

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
TAX APPEAL NO.20 OF 2009

Sesa Industries Limited,
having its Office at “Sesa Ghor”,
Patto Plaza, Panaji, Goa. Appellant.

V/s.
Commissioner of Income-tax,
having his office at Aayakar Bhavan,
Patto-Plaza, Panaji, Goa. Respondent.

Mr. R.G. Ramani, Advocate for the Appellant.

Ms. Susan Linhares, Junior Standing Counsel for the Respondent.

***Coram : R.D. Dhanuka &
Prithviraj K. Chavan, JJ.***

Reserved on : 20th March, 2019.

Pronounced on : 18th April, 2019.

JUDGMENT : (Per R.D. Dhanuka, J.)

1. This appeal under Section 260-A of the Income-tax Act, 1961 (for short 'the Act') preferred by the Assessee, challenges the order dated 18th February, 2009, passed by the Income Tax Appellate Tribunal, Panaji Bench, Panaji in ITA No.177/PNJ/2007. The impugned order is in respect of Assessment Year 2004-05.

2. By an order dated 7th December 2009, this Court admitted the Tax Appeal on the following substantial question of law :

Whether on facts and in the circumstances of the case, the profit from the sale of slag, which is a by-product in the manufacture of Pig Iron, could, for the purpose of deduction u/s. 80-IB of the Act, be considered as the profit derived from the business of the industrial undertaking engaged in the manufacture and sale of Pig Iron ?

3. Some of the relevant facts, for the purpose of deciding this Tax Appeal. are as under :

(A) The Assessee had filed its original return of income for the assessment year under appeal on 30 October 2004, declaring a total income of ₹ 20,79,53,900/- based on the profit as per its accounts for the year ended 31st March, 2004.

(B) On 6 January 2006, the Assessee filed revised return under Section 139(5) of the Act to claim deduction under Section 80-IB for one of its industrial undertakings of ₹ 5,74,90,089/- which industrial undertaking was engaged in manufacture of Pig Iron. The Assessee placed reliance on an audit report from a Chartered Accountant in this connection and furnished a copy thereof, along with revised return, as required under Section 80-IB (13), read with Section 80-IA(7) of the Act.

(C) On 29 December 2006, the Assessing Officer completed the assessment under Section 143(3), read with Section 147 of the

Act and in determining the total income in the said assessment, computed the deduction under Section 80-IB of the Act only on the profits arising from sale of Pig Iron, without considering the profit arising on sale of 'slag' which, according to the Assessee, was a by-product in the manufacture of Pig Iron.

(D) The Commissioner of (Appeals) passed an order on 30 July 2007 in the appeal preferred by the Assessee against the said assessment order, dated 19 January 2007 and held that any profit earned on sale of such slag, has to be considered as part of the profits derived from the business of the industrial undertaking manufacturing Pig Iron.

(E) Being aggrieved by the said order dated 30 July 2007 passed by the CIT(A), the Assistant Commissioner of Income-tax, Circle 1(1), Panaji, Goa preferred an appeal before the Income Tax Appellate Tribunal. It was the case of the Revenue in the said Appeal that the slag being a by-product of the manufacturing process, the CIT(A) was not justified in holding that the profit from the sale of slag was entitled for deduction under Section 80-IB of the Act. It was the case of the Revenue that the claim for deduction under Section 80-IB was confined to the primary product for which manufacturing process was established by the industrial undertaking and that it cannot be extended to by-products.

(F) By an order dated 18th February, 2009, the Income Tax Appellate Tribunal allowed the appeal preferred by the Revenue and held that the profit arising from the sale of 'slag' was not derived from the business of the industrial undertaking. The Tribunal distinguished the Judgment of this Court in the case of ***Commissioner of Income Tax vs. Mansinghka Oil Mills Private Ltd. 1988 169 ITR 158 Bom.*** The Assessee, thus, preferred this Appeal under Section 260-A of the Act before this Court.

