unless the same is grown and tested in the field. It was further submitted that for the production of hybrid seed, male and female parent seed, was supplied by the appellant which was shown in the prescribed manner and standard. It is also the most important requirement that isolation distance as per prescribed standard is maintained which is essential to prevent any contamination of genus of any other variety of Bajra, even from the surrounding area. It was further submitted that after harvesting is over only female ear-heads are thrashed under constant supervision of the Inspector of the Seed Certification Agency then thrashed seed is received through gunny bags and lot number is assigned to each of the lots. Each bag is individually sealed by Certification Officer of the Seed Certification Agency which has overall control right from the production, process and grading of the seed. It was submitted by the assessee that in the first stage of process, seed has to be sieved through three screens of different sizes so that poor germinating, shriveled and undersized seed will be eliminated and standard sized seed having standard weight will remain. The moisture level also has to be tested and seed-lots having moisture content more than prescribed level requires to be dried. Also dormancy is required to be eliminated. The seed stock also requires to be fumigated to prevent infestation by the vivils.

Thus level of minimum standards in respect of Germination, Moisture and viability, as prescribed by the Central Seed Certification Board, are achieved. It was submitted that besides, due to this process, dust and other inert matters are also eliminated, making it confirm to the maximum 2% of physical impurity standard. All these purity standards, namely, germination, moisture and inert matters are tested in the Government Notified Laboratory and seed lot is released as certified only if the lots meet the standards. Processed seed then has to be treated with prescribed doses of poisonous chemicals by putting both the chemicals and the seed in seed treating drums and seed treatment process is carried out which coats each and every seed with poisonous chemicals which protects the hybrid seed from diseases and insects even after sowing. It was pleaded that this process is mandatory for getting the seed certified. Processed and treated seed is then packed in cloth bags having designs as approved by the Seed Certification

Agency. All this process has been explained in the arguments by the Id. AR of the assessee in para 6.2 of the impugned order. After considering these submissions, the CIT(A) relying on the following decisions has held that the assessee is entitled to deduction under Section 80-I as the process carried out by the assessee meets the requirements of Section 80-I. (ii) ITO v. Navbharat Seeds (P.) Ltd., ITAT, Ahmedabad. Vide its order dated 29-11-1989 in appeal No. 1TA 2816/Ahd./1986.

It was further brought to our notice that similar proposition has been upheld by Hon'ble Bombay High Court in the case of CIT v. Jalna Seeds Processing & Refrigeration Co. Ltd. 246 ITR 156 (Bom.).

4. We have heard both the parties, we have also considered the process involved as described in para 6.2 of the order of CIT(A). We found that the Id. CIT(A) while deciding the issue in favour of assessee has followed the decision of Co-ordinate Bench i.e., Ahmedabad Bench in the case of ITO v. Navbharat Seeds (P.) Ltd. since reported in 36 TTJ (Ahd.) 212. The process adopted by assessee appears to be similar as described in afore-cited order of Ahmedabad Tribunal, as Id. DR could not differentiate the process. The other case laws i.e., CIT v. EID Parry (India) Ltd. (supra) and CIT v. Jalna Seeds Processing & Refrigeration Co. Ltd. (supra) support the above view. No contrary decision whatsoever was brought to our notice. Under these circumstances respectfully following the decision of Coordinate Bench, the decision of Hon'ble Madras High Court and the decision of Hon'ble Bombay High Court we hold that Id. CIT(A) was right in giving the relief to assessee. We uphold his order and departmental appeals are dismissed. *Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd.* Civil Appeal No. 6301 of 2001, dated 28-11-2003 (copy placed at page Nos. 16 to 34 of the assessee's paper-book) for the proposition that the final product, i.e., seeds produced by the assessee which had been treated with poisonous chemicals was unfit for human consumption and ceased to be cereal which is fit for human consumption.

(c) Decision of ITAT Ahmedabad Bench 'C in the case of ITO v. Navbharat Seeds (P.) Ltd. [1990] 32 ITD 703 on the strength that decision of the Tribunal has since been confirmed by the Hon'ble Supreme Court as per order dated 18-3-1999 copy placed at page No. 35 of the assessee's paper-book, by observing as under:- 8.

We have examined the rival submissions and have also perused the orders of the authorities below. The paper book furnished by the assessee's counsel as also the decisions cited by the parties have been duly considered. At the outset we may mention that after hearing the parties, we directed the learned counsel for the assessee to furnish a note detailing therein the factual aspects of the case. A copy of this note was also directed to be supplied to the DR. There has been no request from the side of the Revenue to be heard in respect of the said detailed note furnished on behalf of the assessee. In other words we proceed to record that the facts stated in the note remain unchallenged and are the accepted facts between both the parties. We now proceed to state these undisputed facts: 'Navbharat Seeds Private Limited, a company registered on 23rd April, 1981 under the Companies Act, 1956 having its registered office at 4, Sarvodaya Commercial Centre, Salapose Road, Ahmedabad.

The company is engaged in production, processing and marketing of various hybrid seeds of different crops such as hybrid bajra, hybrid cotton, hybrid jowar, hybrid maize and hybrid castor etc. The activities of the company comprises of the following:- All the above activities are conducted as per the 'Indian Minimum Seeds Certification Standards' stipulated by Central Seed Certification Board, Department of Agriculture and Co-operation, Ministry of Agriculture, Government of India. The company is producing, processing and marketing certified seeds. Gujarat State Seeds Certification Agency inspect the seed production field, processing plant and test seeds in notified Government laboratories and issue tags for each and every bag.

(a) Company is producing hybrid seeds through its contract growers.

