

M/S. ASPINWALL AND CO. LTD.

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v.

THE COMMISSIONER OF INCOME-TAX, ERNAKULAM.

SEPTEMBER 5, 2001.

[S.P. BHARUCHA, Y.K. SABHARWAL AND ASHOK BHAN, JJ.]

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*Income Tax Act, 1961:*

*Section 32—Investment Allowance—Machinery installed for curing coffee—Assessee claiming investment allowance—Whether entitled—Held, processing of raw berry into coffee beans amounts to manufacturing activity—Assessee entitled to investment allowance under Section 32A—Section 256.*

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*Words & Phrases—‘Manufacture’—Meaning of in common parlance.*

Appellant-assessee had claimed investment allowance under Section 32A of the Income Tax Act, 1961 for machinery installed for curing of coffee in its coffee curing plants, for the assessment years 1980-81 and 1983-84 which was rejected by the Income Tax Officer but allowed in appeal by the Commissioner of Income Tax (Appeals). On further appeal by Revenue, Appellate Tribunal upheld the order of C.I.T. (Appeals) on the basis of its own order in a similar issue involving the assessee and held that assessee was involved in the activity of manufacturing coffee beans from raw material plucked from plant. In a reference made under Section 256(1) of the Act, High Court held that assessee was not entitled to investment allowance under Section 32A of the Act in respect of machinery used for curing coffee and its sale as it was not involved in any manufacturing or production activity in the process of curing coffee. Hence this appeal by the assessee.

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Respondent-Revenue contended that assessee was doing only processing work and was not involved in manufacture and production of new article.

Allowing the appeal, the Court

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**HELD:** 1. The word ‘manufacture’ has not been defined in the Income Tax Act, 1961. In the absence of a definition of the word ‘manufacture’ it has to be given a meaning as is understood in common parlance. It is to be understood as meaning the production of articles for use from raw or

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**A** prepared materials by giving such materials new forms, qualities or combinations whether by hand labour or machines. The process is a manufacturing process when it brings out a complete transformation in the original article so as to produce a commercially different article or commodity. That process itself may consist of several processes. The different processes are integrally connected which results in the production of a commercially different article. If a commercially different article or commodity results after processing then it would be a manufacturing activity. [546-F, G]

*Deputy Commissioner of Sales Tax v. M/s Pio Food Packers*, [1980] Supp. SCC 174, relied on.

**C** 2. The assessee after plucking or receiving the raw berries makes it undergo nine processes to give it the shape of coffee beans. The net product is absolutely different and separate from the input. The change made in the article results in a new and different article which is recognized in the trade as a new and distinct commodity. The coffee beans have an independent identity distinct from material from which it was manufactured. A distinct change comes about in the finished product. The processing of the raw berries into coffee beans would be a manufacturing activity and the assessee is entitled to investment allowance provided under Section 32A of the Act. [565-D, G, H]

**E** CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8832-8833 of 1997.

From the Judgment and Order dated 25.9.96 of the Kerala High Court in I.T.R. Nos. 43 and 44 of 1993.

**F** C.N. Sree Kumar for the Appellant.

B.B. Ahuja, Rajiv Nanda, B.V. Balram Das and Ms. Sushma Suri for the Respondent.

The Judgment of the Court was delivered by

**G** **ASHOK BHAN, J.** Aggrieved by the judgment/order of the High Court, the assessee-appellant has come up in appeal. By the impugned judgment, the High Court in a reference made under Section 256(1) of the Income Tax Act, 1961 (for short, 'the Act') by the Income-Tax Appellate Tribunal, Cochin (for short 'the Tribunal') has answered the following question of law in the negative.

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"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding that the assessee's activity of curing coffee amounts to manufacturing and the assessee is entitled to relief under Section 32A of the Income-tax Act?" A

i.e. against the assessee and in favour of the Revenue.