4. Mr. R.G. Ramani, learned counsel for the Assessee invited our attention to the orders passed by the Assessing Officer, CIT(A), and the order passed by the Income Tax Appellate Tribunal. It is submitted by the learned counsel that the Tribunal reversed the decision of the CIT(A) only on the ground that the decision of this Court in the case of ***Commissioner of Income Tax vs. Mansinghka Oil Mills Private Ltd.*** (supra) was concerned with the then prevailing Section 80-I of the Act, which provided for deduction with reference to “profit and gains attributable to any priority industry”; whereas in the case of the Assessee, the applicable Section 80-IB provides for deduction with reference to “profits and gains derived from the business”. The Tribunal also held that the meaning of the words “derived from” is much narrow, compared to the meaning of the words “attributable to”. The learned counsel submitted that the Tribunal did not go into the question as to

whether the profit from the sale of by-product of an industrial undertaking could be considered as “profit derived from the business” of the industrial undertaking.

5. It is submitted by the learned counsel that the Tribunal could not have rejected the submission that the by-product and primary product are integral part of one productive activity of an industrial undertaking and, thus, the profit from sale of by-product ought to have been considered as part of the profit derived from the business of an industrial undertaking. He submits that the manufacture of Pig Iron and generation of slag is the process, which is integrated and composite part of one productive activity of the undertaking manufacturing pig iron. The Tribunal thus ought to have held that the profit from sale of slag was a part of the profit derived from the business of the industrial undertaking manufacturing pig iron. The learned counsel for the Assessee invited our attention to the findings rendered by the CIT(A) and more particularly in paragraph 12 of the order dated 30 July 2007 holding that as far as slag generated out of manufacturing process and profit earned from such sale, is a part of profit derived from industrial undertaking engaged in the manufacturing of Pig Iron.

6. It is submitted by the learned counsel that the profit derived by the Assessee from the sale of slag had to be considered as profit derived from the manufacturing process of the Pig Iron

undertaken by the Assessee. He submits that the slag generated was a result of manufacturing process of the Pig Iron and is an integral part of the manufacturing process and is the first degree source.

7. The learned counsel for the Assessee strongly placed reliance on the Judgment of the Supreme Court in the case of ***CIT vs. Sterling Foods, 237 ITR 579 (SC)*** and submitted that in the said Judgment the Supreme Court had considered the question whether the income derived by the Assessee by sale of the import entitlements was profit and gain derived from its industrial undertaking of processing sea food. He submits that the Supreme Court considered Section 80-HH of the Act in the said Judgment and interpreted the expression “derived from”. There must be a direct nexus between the profits and gains and the industrial undertaking for the application of the words “derived from”.

8. It is submitted that the slag generated out of the manufacturing process had a direct nexus with the manufacturing of the Pig Iron. He placed reliance on the Judgment of the Supreme Court in the case of ***Pandian Chemicals Ltd. vs. CIT, 262 ITR 278 (SC)*** and in particular paragraphs 6 and 7. The Supreme Court in the said Judgment construed the expression 'derived from'. He also placed reliance on the Judgment of the Supreme Court in the case of ***Liberty India and ors. vs. CIT, 317 ITR 218 (SC)*** and in particular paragraphs 3 and 11. He submits that the Supreme Court

in the said Judgment had considered the issue i.e. whether profit from Duty Entitlement Passbook Scheme and Duty Drawback Scheme could be said to be profit derived from the business of the Industrial Undertaking eligible for deduction under Section 80-IB of the Income-tax Act, 1961. He submits that the Supreme Court in the said Judgment held that on analysis of Sections 80-IB and 80-IA it becomes clear that any industrial undertaking which becomes eligible on satisfying sub-Section (2), would be entitled to deduction under sub-Section (1) only to the extent of profits derived from such industrial undertaking after specified date.