Contract growers are selected according to yield potentiality of the area, availability compact area irrigation facility and plots having no isolation problem (isolation distance). The contract is entered into with each and every sub-producer in the beginning of season.

Accounting period for this is 1-10-1981 to 30-9-1982. However agreement with sub-producer has got to be entered into before commencement of the season concerned. Accordingly two specimen agreements dated 26-5-1981 and 2-6-1981

which were effectively in force in this accounting year are enclosed herewith along with English Translation (Appendix I).

(b) After selection of contract growers and seed plots crop-wise, company distribute foundation seed i.e., male and female parents through its technical staff, to the sub-producers. The foundation seeds are distributed to contract growers free of cost or at concessional rate or at cost depending on contractual agreement.

Actually it is not a sale but only an account adjustment for joint venture of seed production. Each and every seed plot so organised is to be registered with Government Seed Certification Agency in the name of company as main producer and farmer as sub-producer.

(c) Technical guidance: After distribution of foundation seeds, company's technical staff give guidance to the farmers about the planting of male and female plants in rows (planting ratio) and inspect the seed plots so organised time to time. Company's technical staff supervise the work of rogueing, crossing and other cultivation practices as per the crop. Rogueing, crossing and isolation is very important in seed producing good yield of superior quality. Such plots which meets minimum seed certification standards, prescribed by Government of India are harvested in the presence of company's representative and Government Seed Certification Agency staff. The seeds thus produced is called as hybrid seeds that is produced by crossing of male and female seed plants. After harvesting threshing, the samples are drawn by the staff of State Seed Certification Agency and tested at Government Seed Testing Laboratories for germination, physical purity and genetic purity. If this seed conforms to the standards prescribed by the Government of India in the Minimum Seed Certification Standards then it will be certified seed.

(a) Moisture meter : Testing moisture content to decide need for drying.

(d) Slurry treater : To treat the seed with chemicals for protection-against insects and micro-organisms.

On receipt of the raw seed from the farmer's field the seeds are dried and tested for moisture content. Afterwards the seeds are cleaned on Air Screen cleaner. This process remove immature seed, dust particles, plant materials, off size seed diseased or insect damaged seed etc. After basic cleaning the seeds are upgraded on Gravity separator to improve the quality of seed by using weight component difference between seeds. The seed then treated with 1% mercurial fungicides and DDT in Slurry Seed Treater. This is done to protect seed against seed borne and soil borne micro-organisms.

In case of hybrid cotton seed raw hybrid seed is treated in a tank with concentrated H_2SO_4 . This process will dissolve fuzz, lint and wax of seed coat. After that with lime solution the seed is neutralized. These process will make the seed free flowing. The same seed is then run on Air Screen Cleaner, Gravity separator and slurry treater to improve the quality of seed.

(3) Testing and quality control' At each and every stage of seed production and processing technical staff of the company take appropriate quality control measures. The seed processed as above will be treated for : These testing is done by Gujarat State Seed Testing Laboratories (Government owned) as well as company's own laboratory. On getting satisfactory test results the seed will be declared as 'certified seed' by State Seed Certification Agency.

(4) Marketing: The seed on getting satisfactory test results are marked with blue tag (Enclosure II) issued by Gujarat State Seed Certification Agency. As per Seed Act, 1966 the seed container and tag must have following : 'DO NOT USE FOR FOOD, FEED AND OIL PURPOSE' 'POISON TREATED WITH 1% PMA FUNGICIDE'.

The hybrid seeds are marked by the company mainly in the States of Gujarat and Maharashtra through its distributors/dealers network.' 9. We also reproduce an English Translation of 'Joint Agreement for Seed Production' between the assessee and a farmer: 'Whereas the parties (main producer and sub-producer) have agreed to a scheme of seed production programme to be jointly undertaken, as per the following terms and conditions : 1. The sub-producer shall get apart his land for hybrid cotton seed production on an area of 0-10 gunthas survey No. 6

which will be known as the reserved area which will be made available in the Kharif season of the year 1981.

2. The above referred seed production programme shall be registered with Gujarat State Seed Certification Agency, in which main producer will be Navbharat Seeds (P.) Ltd. and enjoined by sub-producers Registration charges for both will be paid by main producer.

3. The main producer undertakes the responsibility of providing technical guidance, arranging male and female foundation seed, certification work, arrangement for ginning and successful completion of the programme.

4. The sub-producer shall set apart the required area of levelled, fertile land with facilities for healthy seed production.

5. Main producer will provide male and female foundation seed for this programme to the sub-producer, which is to be used only for the above referred seed programme.

6. Sub-producer shall pay for the expenses for land preparation, irrigation, sowings, interculturing, fertilizers, plant protection, pesticides, rogueing, cross pollination and other expenses.

7. Main producer will provide guidance by technical personal to maintain the purity of the seed, and instructions from the seed certification agency shall be observed and implemented by the sub-producer and accordingly, rogueing and removal of selfed bolls would be arranged and paid for by the sub-producer.

8. Sub-producer will co-operate and follow the instructions given for maintaining the purity of the above referred seed production, by the Seed Certification Agency and officials of the main producer.

9. Sub-producer will bring the seed of cotton at his cost for ginning and arrange for ginning and grading under supervision of main producer.

10. 5 samples each of 150 grams will be drawn from the seed for testing, out of which 3 samples will be for certification agency, and one sample each for main

producer and sub-producer.

11. The seed, meeting certification standards and obtaining the certification tag, would come to the share of main producer and other portion of the crop would go to the share of sub-producer.

12. Certification charges would be borne by the main producer.

However, if the seed is not meeting the standard, the main producer will be entitled to get the reimbursement towards the expenses incurred at the rate of Rs. 5 per kg. from the sub-producer.

