



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **ITA 1544/2006**

HIMALAYA INTERNATIONAL LTD Appellant
Through Mr. C.S. Aggarwal, Senior Advocate
with Mr. Prakash Kumar, Advocate

versus

COMMISSIONER OF INCOME TAX Respondent
Through Ms. P.L. Bansal, Advocate

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

% **14.12.2006**

CM No 14931/2006

Exemption allowed subject to all just exceptions.

CM No 14930/2006 (delay)

Heard. For the reasons stated in the application, the
delay in filing the Appeal is condoned.

Application stands disposed of.

ITA 1544/2006

Mr. C.S. Aggarwal, learned senior counsel for the
Appellant-assessee contends that the following question of law
arises for determination:

"Whether the income derived by the assessee from the
the activity of producing the mushroom was an income
from agriculture and thus exempted altogether?"

Reliance has been placed on the following observations



made in para 144 of the ITAT's order:

"144 On consideration of the matter, we find that the learned CIT (Appeals) has erred in treating the activity to be an agricultural activity or horticultural activity. If that were his finding he should have deleted the assessment of assessee's income in Food Division for the short reason of being agricultural income exempt from tax. While it comes to levy of income-tax, the revenue has no qualms in treating the income as non-agricultural income. When it comes to grant of deduction under Section 80-IA the revenue says it is agricultural income. The approach of the revenue to the assessee is heads I win and tails you lose. In our considered opinion, having charged to tax the assessee's income from Food Division as commercial income, the revenue cannot be permitted to turn around and treat it agricultural income for the purpose of deductions under Section 80-IA only."

Reliance has also been placed on the observations made in para 15.5 of the order of CIT (Appeals), which reads as under :

"15.5 Having gone through several case laws on the subject, I am inclined to view the present case in the light of the ratio of Budharaja. The appellant is growing mushrooms. Can we say that he is manufacturing mushrooms? Growing mushrooms is understood as an activity of cultivation and no matter what advances in agriculture or horticulture have taken place worldwide (including indoor round-the-year cropping, bio-



engineering, etc.) the fact remains that the activity is still recognized as agriculture or horticulture, introduction of advanced hi-tech processes and technologies has not affected the basic character of the activity in question, namely, growing mushrooms. Accordingly, I hold that growing mushrooms is not an activity envisaged under the old Section 80-IA or the new Section 80-IB."

Upon hearing the learned counsel for the parties, we are of the view that the stand adopted by the assessee throughout was that it was in fact entitled to exemption under Section 80-IA. It had never claimed that its income from growing mushrooms and canning them must be treated as agricultural income and therefore, exempt from tax. The findings of the ITAT merely reflect that the assessee was not entitled to exemption under Section 80-IA. If the incidental observations of the ITAT, relied upon by Mr. Aggarwal, are taken to be a finding that it was agricultural income, then it would not justify any appeal by the assessee at all.

Mr. Aggarwal points out that in its rejoinder written submissions before the ITAT, the assessee raised this as an alternative plea. In our view, if the assessee was seeking exemption from taxation on the ground that its income from the mushroom business was agricultural income then such plea



should have been taken by it at the very inception before the Assessing Officer. Neither before the CIT(A) or the ITAT such a plea appears to have been taken by the assessee. Mr. Aggarwal then contends that the assessee is not engaged in mushroom business but rather is engaged in mushroom growing. In our view, such question, never having been raised by it, does not arise for consideration in this appeal.

No substantial question of law arises in this appeal.

This appeal is, accordingly, dismissed.

A handwritten signature in black ink, appearing to read 'Vikramajit Sen'.

VIKRAMAJIT SEN, J

A handwritten signature in black ink, appearing to read 'S. Muralidhar'.

S. MURALIDHAR, J

DECEMBER 14, 2006
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