IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, Accountant Member and
Shri Aby T.Varkey, Judicial Member

ITA No. 621/Coch/2019
(Assessment Year: 1996-97)

Preetha S. Nair Nut Products Company Kochupilammoodu Kollam 691001 [PAN:ABDPN1379H]	vs.	Asst. CIT, Circle - 1 Kollam
(Appellant)		**(Respondent)**

Appellant by: Shri T.V. Hariharan, CA
Respondent by: Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing: 16.05.2023
Date of Pronouncement: 12.06.2023

O R D E R

Per: Sanjay Arora, AM

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals), Thiruvananthupuram, dated 23.08.2019, dismissing her appeal contesting her assessment under section 143(3) of the Income Tax Act, 1961 ('the Act') dated 09.04.2012 for Assessment Year (AY) 1996-97.

2. We may briefly state the relevant facts of the case. The assessee, an individual in the business of processing of raw cashew nuts and export of cashew kernels, filed her return of income on 26.02.1997 declaring total income at Rs.8,82,500. The processing of cashew nuts was, apart from for self, undertaken for other firms, including sister concerns, earning processing income at Rs.73,98,210. Rent at Rs.89,620 was received in respect of factory at Sreeramapuram, which was used by

the assessee's sister concerns. Both the processing charges and lease (processing) rent were included in the 'total turnover', while the same were excluded in computing the 'profits of the business' under *Explanation (baa)* below section 80HHC of the Act, arriving at the deduction u/s.80HHC at Rs.97,09,977 and, thereby, total income at Rs. 37,34,050, vide order u/s. 143(3) of the Act dated 16/2/1999. The assessee appealed there-against, and the matter travelled to the Hon'ble High Court at the instance of the Revenue, raising the following three questions for it's adjudication:-

> *1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and in fact in holding that processing charges and lease rent received are not to be included in the total turnover for computation of deduction under section 80HHC?*
>
> *2. Whether, on the facts and in the circumstances of the case and in view of the Explanation (ba) to Section 80HHC and clauses (iiia), (iiib) and (iiic) of Section 28, will not turnover take into account all other receipts other than the excluded items of receipts?*
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> *3. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in directing to treat the rebate on purchase of tin sheets amounting to Rs.1,54,442/- as part of business profits of the assessee for the purpose of computation of deduction under section 80HHC?*

The Tribunal had earlier (in ITA No. 297/Coch/2000, dated 16.01.2004/copy on record) directed exclusion of processing charges from the total turnover, following the decision by the Hon'ble jurisdictional High Court in *CIT v.K. Rajendranathan* [2004] 265 ITR 35 (Ker). The same stood, however, reversed by the Hon'ble Apex Court on 13/2/2007 (reported as *CIT v. K. Ravindranathan Nair*, at [2007] 295 ITR 228 (SC)). The Hon'ble High Court, accordingly, allowed the appeal of the Revenue in view of the decision of the Hon'ble Apex Court in *K. Ravindranathan Nair* (supra), holding as under (in ITA 114/2008, dated 19/2/2009): -

> "Out of the three questions raised in the department's appeal, questions 1 and 2 pertain to computation of eligible profit for deduction under section 80HHC of the Income Tax Act. Both these questions are covered by decision of the Supreme Court in COMMISSIONER OF INCOME-TAX V. K. RAVINDRANATHAN NAIR (2007) 295 ITR 228. So far as third question is concerned, we find the Tribunal has only followed the decision of this court and allowed the assessee's claim. Following the judgement of the Supreme Court referred above, we allow the appeal in part by

> setting aside the order of the Tribunal and that of the C.I.T. (Appeal) pertaining to relief granted under section 80HHC with direction to the Assessing Officer to recompute eligible relief under section 80HHC by following judgement of the Supreme Court above-referred and after giving opportunity to the assessee. The Tribunal's order pertaining to the last question will stand confirmed."

The appeal effect thereof was accordingly given by the Assessing Officer (AO), retaining the 'total turnover'(TT) at Rs.1272.70 lakhs, i.e., as computed earlier (even as we observe minor differences in the figures of 'processing charges' and 'processing rent', i.e., with reference to that adopted earlier, included therein, and which differences thus neutralise each other). Further, 90% of the profit on processing charges (i.e., Rs.4,80,255/-) and processing rent (Rs. 2,14,720/-),i.e., Rs.4,32,203 and Rs.1,93,248 respectively, stand excluded in computing the 'profits of the business' (PB). It is this that the assessee finds disconcerting and inconsistent; and toward which we extract her written reply in the assessment proceedings, which finds reproduction at pg. 1 of the assessment order:-

> "In the event of the processing charges included in the total turnover, the assessee should be given the benefit of deduction by withdrawing 90% of the profit element already excluded from the profits in the return of income. Both the inclusion in turnover and exclusion from profits at 90% cannot be done simultaneously, which will only whittle down the true benefit eligible to the assesse, which was never the intention of the Parliament."