13. Sub-producer would be entitled to get an amount towards expenses incurred on rent of land, towards his labour and other expenses incurred from the main branch at the rate of Rs. 45 per kg. of certified seed. This amount would be in addition to the amount obtained in terms of clause 11 above in respect of other portion of the crop coming as his share.

14. In this production programme, main producer is involved right from the first stage and therefore, he will be responsible for any legal responsibility arising out in future, as producer.

15. Main producer is free to dispose of certified seed which comes to his share. Similarly sub-producer is free to dispose of that portion of the crop which comes to his share.

16. In case of natural calamity if hybrid seed production fails, main producer and sub-producer will bear their respective expenses incurred by them and they would not make claims on each other for such expenses.

The above referred terms and conditions are mutually agreeable and binding on the main producer and sub-producer and their successors, heirs and assigns.' 10. A reading of the aforesaid facts as also the agreement clearly shows that the activities carried on by the respondent are not merely confined to the purchase and sale of seeds. It is engaged in a wide range of activities starting from the growing of the seeds, their sampling categorisation, preservation as also the

processing thereof. These aspects of the matter have been clearly brought out by the factual note furnished on behalf of the assessee (already reproduced). The respondent company in the course of the growing activity by the farmers not only provides guidance and assistance from day-to-day but even thereafter is engaged in the complicated activities of testing, quality control and the final activity of marketing the seeds through its distributors and dealers. The activities of the company are more or less identical to those as considered by the Allahabad High Court in the case of Tarai Development Corpn. (supra). The distinguishing feature sought to be brought out by the learned DR does not appear to be correct. The other arguments advanced by the DR are also not of any avail vis-a-vis the case of the revenue since these run contrary to the various other decisions relied upon by the assessee's counsel including those of the Tribunal.

11. In the final analysis we uphold the order of the CIT(A) vis-a-vis the claims of the assessee under Sections 80HHA and 80-I. With regard to the decisions of Hon'ble Supreme Court relied upon by the Id. DR, the Id. Counsel for the assessee had submitted that the same been distinguishable both in facts and law, were not applicable to the present controversy.

(iv) It was, further submitted that so far assessee's case was concerned, the final product, i.e., certified seed as well as in labelled seed, was different article or thing, then the raw-bajra because of the treatment with chemicals which had rendered it unfit for human consumption and, consequently, also ceased to be cereal which is fit for human consumption.

It was, further submitted that this fact was evident from the fact that on the packing of both the types of seed manufactured by the assessee, it was statutorily required to print a warning in Red Colour that "Seed treated with poison (Thiram) do not use for food, feed or oil purpose" and our attention was drawn to sample packings of both the types placed on record.

8. We have considered the rival submissions, facts and circumstances of the case, proposition of law relating to precedence binding force and judicial propriety in case there are conflicting decision of Co-ordinate Benches with utmost care.

8.1 We have also considered the proposition of law as to which view, in case of possibility of two views, should be followed.

9. So far as proposition of law relating to the issue as to which view, in case there are two possible views, should be followed, the decision in following cases have dealt with this proposition of law and have held that in case a provision of law is liable to interpretation, then, the interpretation in favour of assessee should be adopted.

(2) Orissa State Warehousing Corporation v. CIT [1999] 237 ITR 5892 (SC) CIT v. Kulu Valley Transport Co. (P.) Ltd. 9.1 The aforesaid issue has been dealt with by the IT AT Ahmedabad Bench in a landmark judgment in the case of Dy. CIT v. Meera Industries-wherein, the Hon'ble Tribunal, of course, has held that a judicial officer or a Tribunal would not be justified, or has any right or jurisdiction to come to a conclusion entirely contrary to or different than from the one reached by it on the same facts and if that be followed to happen that will not sake the evidence of the public in judicial procedure as such, it would be destructive of the institutional integrity itself. But on the same time, the Hon'ble Tribunal has, further held that a decision on these particular facts and on consideration of the law prevailing at the relevant time can be deviated from it, if some new facts are brought on record or some more cases of higher Courts on the subject has come to its notice. The relevant part of the order as contained in paragraph Nos. 5 to 11 which reads as under:- 5. It is true that a judicial officer including the Tribunal would not be justified or has any right or jurisdiction to come to a conclusion entirely contrary to or different from the one reached by it on the same facts and if that be allowed to happen that will not sake the confidence of the public in judicial procedure as such, it would be destructive of the institutional integrity itself. The Sayaji Iron & Engg. Co. 's case decision of the Gujarat High Court is however of no much help in these cases. Firstly, because the observations were vis-a-vis assessee's own case in earlier year whereas the present assessees are different one; secondly, because Sayaji Iron & Engg. Co. 's case was a case of a different view taken on facts, that too on same facts whereas in present cases the question involved is not only on facts or so to say same facts but a question of interpretation of provision of statute is also involved, and thirdly, because the High Court has found on the facts

that the Tribunal's earlier order in the assessee's own case was distinguished by giving reasons which were, to say the least, unwarranted. The decision in our opinion is not an authority for the proposition that in no circumstances a decision taken in a case or even in one year of the same assessee cannot be deviated from in another case or another year of the same assessee. Whenever new facts appeared subsequently in another case(s) or another year(s), different view(s) taken in that case(s) or year(s) have been upheld by the courts time and again.

6. We may cite a few cases on the issue. One is in the case of CIT v. Motilal Hirabhai Spg. & Wvg. Co. Ltd. , the Gujarat High Court held that the doctrine of res judicata is not applicable to income-tax proceedings and this issue was discussed at page 182 of the report as under:- The Tribunal noted that for a number of years the assessee had returned the income derived by it as and by way of interest under the head "Other sources" and that it was assessed accordingly. It, however, proceeded to observe that the principles of estoppel and res judicata were not applicable to income-tax proceedings and that, therefore, the matter had to be viewed in the light of the facts and circumstances brought on record, so far as the assessment year in question was concerned. We do not think any objection could be taken to the approach of the Tribunal, so far as this particular aspect is concerned.