The High Court opined that the assessee is not entitled to the investment allowance under Section 32A of the Act in respect of the machinery used for curing coffee and its sale. B

The relevant facts giving rise to the above question of law are:- C

The Assessment Years in question are 1980-1981 and 1983-1984. The assessee is a public limited company. It is engaged in the export of coir products, distribution of insecticides and pesticides, running and managing of estates on service contracts. In addition, the assessee has coffee curing plants. For the machinery installed for curing of the coffee, the assessee claimed investment allowance under Section 32A for both the Assessment Years. The Income Tax Officer held that the assessee was not entitled to the investment allowance. Assessee preferred appeal before the Commissioner of Income-Tax (Appeals) [for short 'C.I.T. (Appeals)'] who allowed the appeals and held that the assessee was entitled to the investment allowance as provided under Section 32A of the Act. D E

On further appeal by the revenue, the Tribunal noticed that a similar issue had come before it in ITA No.421/Coch/1984 in the assessee's own case wherein the Tribunal had held that the assessee was entitled to the investment allowance. Following its earlier decision, the Tribunal upheld the order of C.I.T. (Appeals). F

The matter was taken up in reference before the High Court. To ascertain the factual position as to what is meant by curing of coffee, the Court directed the counsel for the parties to produce the order of the Tribunal for the earlier Assessment Year, which was taken on record. G

To appreciate as to what is understood by the word 'coffee' as is generally known in the commercial parlance, the High Court referred to the Encyclopedia Britannica, Volume 6 (1972 edition) and concluded that 'coffee' is a beverage made from the roasted seeds (beans) of the coffee plant. The said beverage is consumed as either a hot or cold drink and is considered to be having an H

- A invigorating effect. Coffee is prepared by either a dry or a wash process. In the dry process, known as natural process, the coffee cherries are thoroughly rinsed in water and then spread out on cement patios in the open air and sun to dry. After drying, the coffee is repeatedly run through fanning and hulling machines to remove the hulls, dried pulp and parchment. As against this, the wash process is quite different. In this process, the cherries are first put through a pulping machine that breaks them open and virtually squeezes the beans out of the pulpy skin. Such beans go into large tanks where they are left for about 24 hours. Fermentation in the process is avoided, because it loosens what is known as a jelly like substance understood as 'honey' in regard thereto. Even in this process, after washing, the coffee is spread out in patios to dry. It takes two to three weeks in the sun for the coffee to become thoroughly dried and during this time it requires shuffling and turning over so as to give sufficient natural heat depending on the climatic conditions. The usual expected aroma is available only after the process of roasting. Roasting also changes the colour giving it a brown colour and a consequent process of chemical change also. The process of roasting brings with its splendid aromatic qualities and pleasing taste.

E It was noticed that the Tribunal had inspected the factory premises to have a first-hand knowledge of the operations carried on by the assessee-Company. The inspection was made by the Tribunal in the presence of both the parties through their representatives. The factual observation of the Tribunal as a result of the inspection found that following nine processes are involved in curing of coffee:

- (1) Receipt of coffee from the Estates;
- (2) Storage of coffee in covered godowns;
- F (3) Drying of coffee to the required standards prescribed by the coffee Board in drying yards;
- (4) Hulling/Peeling/Polishing;
- (5) Grading of coffee mechanically;
- G (6) Colour sorting;
- (7) Garbling and manual grading;
- (8) Out-turning of garbled coffee; and
- H (9) Bulking`.

The Tribunal also found that to deal with the nine processes, the assessee has the factory area where godowns for storage of uncured/clean coffee, coffee drying yards, machine rooms, garbling sheds, etc. are located. A

Curing operations start with the drying of coffee in the drying yards in bright sunlight. Then comes the stage of hulling. It means, the outer husk of the coffee bean has to be carefully removed, if necessary, by mechanical operations to obtain coffee seeds which can further be processed. The Tribunal found that in the hulling process pre-cleaning, destining, elimination of husk, separation of unhulled beans and polishing is done. Thereafter gradation is done. The process of gradation requires separation of good coffee for the purpose of grading by a process of what is known as garbling/manual grading. At times, the process of gradation is done by mechanical means as well. After grading the polishing is done on the basis of grading. The Tribunal held that in this process assessee was involved in the activity of manufacturing the coffee beans from the raw material plucked from the plant. B C