9. It is submitted that the Tribunal could not have distinguished the Judgment of this Court in the case of ***Commissioner of Income Tax vs. Mansinghka Oil Mills Private Ltd.*** (supra). It is submitted that that the Pig Iron itself is generated by process of manufacturing. Slag is a by-product and is also generated while manufacturing Pig Iron. Slag goes with Pig Iron. Since the slag itself is generated from the first degree source, the Assessee was eligible for deduction under Section 80-IB in respect of the profit earned from sale of such slag generated from the first degree source.

10. The learned counsel for the Assessee placed reliance on the Judgment in the case of ***CIT vs. Vidyut Corporation, 324 ITR 221 (Bom)***. He would submit that the Judgment of the Supreme

Court in the case of *Liberty India and ors vs. CIT* (supra) has been followed by this Court in the said Judgment. This Court has considered the issue, “whether on the facts and circumstances and in law, the Tribunal was right in upholding the order of CIT(A) directing the AO not to reduce the receipt of interest income by way of bill discounting and to allow deduction under Section 80IB on the said interest income without appreciating that said income is not 'derived from' manufacturing”. He submits that the Division Bench in the said Judgment held that there can be no dispute about the position that the price realised by the Assessee from the sale of goods manufactured by the Industrial Undertaking constitutes a component of the profits and gains derived from the eligible business. The purchaser, on account of the delay in payment of the sale price also pays to the Assessee interest, which forms a component of the sale price and is paid towards the lag which has occurred in payment of the price of the goods sold by the Assessee. The Division Bench has held that payment of interest on account of delay in payment of the sale price of the goods supplied by the undertaking partakes of the same nature and character as the sale consideration. The delayed payment charges consequently satisfy together with the sale price, the first degree test which has been laid by the Supreme Court in *Liberty India* (supra).

11. It is submitted that in this case also since the slag generated

during the manufacturing process of Pig Iron being the first degree source, was eligible for deduction under Section 80-IB of the Act. It is submitted that in the said Judgment in the case of ***Vidyut Corporation*** (supra), this Court disallowed the deduction on the interest on unsecured loan having found that the same was not derived from the first degree source. He submits that the slag was part and parcel of the manufacture of Pig Iron and thus was eligible for deduction under the said provision.

12. Ms. S. Linhares, learned counsel for the Revenue, on the other hand, invited our attention to the findings rendered by the Assessing Officer, CIT(A) and the Tribunal and would submit that the findings rendered by the Assessing Office, while rejecting the claim in so far as the deduction claimed on the slag generated in the process of manufacturing and by the Tribunal while allowing the Appeal preferred by the Revenue by distinguishing the Judgment of this Court in the case of ***Commissioner of Income Tax vs. Mansinghka Oil Mills Private Ltd.*** (supra), are correct and does not warrant any interference.

13. The learned counsel placed reliance on the following Judgments in support of contention that the slag generated out of the manufacturing activity, if any, was not eligible for deduction under Section 80-IB of the Act :

- (I) Judgment of the Madras High Court in the case of *M/s. Computer Graphics Limited vs. The Assistant Commissioner of Income Tax Company Circle IV(2), (2006) 285 ITR 84* ;
- (II) Judgment of the Himachal Pradesh High Court in the case of *Mrs. Poonam Arora vs. Income Tax Officer and others, 2009 Supreme (HP) 852*; and
- (III) Judgment of the Madras High Court in the case of *M/s. India Cine Agencies vs. The Commissioner of Income Tax, 2002 Supreme (Mad) 1105*.

14. Mr. Ramani, learned counsel for the Assessee distinguished the Judgment cited by the learned counsel for the Revenue on the ground that none of those Judgments applies to the facts of this case. In none of those Judgments, the issue was as to whether the slag generated out of manufacture of Pig Iron would be eligible for deduction under Section 80IB of the Act or not ?

15. The learned counsel for the Assessee submits that though the Tribunal has rendered a finding in favour of the Assessee that the slag generated out of manufacturing process and profit earned from such sale is a part of the profit derived from industrial undertaking which is engaged in manufacturing of pig iron, the Tribunal, contrary to such finding has allowed the Appeal filed by the Revenue partly by distinguishing the Judgment of this Court in the case of *Commissioner of Income Tax vs. Mansinghka Oil Mills Private*

Ltd. (supra).