7. Another case we find in the case of Dwarkadas Kesardeo Morarka v. CIT the Supreme Court observed as under:- The conclusion of the Tribunal was amply supported by evidence. It cannot be said that because in the previous years the shares were held to be stock-in-trade, they must be similarly treated for the assessment year 1949-50. In the matter of assessment of income-tax, each year's assessment is complete and the decision arrived at in a previous year on materials before the taxing authorities cannot be regarded as binding in the assessment for the subsequent years. The Tribunal is not shown to have omitted to consider the material facts. The decision of the Tribunal was on a question of fact and no question of law arose which could be directed to be referred under Section 66(2) of the Income-tax Act.

8. Again see in the case of CIT v. Brij Lal Lohia & Mahabir Prasad Khemka the Supreme Court at page 277 observed as under: The fact that in the earlier proceedings, the Tribunal took a different view of those deeds is not a conclusive circumstance. The decision of the Tribunal reached during those proceedings does not operate as res judicata. As seen earlier there was a great deal more evidence before the Tribunal during the present proceedings, relating to those gift deeds.

9. The Supreme Court decision in the case of Indian Oil Corporation Ltd. relied upon by the Id. counsel of the assessee is also in our opinion, of no help to the assessees. In this case, the Supreme Court observed That the Division Bench of the High Court in Municipal Corporation was clearly in error in taking the view that the decision of this court (Supreme Court) in Ratnaprabha was not binding on it. In doing so, the Division Bench of the High Court did something which even a later coequal Bench of this Court did not and could not do. The view taken by the Division Bench of the High Court in Municipal Corporation proceeds on a total misunderstanding of the law of Presidents and Article 141 of the Constitution of India....' It was in these circumstances it was observed by Their Lordships of the Supreme Court that the High Court has done a thing which even a co-equal Bench of the Supreme Court could not do. It is, in our opinion, not an authority for the proposition that if the subsequent Bench of the ITAT did not follow the earlier order of the ITAT, the same is required to be ignored.

10. In a recent decision of Hemalatha Gargya v. CIT the Supreme Court held that given 'just cause' the Department could challenge subsequently the interpretation which was given in an earlier decision. It accepted the submission of the revenue that the decision of the other High Court holding to the contrary as well as the subsequent conflicting decision of the very Punjab and Haryana High Court decision would itself would come within the phrase 'just cause'. In this case. Their Lordships considered its earlier decisions in the case of Union of India v. Kaumudini Narayan Dalal and Union of India decisions do not hold that the revenue can never challenge an interpretation which they have not chosen to do so earlier. This is an indication of a proposition that there is no bar for taking a different view and such a different view could be taken by showing a 'just cause'

and conflicting decision by itself and a contrary decision of another court by itself would be such a 'just cause'.

11. From the above it is clear that an earlier order of coordinate Bench has a great persuasive value and it should not ordinarily be deviated from. This principle however, is subject to certain limitations, namely, (i) the facts are same, (ii) no new facts are brought on record, (iii) no change in the circumstances under which the decision was reached is there, (iv) there is no decision of a higher court, or (v) there is no change in the statutory provision of law. A decision reached on particular facts and on consideration of the law prevailing at that time can be deviated from if some new facts are brought on record or some more cases of higher courts on the subject have come to its notice. It would be justified and indeed under a duty to take a view commensurate to the new development and also because each year and each assessee is a separate year and a separate assessee and the principle of *res judicata* and *estoppel* did not apply to income-tax proceedings even though the department is one and also because in the earlier order some of the decisions of Supreme Court and the High Court were not considered.

10. After having considered the aforesaid decision and also other decisions on this point, we are of the opinion that so far as both the legal propositions are concerned, there is no dispute, but coming to the binding nature of decision of coordinate Bench or of the same Bench, we are of the opinion that this theory is applicable only if, not only the facts and circumstances of the case must remain the same, but the pleadings must also be the same and it is so because it happens many a times that in some cases or at earlier occasion one may not have been able to plead properly or may have failed to bring to the notice of the appellate authority or Tribunal or Court, the latest provisions of law or decisions having binding strength because in such cases, it is the later provision of law or decision which will prevail. If at a later stage, one is able to apprise the appellate authority or Tribunal or Court of latest provisions of law or binding decision, then the appellate authority, Tribunal or the Court have the bounden duty to consider the same and if comes to the conclusion that there is necessity for deviating from the earlier findings, then it must deviate and decided the issue

judiciously/accordingly.

11. If we test the present case, keeping in view the aforesaid settled proposition of law, it will be noticed that at the time of earlier decision of the Tribunal, Le., on 29-10-2004, though the decisions of Hon'ble Supreme Court in case of Navbharat Seeds (P.) Ltd. (supra) was available, but the same having not brought to the notice of the Bench hearing the assessee's appeal for assessment year 2000-01, the Bench arrived at a different conclusion. Similarly from the two orders of the Tribunal in assessee's own case (supra), it is further revealed that when assessee's appeals for assessment years 1992-93, 1993-94 & 1995-96 were heard by the Tribunal (on 1-6-2005), the assessee had brought four decisions; namely, (i) Tarai Development Corporation v. CIT , (ii) ITO v. Navbharat Seeds (P.) Ltd. ITAT, Ahmedabad vide its order dated 29-11-1989 in appeal No. IT Appeal 2816(Ahd.) of 1986 : [1990] 32 ITD 703, (iii) CIT v. EID Parry (India) Ltd. [1996] 218 ITR 713 (Mad.), and (iv) CIT v. Jalna Seeds Processing & Refrigeration Co. Ltd. to the notice of the Bench, whereas at the time of hearing of the assessee's appeal for assessment year 2000-01, no such order or decision was brought to the notice of the Bench. It was, therefore, for this reason that order dated 1-6-2005 went in assessee's favour.