The same did not find acceptance by both the assessing and the first appellate authority inasmuch as the scope of the instant proceedings was only to give appeal-effect to the directions of the Hon'ble High Court. No ground or issue not arising therefrom could form part of the said proceedings. Aggrieved, assessee is in second appeal.

3. We have heard the parties, and perused the record.

3.1 We may, at the outset, clarify the scope of instant proceedings as limited to inclusion or otherwise of the following in computing export profit deductible u/s. 80-HHC, for which reference be made to Qs. 1 & 2 supra before the Hon'ble High Court:

(a) processing charges and processing rent in the "total turnover" (TT) and "profit of the business" (PB) in computing the latter u/s. 80HHC(3); and

(b) other items which would stand to be included in calculating TT.

3.2 The Hon'ble Apex Court in *K. Ravindranathan Nair* (supra) explained that the processing charges constitute an important part of the cashew business and, therefore, were to be included in the TT thereof u/s. 80HHC(3) (para 23). Also, profit incentives and items like rent, commission, brokerage, etc., though form part of gross total income, had to be excluded in computing PB as they were "independent incomes", which had no element of export turnover (para 19). Board Circular 621, dated 19.12.1991 (reported at [1992] 195 ITR (St.) 154 (at para 32/pgs. 176-179) explaining the amendments to the Act by Finance (No.2) Act, 1991, does so *qua* sec. 80HHC at para 32. Paras 32.10 and 32.11 are particularly relevant for our purpose, and are reproduced as under: -

CBDT Circular No. 621 dated 19.12.1991

> 32.10 The existing formula often gives a distorted figure of export profits when receipts like interest, commission, etc., which do not have element of turnover are included in the profit and loss account.
>
> 32.11 It has, therefore, been clarified that "profits of the business" for the purpose of section 80HHC will not include receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature. As some expenditure might be included in earning these incomes, which in the generality of case is part of common expenses, ad hoc 10per cent deduction from such income is provided to account for these expenses.

As would be evident, the same sets out the rationale for deduction of independent incomes in computing 'profits of the business', on the basis of which, applying further filters, the export profit is determined. That is, incomes, which though stand credited to the Profit & Loss Account, have no element of turnover. Further, as some expenditure might be incurred in earning these incomes, which is generally by way of common expenses, an *ad hoc* deduction from such incomes is provided to account for the same, explaining thus the basis for deduction of such incomes at 90% (as against

100%) thereof. Clearly, there is a total harmony between the amendments as explained by the Board and as later elucidated by the Hon'ble Apex Court.

4. In view of the above, we direct as under: -

(a)processing charges (rs.72,73,110/-) shall form part of the total turnover;

(b) profit on processing charges (rs. 4,80,255) shall not be excluded in computing PB;

(c)processing rent (at rs.2,14,720), an independent income, shall not form part of TT, but shall stand reduced in computing PB, at 90% thereof, i.e., rs. 1,93,248;

(d) discount received on purchase of tin plates (Rs.1,54,443), reduced in computing PB vide assessment order dated 16.02.2099, has not been similarly reduced while giving effect vide order dated 09.04.2012, so that it obtains no longer. Being an integral part of assessee's trading operations, it is not an independent income and, therefore, rightly not reduced by the AO. The same, in fact, also forms part of the third question referred to the Hon'ble High Court, and which had directed thus.

No other adjustment, either to TT or PB stands made by the AO per the original assessment order. He has however while giving appeal effect reduced 90% REP premium (Rs.5,77,347), i.e., Rs.5,19,612, in computing the PB. *The same is not understood*. When no adjustment in its respect was made per the original assessment, either by the assessee or the AO, how could the same be regarded as in dispute and, accordingly, subject to adjudication at any stage, including before the Hon'ble High Court, for it to adjudicate thereon per it's order dated 19/2/2009? The same has not been shown as so. The AO, if he considered the same as warranted, ought to have invoked section 154 of the Act. In fact, even here, we find the assessee as correct. Even if, as apparent, the assessee has credited, and only rightly so, the entire amount of Rs.5.77 lakhs to the Profit & Loss Account, it is only the profit component therein that would stand to be excluded on the transfer of the REP, as the assessee claims with reference to the decision in *Topman Exports v. CIT*[2012] 342 ITR 49 (SC). Further still, as it appears, the same falls u/s. 28(iiie) of the Act, adjustment in respect of which stands co-opted in *Explanation (baa)* by Taxation Laws (Amendment) Act,

2005 w.r.e.f. 01.04.1998,i.e., AY 1998-99 onwards. As such, considered whichever way, there is no basis for the said adjustment in the instant proceedings. We decide accordingly.

5. In the result, the appeal by the assessee is allowed.

Order pronounced on June12, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-	Sd/-
(Aby T.Varkey)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin, Dated: June 12, 2023

Copy to:

1. The Appellant
2. The Respondent
3. The CIT concerned
4. The DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin

n.p.