16. We have heard the learned counsel at length and have given our anxious consideration to the rival submissions made by the learned counsel.

17. Relevant portion of Section 80-IB of the Act reads thus :

“Section 80-IB. (1) *Where the gross total income of an assessee includes any profits and gains derived from any business referred to in sub-sections (3) to 52[(11), (11A) and (11B) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section.*

(2) This section applies to any industrial undertaking which fulfills all the following conditions, namely :—

(i) ...

(ii) ...

(iii) it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India :

Provided that the condition in this clause shall, in relation to a small scale industrial undertaking or an industrial undertaking referred to in sub-section (4) shall apply as if the words "not being any article or thing specified in the list in the Eleventh Schedule" had been omitted.

(3) The amount of deduction in the case of an industrial undertaking shall be twenty-five per cent (or thirty per cent where the assessee is a company), of the profits and gains derived from such industrial undertaking for a period of ten consecutive assessment years (or twelve consecutive assessment years where the assessee is a co-operative society) beginning with the initial assessment year subject to the fulfillment of the following conditions, namely :—

(i) it begins to manufacture or produce, articles or things or to operate such plant or plants at any time during the period beginning from the 1st day of April, 1991 and ending on the 31st day of March, 1995 or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular undertaking;

(ii) where it is an industrial undertaking being a small scale industrial undertaking, it begins to manufacture or produce articles or things or to operate its cold storage plant [not specified in sub-section (4) or sub-section (5)] at any time during the period beginning on the 1st day of April, 1995 and ending on the 31st day of March, [2002].

(4) The amount of deduction in the case of an industrial undertaking in an industrially backward State specified in the Eighth Schedule shall be hundred per cent of the profits and gains derived from such industrial undertaking for five assessment years beginning with the initial assessment year and thereafter twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains derived from such industrial undertaking :”

18. A perusal of the findings rendered by the CIT(A), clearly indicates that the learned Commissioner of Income Tax (Appeals) adverted to the Judgment of this Court in the case of ***Commissioner of Income Tax vs. Mansinghka Oil Mills Private Ltd.*** (supra). It is held by the CIT(A) that there was justification in the submission made by the Assessee that the cost should have been attributed to the slag sold. There was also justification in the submission made by the Assessee that the slag was generated out of the manufacturing process and any profit earned from such sale, is part of the profit derived from the Industrial Undertaking which is engaged in the manufacturing of pig iron. There was as difference between the sale of unused raw material and sale of slag. It is also held that in the first case, the raw material did not enter in the manufacturing process at all, while in the second case, the slag was generated out of manufacturing process and, thus, any profit earned on sale of such slag has to be considered as part of the profits derived from the manufacturing activity of the Industrial Undertaking. The learned CIT(A), accordingly, directed the Assessing Officer not to exclude the amount of ₹ 71,31,557/- from the sales.

19. A perusal of the order passed by the Tribunal in the appeal filed by the Revenue indicates that though the Tribunal, in paragraph 12 of the impugned order, has held that the CIT(A) has taken a correct view as far as slag generated out of manufacturing

process and profit earned from such sale holding that it is a part of profit derived from the Industrial Undertaking which is engaged in the manufacturing of pig iron, and has rightly held that the slag could be considered as part of profit derived from manufacturing activity of the Industrial Undertaking, the Tribunal contrary to such findings rendered by it, and upholding the findings rendered by the CIT(A), has allowed the Appeal of the Revenue by distinguishing the Judgment of this Court in the case of ***Commissioner of Income Tax vs. Mansinghka Oil Mills Private Ltd.*** (supra). In our view, the conclusion drawn by the Tribunal in the impugned order is contrary to the finding rendered by it, shows perversity.