12. In view of above discussion what we are able to understand is that in view of availability of decision of Hon'ble Supreme Court in the case of Navbharat Seeds (P.) Ltd. (supra) there is no necessity to consider as to which order of the Tribunal in assessee's own case should be followed and even if, without prejudice to above, this proposition is to be considered, then we are of the opinion that for the reasons stated hereinbefore, it is the later decision of the Tribunal, i.e., dated 1-6-2005 in assessee's own case, which is to be followed.

13. Coming to the issue on merits, we, after having considered the facts of assessee's case as well as the facts in cases of Navbharat Seeds (P.) Ltd. (supra) and Pilibhit Pantnagar Beej Ltd. (supra), are of the opinion that the facts of assessee's case are similar to the facts in those cases as the appended Annexures 'A' & 'B' of this order, will reveal.

14. Before coming to the final conclusion we would like to consider both the decisions of the Hon'ble Supreme Court relied upon by the assessee - copies of which have been placed in assessee's paper-book and, therefore, we proceed to consider the same.

(a) Facts of this as have been revealed from the order of the Hon'ble Supreme Court were that UP Krishi Utpadan Mandi Adhiniyam, 1964 (hereafter referred to as 'Adhiniyam') was enacted to regulate sale and purchase of agricultural produce.

(b) Section 6 provided for declaration of Market area and Sections 9 and 10 prohibited business of specified agricultural in such market area without licence. Section 2(a) of this Act, specified (agricultural produce) and Schedule appended to Adhiniyam provided all items covered as agricultural produce.

(c) Section 17(iii) of the Adhiniyam provided for imposition of market if on the transaction of such specified agricultural produce in the market area and on such rates, as specified by the State.

(d) Wheat was one of the specified items in the Schedule and was listed under the Heading "Cereals".

(e) So far as levy of market fee was concerned, wherever it was levied on seed, there was mention of seed, but in case of wheat, there was no mention of wheat seed and since the petitioner was carrying on the business of dealing in wheat seeds, it claimed that its product which was not fit for human consumption was not wheat as specified in the Schedule and, consequently, no market fee was leviable.

(f) It was, in view of above facts that the petitioner had gone before the Hon'ble Allahabad High Court by way of writ which was allowed by following the decision of Hon'ble Supreme Court in the case of State of Rajasthan v. Rajasthan Agricultural Inputs Dealers Association AIR 1996 SC 2179. The petitioner Krishi Utpadan Mandi Samiti, therefore, got aggrieved by the judgment of Hon'ble High Court of Allahabad and filed a SPL under Article 136 of the Constitution of India before the Hon'ble Supreme Court.

14.1 It was, in view of above facts and circumstances of the case, that the Hon'ble Supreme Court proceeded to deal with the issue as to whether wheat seed manufactured or produced by the assessee which had to be treated with poisonous chemicals unfit for human consumption was wheat which was fit for human consumption and, hence, an agricultural produce or was a different article than the wheat fit for human consumption.

Before the Hon'ble Supreme Court, the first respondent submitted a note on method and seed production which were as under:- 1. Reasons for Seed Production: All high yielding seeds are made by scientists by changing the composition of genes in the seeds so that the seed gives high yields. However, nature's force has a tendency to change the seeds over a period of time and, herefore, it is necessary to produce pure seed year after year.

2.1 The seed industry for production and sale is regulated under the Seeds Act, 1966 and Rules and Seed Control Order, 1983. Under the Seeds Act, the Government has made State Seed Certification Agencies who are responsible to certify seeds and monitor their production and sales.

2.2 The Indian Minimum Seed Standards' lays down the minimum seed standards required for each crop which can be certified.

3.1 The company purchases breeder seed from the Agricultural Universities and then produces the next stage, i.e., foundation seeds. These foundation seeds are given to contract farmers for further production to certified seed. This certified seed is sold to trade and subsequently to farmers. Foundation Seed is the progeny of Breeder Seed and certified seed the progeny of Foundation Seed.

4.2 Classification of foundation seed from breeder seed. (Rule 14(a)).

4.4 Registration of the contract farmers with the State Seed Certification Agency and payment of registration and inspection charges to the agency. (Rule 6(d) & Form I).

4.6 Inspection of the farmer's field by an inspector of all the State Seed Certification Agency, at least two times during the growth of the crop. (Rule 6(k)).

4.7 Submission of final field report by the State Seed Certification Agency, inspector stating that the crop meets the standards or rejecting the crop if it does not meet the standards. The final field report also states the estimated quantity of produce of every field and farmer which the Company can purchase (Rules 6(k) and 23(c)).

4.8 If the farmers seed crop has been found satisfactory and indicated as such in the final field report prepared by the State Seed Certification Agency inspector it is purchased by the company and the seed stored in company godowns.

4.9 The seed is then processed under the supervision of an inspector of the State Seed Certification Agency who takes samples and sends them to the Government Seed Testing Laboratory. (Rule 6(g) & 6(e)).

4.10 After testing the Government Seed Testing Laboratory gives a report which shows that either the seed meets the Minimum Seed Standards or it does not. (Rule 21 (3)).

4.11 If the seed meets the 'Minimum Seed Standards', the chemical treatment and baging of the seeds is made under the supervision of an inspector of the State Seed Certification Agency. (Rule 17A).