The High Court accepted the factual matrix but in conclusion as to whether it amounts to manufacturing activity differed with the Tribunal and held: D

"We find that all the nine stages of the process do not show any kind of change or a commercially different commodity is not seen to be passing through the various stages of the process. It cannot be ignored that in common parlance, 'coffee' means, coffee powder, a beverage consumed as either a hot or cold drink. At no stage, this colour combination between manufacture and production has its manifestation". E

The relevant portion of Section 32A is reproduced below: F

"32A.(1)In respect of a ship or an aircraft or machinery or plant specified in sub-section (2), which is owned by the assessee and is wholly used for the purposes of the business carried on by him, there shall, in accordance with and subject to the provisions of this section, be allowed a deduction, in respect of the previous year in which the ship or aircraft was acquired or the machinery or plant was installed or, if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, of a sum by way of investment allowance equal to twenty-five per cent of the actual cost of the ship, aircraft, machinery or plant to H

A the assessee:

Provided that no deduction shall be allowed under this section in respect of -

(a) xxx xxx xxx

B (b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

C (2) The ship or aircraft or machinery or plant referred to in sub-section (1) shall be the following, namely:-

(a) xxx xxx xxx

(b) xxx xxx xxx

(i) xxx xxx xxx

D (ii) xxx xxx xxx

(iii) in any other industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing, not being an article or thing specified in the list in the Eleventh Schedule.)`.

E The short point for consideration is whether the High Court was right in coming to the conclusion that the assessee was not involved in any manufacturing or production activity in the process of curing the coffee.

F The word 'manufacture' has not been defined in the Act. In the absence of a definition of the word 'manufacture' it has to be given a meaning as is understood in common parlance. It is to be understood as meaning the production of articles for use from raw or prepared materials by giving such materials new forms, qualities or combinations whether by hand labour or machines. If the change made in the article results in a new and different article then it would amount to a manufacturing activity.

G This Court while determining as to what would amount to a manufacturing activity held in *Deputy Commissioner of Sales Tax v. M/s. Pio Food Packers*, [1980] Supp. SCC 174: that the test for determination whether manufacture can be said to have taken place is whether the commodity which H is subjected to the process of manufacture can no longer be regarded as the

original commodity, but is recognized in the trade as a new and distinct commodity. It was observed: A

"Commonly manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place." B C

Adverting to facts of the present case, the assessee after plucking or receiving the raw coffee berries makes it undergo nine processes to give it the shape of coffee beans. The net product is absolutely different and separate from the input. The change made in the article results in a new and different article which is recognized in the trade as a new and distinct commodity. The coffee beans have an independent identity distinct from raw material from which it was manufactured. A distinct change comes about in the finished product. D

Submission of the learned counsel for the Revenue that the assessee was doing only the processing work and was not involved in the manufacture and producing of a new article cannot be accepted. The process is a manufacturing process when it brings out a complete transformation in the original article so as to produce a commercially different article or commodity. That process itself may consist of several processes. The different processes are integrally connected which results in the production of a commercially different article. If a commercially different article or commodity results after processing then it would be a manufacturing activity. The assessee after processing the raw berries converts them into coffee beans which is commercially different commodity. Conversion of the raw berry into coffee beans would be a manufacturing activity. E F G

For the reasons stated above, we are of the opinion that the High Court was wrong in its opinion that the processing of the raw berries into coffee beans ready for consumption would not be a manufacturing activity disentitling the assessee to the investment allowance provided under Section 32A of the Act. H

A Accordingly, the appeals are allowed with costs. The impugned order/ judgment of the High Court is set aside and that of the Tribunal is restored. The question of law is answered in the affirmative i.e. in favour of the assessee and against the revenue.

A.K.T.

Appeals allowed.