20. The Supreme Court in the case of ***Liberty India and ors. vs. CIT*** (supra), had considered a substantial question of law i.e. “Whether profit from Duty Entitlement Passbook Scheme and Duty Drawback Scheme could be said to be profit derived from the business of the Industrial Undertaking eligible for deduction under Section 80-IB of the Income-tax Act, 1961”. The Supreme Court considered the provisions of Section 80-AB, 80-I, 80-IA and 80-IB in the said Judgment. After analysing Chapter VI-A, it is held by the Supreme Court that Sections 80-IB and 80-IA are the Code by themselves as they contain both substantive, as well as procedural provisions. It is held that one needs to read Section 80-I, 80-IA and 80-IB as having a common scheme and if so read, it is clear that the

said sections provide for incentives in the form of deductions which are linked to profits and not to investment.

21. It is further held by the Supreme Court that on analysis of Sections 80-IA and 80-IB, it becomes clear that any Industrial Undertaking which becomes eligible on satisfying sub-section (2), would be entitled to deduction under sub-Section (1) only to the extent of profits derived from such Industrial Undertaking after specified dates. It is held that this is the importance of the words “derived from industrial undertaking” as against “profits attributable to industrial undertaking”. The Supreme Court held that Section 80-IB provides for allowing deduction in respect of profits and gains derived from the eligible business. The words “derived from” is narrower in connotation as compared to the words “attributable to”. In other words, by using the expression “derived from”, the Parliament intended to cover sources not beyond the first degree.

22. However, in the facts of that case, while considering the issue whether the Duty Entitlement Passbook Scheme and Duty Drawback Scheme could be said to be profit derived from the business of the Industrial Undertaking eligible for deduction under Section 80-IB of the Act, the Supreme Court held that such profits were not profits derived from the eligible business under Section 80-IB and they belong to the category of ancillary profits of such undertakings. It is held that the said DEPB/Duty Drawback were

the incentives which flew from the schemes framed by Central Government or from Section 75 of the Customs Act, 1962 and, thus, incentives profits were not the profits derived from the eligible business under Section 80-IB. In our view, the principles of law laid down by the Supreme Court in the said Judgment applies to the facts of this case

23. The question that arises for consideration of this Court is, whether the slag generated out of the manufacturing process would satisfy the test 'first y degree source' or not and, if satisfies such test, would be eligible to deduction under Section 80-IB of the Act or not ?

24. In our view, in view of the findings already rendered by the CIT(A), which are upheld by the Tribunal that the slag generated out of the manufacturing process, the profit earned from such sale, is derived from the Industrial Undertaking which is engaged in manufacturing of Pig Iron, the Revenue cannot be allowed to contend that the sale of slag would not be a part of profits earned from the manufacturing process and would not be eligible for deduction under Section 80-IB of the Act. The findings rendered by the CIT(A) and upheld by the Tribunal having attained finality, are binding on the Revenue.

25. The Supreme Court in the case of *Pandian Chemicals*

Ltd. vs. CIT (supra), has also construed the word “derived” after adverting to the Judgment of the Privy Council in *CIT vs. Raja Bahadur Kamakhya Narayan Singh [1948] 16 ITR 325*, in which it was held that the inquiry should stop as soon as the effective source is discovered. In our view, the slag generated during the process of manufacturing activity of pig iron, was part of the manufacturing process and was a by-product of pig iron and integrated part of the manufacturing activity conducted by the Assessee and thus the profits earned from the sale of such by-product would have to be considered as part of the profits derived from the business of the Industrial Undertaking. The slag generated during the manufacturing activity satisfies the test of first degree source and, thus, the Assessee was eligible to seek deduction under Section 80-IB of the Act for the profits earned out of the sale of pig iron, in addition to the deduction already availed of by the Assessee on the profits earned on sale of pig iron.