4.12 After the seed is put in bag the inspector of the Seed Certification Agency will seal and tag each bag and this seed and bag is called certified seed which goes to the market. (Rule 17H).

4.13 The seed inspector will also give a certificate to the company stating that the seed has been found above the 'Minimum Seed Standards' and has been certified as such by the State Seed Certification Agency. (Rule 17).

14.2 The Hon'ble Supreme Court, thereafter dealt with the issue in the following terms:- We have already referred to the essential conditions incorporated in the Certificate of Registration. One of the essential conditions incorporated in the Certificate of Registration is that the certificate holder shall not carry on any business such as dealing in foodgrains, other than the business of sale of certified seeds.

Under the terms and conditions of such certificate, the first respondent is not carrying any other business except the business of certified seeds and it is also not in dispute that the respondent does not hold any other licence for dealing in foodgrains including wheat.

It was also argued by Mr. Dushyant A. Dave that the Market Committee has completely failed to appreciate the declaration of law in the case of *State of Rajasthan v. Rajasthan Agricultural Inputs Dealers Association* (supra) affirmed by this Court on 21-8-1996. In these orders, two reasonings were adopted to hold that the transaction of seeds do not attract market fee namely (a) that the definition of agricultural produce includes items specified in Schedule and that wherever it was intended to separately cerealised seeds, they have been distinctly found mentioned in the Schedule and that wherever the Schedule does not include seeds specifically in the serialised item such seeds are not specified agricultural produce and (b) on the process of coating and applying insecticides, other chemicals and poisonous substances the basic character, i.e., its consumption as food by human being or animals is irretrievably lost and that such commodity is distinct from foodgrains.

The decision of the State Government does not take into account the first reasoning and treats only that commodity as seeds which is treated with chemicals and that the action, in our view, is apparently and palpably wrong. It is to be noticed that the farmers are paid prices on the certified seed only after its certification and that the entire quantity of such seeds is chemically treated and is thus a distinct commodity as certified seeds. It was denied that the first respondent purchased wheat from farmers and the seeds purchased from the farmers are of very high quality specified standardised seeds each of which price is very high as compare to wheat. It is not sold in the market and cannot be so sold as wheat and the entire quantity is taken for processing with chemicals at processing plant. The High Court has, in our view, correctly appreciated and accepted the contention of the respondent-Company and has rightly relied upon the judgment of this Court in *State of Rajasthan v. Rajasthan Agricultural Inputs Dealers Association* (supra).

Learned senior counsel appearing for the first respondent drew our attention to Annexure CA 11 which is the representation in pursuance to the judgment of the High Court in Writ Petition No. 3274 of 1998.

The relevant portion of the representation reads as under: Thus our business procedure makes it clear that by the time we purchase seeds from farmers it remain no longer simple unprocessed seed but it comes into the category of certified seed after chemical treatment. At the time of purchase, this wheat is necessary to be determined is the nature of commodity at the time of purchase. As per the specific view taken by Hon'ble Supreme Court in State of Rajasthan v. Rajasthan Agricultural Inputs Dealers Association AIR 1996 2179 seed undergone chemical and pesticide treatment is an entirely different commodity and the same is not subject to market fee on account of its non- inclusion on the Schedule of Mandi Act.

Under provisions of Section 17(iii)(b)(2) of the Mandi Act, if agricultural produce is purchased directly by a trader from a producer, the trader shall be liable to pay the market fee but in the present circumstances it is clear that we have purchased only certified seeds from the farmers and certified seed not being scheduled produced the same is not liable to fee at our level.

In the same reference, the decision taken in the meeting dated 16-5-1998 presided by Secretary, Agriculture is also important. In the abovesaid meeting, it has been decided that if trader purchases unprocessed seed before chemical treatment in that case the trader is liable to pay market fee on such purchase of unprocessed seeds.

However, in the present case, the trader has not purchased unprocessed seed before chemical treatment, therefore, trader is not liable to pay fee on such purchases. Thus direction issued by Secretary, Agriculture in meeting, dated 16-5-1998 also support trader's stand.

I.A. No. 3 of 2001 is filed by the first respondent for seeking permission to place on record a letter dated 19-1-2000 annexed as Annexure A which is very important for the final adjudication of the case. The said LA. be taken on record. By the said

LA., the first respondent sought to place on record a letter dated 19-1-2000 addressed by the Principal Secretary, Government of Uttar Pradesh to the Commissioner, Trade Tax Department, Government of Uttar Pradesh directing that instructions be issued to the taxation officers that when the growers or the distributors, seed certification machinery sell the seeds in sealed containers after producing themselves after certification along with the tag of the Uttar Pradesh Certification Agency affixed as under the Central Seed Act, 1966 then in such circumstances, no liability of purchase tax is attracted under Section 3AAAA(4). We have perused the communication dated 19-1-2000 marked as Annexure A. The judgment in the case of State of Rajasthan v. Rajasthan Agricultural Inputs Dealers Association (supra) was heavily relied on by the learned senior counsel appearing for the first respondent.

In the said case, the respondent therein claimed themselves to be engaged in the business of purchasing and selling seeds and, in particular, Bajra seeds. According to them, seeds cannot be termed to be agricultural Produce for the purposes of the Rajasthan Agricultural Produce Market Act, 1961 and its Schedule, as amended from time to time by the State Government in exercise of powers under Section 40 enabling it to add, amend or cancel any of the items of agricultural produce specified in the Schedule. It is maintained that seeds are a processed item and coated by insecticides, chemicals and other poisonous substances whereby the grains employed lose their use and utility as foodgrains and become unfit for human or animal consumption or for extraction therefrom for such consumption.

The challenge posed by the respondents before the High Court was answered by the appellants (State of Rajasthan) maintaining that foodgrains of all sorts, as mentioned in the Schedule, were seeds, per se, the only exception carved out from the items mentioned in the Schedule being those relating to blue tagged certified seeds and white tagged certified foundation seeds; such exceptions have been notified by way of amendment to the Schedule in exercise of the power of the State Government under Section 40 of the Act. The High Court took the view that when foodgrains of particular varieties were treated and subjected to chemical process for preservation, those grains become commercially known as 'seeds'. It

was ordered that no licence under the Act was required for sale of such seeds.

On appeal, this Court held as under: It is undoubtedly true that foodgrains per se could be used as seeds for being sown and achieving germination, but in that form they retain the dual utility of being foodgrains as well as seeds. By process of coating and applying insecticides, other chemicals and poisonous substances to the foodgrain meant to be utilised as seeds, one of its basic character, Le., its consumption as food by human beings or animals or for extraction for the like purpose, gets irretrievably lost and such processed seeds become a commodity distinct from foodgrains as commonly understood. That distinction was borne in mind by the High Court in allowing the writ petition of the respondents, and in our view rightly.

The other decisions cited by the counsel for the appellants will not be of any assistance in deciding the factual disputes involved in the instant case. In our view, the High Court has correctly applied the above judgment. This Court held that no market fee could be levied by the State of Rajasthan on seeds on the ground that a seed was distinct from foodgrains inasmuch as they were not fit for human consumption. The ratio decidendi of the above decision is squarely applicable to this case wherein the appellant seeks to give a wide connotation to the words in the Schedule. In our opinion, that giving a wide interpretation is not possible and as Wheat Seed is not included in the Schedule, the Mandi Samiti is not allowed to levy a market fee on purchase. As the Mandi Samiti plays no role in the trade of the respondent's seeds, it may not be allowed to levy the market fee. It is also not in dispute that the Breeder Seeds are allocated by the Ministry of Agriculture or by the Universities to the various seed producing agencies and companies who multiply the breeder seeds into foundations seeds.

It is also very useful to refer hereunder the process by which the seed is manufactured under the Seeds Act and the Seeds Rules : (i) Seeds developed in laboratories are classified as Breeder Seeds and are sold through the Ministry of Agriculture or notified Agriculture Universities to producing agencies, Companies and farmers. Foundation Seeds (Stages I and II) are developed as progenies of Breeder Seeds and are required to obtain a Certificate from the Seed Certification

Agency.

(ii) The production of Foundation Seeds is supervised and approved by the Certification Agency to maintain specific genetic identity and genetic purity and are required to conform to certification standards specified for the crop/ variety being certified.

(iii) The Foundation Seed is then grown by the farmer in a land earmarked specifically for the sowing of the Foundation Seed. The offsprings of these Seeds are termed as Certified Seeds, which too are required to meet the minimum standards of genetic purity and genetic identity.

(iv) It is only if the Seeds meet the minimum standards are they subsequently categorised as Certified Seeds and can be purchased by the respondent for further processing.

(v) The processing done by the respondent is done under the aegis of an Inspector of the State Seed Certification Agency and thereafter the samples are taken for testing to notified Government Seed Testing Laboratories.

(vi) It is only after meeting the minimum standards of genetic purity and genetic identity that the Seed is put in a bag that is sealed and tagged by the Inspector of the Seed Certification Agency.

It is this seed which is allowed to be sold in the market and a certificate is issued by the Agency stating the standards of the Seed and other particulars.

It was submitted by the first respondent that all the above-mentioned stages of Certification are as per the provisions of the Rules and that right from the inception to the time when the Seed is sold in the market, it is done under regulation issued to govern each and every stage of seed production and certificates are only issued after the seed is found to achieve the minimum standards of genetic identity and genetic purity. It was also pointed out that no such certification standards exist for foodgrains sold by farmers to the Mandi Samiti. Thus the production of seeds is an integrated process and needs to be regulated at every stage, right from the inception, in order to maintain genetic identity and genetic purity.

There is no nexus whether the seed has been chemically treated or not and the levy of market fees. Since the seed is a separate commodity from grain, the same is not covered under Schedule 1 of the Adhiniyam and as such no market fee is leviable over the sale and/or purchase of the same.

We are, therefore, of the view that the seeds are not specified agricultural produce under the provisions of the Act and, therefore, the business of purchase and sale of seeds under the supervision of Seed Certification Agency established under the Act is not a business of sale and purchase of specified agricultural produce and as such the first respondent is not required to pay the market fee or to take out a licence.

We are also of the view that the respondents have grossly erred in ignoring the law settled by this Court in the case of State of Rajasthan v. Rajasthan Agricultural Inputs Dealers Association (supra) under Article 141 of the Constitution in demanding market fee on seeds. Since the processing of wheat resulting in loss of its basic characteristics of being cereal, it cannot be subjected to levy as agricultural produce since the purchase by the respondent is for the purpose of growing seeds, no levy is permissible and, therefore, market fee cannot be imposed on seeds which are unfit for human consumption.

Question No. i: Thus, the true scope and ambit of Sections 2(a) and 17(iii)(b) of the Act has been explained in paras supra.

Question No. ii: The appellant has no authority to levy market fee on the purchase of wheat by the seed processing unit. This question is answered in the negative.

Question No. iii : Wheat seed converted into certified seed is unfit for human consumption and, therefore, market fee levy is impermissible.

Question No. iv : The object of Legislature was to notify only those seeds which are different from the produce itself.

The argument of the counsel for the first respondent is well merited and founded on sound legal principles and on practical and factual aspects of the matter.