26. The Supreme Court in the case of *CIT vs. Sterling Foods* (supra), considered the question i.e. “whether the income derived by the Assessee by sale of the import entitlements was profit and gain derived from its Industrial Undertaking of processing sea food.”. The Supreme Court construed the word “derived” and held that there must be, for the application of the words “derived from”, a direct nexus between the profits and gains and the Industrial

Undertaking. In the facts of that case, the Supreme Court held that refining or cracking, of raw naphtha results in the said products. The source of the said products is crude petroleum. In this case, it is not the case of the Revenue that the slag which was sold by the Assessee was a raw material used for manufacturing of pig iron. A separate claim made by the Assessee for deduction under Section 80-IB on sale of raw material was already disallowed by the Assessing Officer, which order is upheld by the CIT(A).

27. The Division Bench of this Court in the case of *CIT vs. Vidyut Corporation* (supra) has considered the question “whether on the facts and circumstances and in law, the Tribunal was right in upholding the order of CIT(A) that the AO cannot deduct the income under the head “interest” from the business income for the purpose of computation of deduction under Section 80IB. The Division Bench of this Court held that there could be no dispute about the position that the price realised by the Assessee from the sale of goods manufactured by the Industrial Undertaking constitutes a component of the profits and gains derived from the eligible business. It is further held that the payment of interest on account of the delay in payment of the sale price of the goods supplied by the undertaking partakes of the same nature and character as the sale consideration. The delayed payment charges consequently satisfy, together with the sale price, the first degree test which has been laid

down by the Supreme Court in the case of ***Liberty India and ors vs. CIT*** (supra).

28. In the said Judgment, the Division Bench, however, rejected the deduction claimed in respect of the interest received by the Assessee on unsecured loans under Section 80-IB by holding that the interest received by the Assessee on unsecured loans, cannot be regarded as being derived from Industrial Undertaking and would fail to meet the first degree test laid down by the Supreme Court in the case of ***Liberty India and ors vs. CIT*** (supra). In our view, the principles laid down by the Division Bench of this Court in the said Judgment in the case of ***CIT vs. Vidyut Corporation*** (supra) applies to the facts of this case. Since the slag generated out of the manufacturing activity of pig iron satisfies the test “first degree source”, the assessee was entitled to seek deduction on the profits generated out of the sale of such slag under Section 80-IB of the Act. The slag generated has a direct nexus with the manufacturing process of pig iron.

29. In so far as the Judgment of the Division Bench of this Court in the case of ***Commissioner of Income Tax vs. Mansinghka Oil Mills Private Ltd.*** (supra) which is distinguished by the Tribunal is concerned, the Division Bench of this Court had considered the question “whether, on the facts and in the circumstances of the case, and in law, the relief under Section 80-I of the Income-tax Act, 1961,

is to be granted with reference to the composite profits or with reference to the proportionate profits on the cotton seed oil alone, being item No.25 of Schedule VI to the said Act ?” The Division Bench in the said Judgment held that the cotton seed oil-cake, lint, husk, etc., are the by-products in the business of manufacture and sale of cotton seed oil and accordingly, the business of the Assessee of manufacture and sale of cotton seed oil was a priority industry and that all profits and gains attributable to such a priority industry qualify for deduction under Section 80-I of the Income-tax Act, 1961. The Tribunal, however, distinguished this Judgment of the Division Bench of this Court, which was considering the provisions of Section 80-I, on the ground that in Section 80-IB of the Act, the words used are “income derived” which is much narrow compared to Section 80-I that was a concern with the High Court in the said Judgment. In our view, the Tribunal has erroneously distinguished the said Judgment of this Court in the case of ***Commissioner of Income Tax vs. Mansinghka Oil Mills Private Ltd.*** (supra).

30. The Supreme Court in the case of ***Liberty India and ors vs. CIT*** (supra) has categorically held that Sections 80-I, 80-IA and 80-IB have a common scheme. It is held that said sections provide for incentives in the form of deductions which are linked to profits and not to investment. In our view, the view taken by the Tribunal is contrary to the principles laid down by the Supreme Court in the

case of *Liberty India and ors vs. CIT* (supra).