For the foregoing reasons, we hold that the appeal has no merit and is liable to be rejected. Accordingly, we do so. However, there will be no order as to costs.

15. Decision of Hon'ble Supreme Court in the case of Navbharat seeds (P.) Ltd. (supra) (i) So far as decision of Hon'ble Supreme Court in the case of Navbharat Seeds (P.) Ltd. (supra) is concerned, the brief order, which is landmark judgment, reads as under:- In the Supreme Court of India Civil Appellate Jurisdiction Civil Appeal No. 4619 of 1994 Commissioner of Income-tax ...

Appellant Versus 115712 Navbharat Seeds (P.) Ltd. ...

Respondent With Civil Appeal No. 9104 of 1994 It appears that the Income-tax Appellate Tribunal directed the respondent to place before it a note detailing therein the factual aspects of the case, that is to say, to support by material their case that they processed the seeds in question. The note was furnished to the Revenue but was not contested. Having seen that note, we are satisfied that the Tribunal was right in coming to the conclusion that the seeds were processed by the assessee and that, therefore, the assessee was entitled to the deduction under Section 80HH of the Income-tax Act.

(ii) Since the order of the Hon'ble Apex Court in the case of Navbharat Seeds (P.) Ltd. (supra) is a brief order and has referred to a note considered by the Tribunal. We are of the opinion, it is necessary to consider the order of the Tribunal, relevant part of which has been reproduced in paragraph No. 7(if)(c) of this order, also.

(iii) After careful consideration of the order of the Tribunal (supra) we are of the opinion that, any cereal, if after treatment with poisonous chemicals gets rendered unfit for human consumption is altogether a different article or a thing, then the original cereal and production of seed being in the same way, the seed so produced also become unfit for human consumption and ceases to be cereal, meaning thereby that the seed (final product), though original cereal remains one of the ingredients, is an article or thing different from the basic cereal and, therefore, the method used therein is nothing, but manufacturing or production of seed, an altogether different article or thing, rendering the assessee entitled to

deduction under Section 80-I of the Act.

16.(i) After giving our thoughtful consideration of the totality of the facts and circumstances of the case and various decisions (*supra*), we are of the opinion that the issue involved in this ground of the Revenue's appeal is squarely covered in favour of Assessee and against the Revenue by the aforesaid two decisions of the Hon'ble Supreme Court, because both types of Bajra seed produced by the assessee not only has to be treated with poisonous chemicals rendering the same unfit for human consumption, but a statutory warning that "Seed traded with poison Thiram' do not use for food, feed or oil purpose" has to be printed on the packing in Red, which confirms that the seed had ceased to cereal, i.e., the seed of Bajrais different from the 'Produce - Bajra' and hence an altogether different article or a thing in all respects.

(ii) Further, in view of above facts and circumstances of the case, we are of the opinion that the product, i.e., both types of Bajra Seeds produced by the assessee was a different article or a thing than the raw-bajra fit for human consumption for all intents and purposes and that, the assessee has to be considered as having complied with the requirements of provisions of Section 80-I of the Act. We, therefore, do not see any reason for interfering with the order of the CIT(Appeals), which is confirmed.

17. So far as decisions relied upon by the Id. DR are concerned, for the reasons hereunder, we are of the opinion that the same being distinguishable on facts and in law are not applicable to the present case.

(i) Decision of Hon'ble Supreme Court in the case of Divisional Dy.

CST v. Bherhaghat Mineral Industries .

In this case, the Hon'ble Supreme Court has held that crushing of dolomite lumps into chips and powder is not a process of manufacture that brings about a new commercial commodity.

After thoughtful consideration of the decision, we are of the opinion that in case before us, the final product being poisonous and unfit of human consumption, and

having ceased to 'cereal' which is fit for human consumption, is distinguishable on facts and, therefore, ratio of this decision of Hon'ble Supreme Court is not applicable to the assessee's case.

(ii) Decision of Hon'ble Supreme Court in the case of CIT v. Gem India Mfg. Co. .

In this case, the Hon'ble Supreme Court has held that in the absence of any material to show that polished diamond is a new article or thing which is the result of manufacture or production, subjecting raw uncut diamonds to a process of cutting and polishing, which yields the polished diamond, cannot be said to amount to manufacture or production of an article or thing, for the purpose of obtaining the benefit of deduction under Section 80-I of the Income-tax Act, 1961.

In our opinion, the facts of the case before the Hon'ble Supreme Court were quite different. There was no difference in rough diamonds and final polished diamonds, whereas in case before us the final product, i.e., the seed; which, admittedly, is always unfit for human consumption and ceased to be 'cereals' which is fit for human consumption and cereals is, always, definitely a new article or thing and, therefore, the decision relied upon by the Id. DR. is no help to the Revenue.

(iii) Decision of Hon'ble Supreme Court in the case of Sacs Eagles Chicory v. CIT 2000] 255 ITR 178.

In this case, the Hon'ble Supreme Court has held that the only processes recorded by the Appellate Tribunal being that the chicory roots were roasted and that they were powdered, the activity of the assessee did not satisfy the test laid down in Aspinwall & Co. Ltd. v. CIT [2001] 251 ITR 3232 and did not amount to manufacture and the assessee was not entitled to the special deductions under Sections 80HH, 80-I and 80J of the Income-tax Act, 1961.

Here again, we, after having considered the decision of Hon'ble Supreme Court (supra), are of the opinion that the same being distinguishable on facts for the reasons stated hereinabove in the case of earlier two decisions of Hon'ble Supreme Court, this decision is also not applicable to the present case.

18. In the result, the Revenue's appeal is partly allowed for statistical purposes.