31. If we consider the legislative history of Section 80-IB, it is clear that by the Finance Act, 1999, Section 80-IA was split. The deductions therein were divided in two sections i.e. Section 80-IA and 80-IB. Section 80-IA deals with deductions for Industrial Undertakings or enterprises engaged in infrastructure developments; whereas Section 80-IB deals with several other activities and income of any profits and gains derived from any such business/activities are covered by the provisions of Section 80IB.

32. In so far as the Judgment of the Madras High Court in the case of *M/s. Computer Graphics Limited vs. The Assistant Commissioner of Income Tax Company Circle IV(2)* relied upon by the learned counsel for the Revenue is concerned, the substantial question of law before the Madras High Court was “whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in holding that the appellant was not entitled to deduction under Section 80-IB of Income-tax Act 1961 on the ground that conversion of jumbo rolls into salable packets/rolls of standard sizes was not manufacture or production of article or thing?” The Madras High Court, in the said Judgment, held that the activity of converting jumbo rolls into marketable small sizes cannot be regarded as a marketing activity and as such, the Assessee was not entitled to the benefit of Section 80-I. In our view, the

reliance placed by the learned counsel for the Revenue on the said Judgment is totally misplaced and would not even remotely apply to the facts of this case.

33. In so far as the Judgment of the Himachal Pradesh High Court in the case of *Mrs. Poonam Arora vs. Income Tax Officer and others* (supra) relied upon by the learned counsel for the Revenue is concerned, the substantial question of law under consideration of the Himachal Pradesh High Court was, “whether in the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the manufacturing of “roasted groundnut” from “groundnut seed” was not by a manufacturing process, but was the same salable commodity with variation in demand.” The Himachal Pradesh High Court in the said Judgment held that the process of roasting raw groundnut seed into roasted groundnut does not bring into a new and distinct product and, therefore, does not amount to manufacture and, thus, the Assessee is not entitled to the benefit of Section 80-IA or 80-IB of the Act. The facts before the Himachal Pradesh High Court were totally different. In this case, there is a finding rendered by the CIT(A), as well as the Tribunal that the slag was generated out of manufacturing process and the profit earned from such sale was a part of the profit derived from the Industrial Undertaking which was engaged in manufacturing of pig iron. The Judgment of the Himachal Pradesh

High Court, thus, would not advance the case of the Revenue in any manner whatsoever and is clearly distinguishable.

34. In so far as the Judgment of the Madras High Court in the case of *M/s. India Cine Agencies vs. The Commissioner of Income Tax* (supra), relied upon by the learned Counsel for the Revenue is concerned, the question of law under consideration of the Madras High Court was, 'whether on the facts and in the circumstances of the case, the Tribunal was correct in not granting deduction under Section 32-A Income-tax Act for deduction under Section 80-I of the Act or not ?' The Madras High Court in the said Judgment held that the Assessee, in that case, had imported already manufactured colour papers, which had been reduced in size according to the needs of the customers of the Assessee. The original goods, as well as the size reduced goods by slitting were all one and the same i.e. they were photographic colour paper. No new commercial commodity emerged out of the activity carried on, on the original goods i.e. jumbo rolls which could be considered as a manufacturing activity at the hands of the Assessee.

35. It is held that the Assessee was only trading in photographic colour papers as a wholesaler and slitted the already manufactured and produced photographic paper into required size to suit the requirement of its customers and in easily marketable sizes. It is held that slitting of bigger roll into marketable smaller rolls or

sizes was an integral part of the trading activity of the Assessee and in such process neither manufacture nor production is involved, nor a new product emerged. The facts before the Madras High Court were totally different. The said Judgment even does not remotely apply to the facts of this case and is clearly distinguishable.

36. For the reasons indicated above the substantial question of law formulated herein above on 7th December 2009 by this Court is answered in the affirmative, i.e against the respondent-Revenue and in favour of the appellant- Assessee.

37. Tax Appeal No.20/2009 is disposed of accordingly.

Prithviraj K. Chavan, J.

R.D. Dhanuka, J.