* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ ITA No. 205 of 2007

% *Reserved on : March 30, 2009*
Pronounced on : April 27, 2009

Commissioner of Income Tax
Delhi – IV, New Delhi . . . Petitioner

through : Mr. P.L. Bansal with Mr. Sanjeev Rajpal, Mr. Anshul Sharma and Mr. M.P. Gupta, Advocates

VERSUS

Indian Railway Construction Co. Ltd. . . . Respondent

through : Mr. S. Ganesh, Sr. Advocate with Mr. K.M. Rustogi and Mr. Parag Goyal, Advocates

CORAM :-
THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

For orders, see ITA No. 222/2007.

(A.K. SIKRI)
JUDGE

* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ ITA No. 222 of 2007
with
ITA Nos. 205, 224, 227 & 228 of 2007

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1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
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A.K. SIKRI, J.

1. These appeals are preferred by the Revenue under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). The issue involved in all these appeals, in respect of the same assessee, is common, which relates to the deductions allowed by the authorities

for consideration in these appeals, we may recapitulate the background under which these issues arise.

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2. The assessee, namely, Indian Railway Construction Company Ltd. is a public sector company incorporated under the Companies Act and is under the administrative control of the Ministry of Railways. It is engaged in the manufacturing of large number of items such as ballast, concrete sleepers, specialised mechanical track laying/relaying equipments, railway panels, steel roof panels, columns, gentry, girders, wind girdles, frames, dressings, erection towers, tackles etc., track laying equipment, cantilever assemblies, termination assemblies, droppers, multi-track portal structures, structure and earth steel bonds, earth mats, jumpers of different sizes, drop arms, super masts for feeders, multiple cross channels of different sizes, double track cantilevers, aluminum bus bars, reel wagons, flat top coaches for pentagraph checking, special beat attachment for pedestal insulators, signals and signal operating systems, relay racks, relays, signalling truck circuiting power packs, ground gears etc., all of which are used in the fabrication and installation of railway tracks.

3. It is not in doubt or disputed by the Revenue as well as status of the assessee company is that of an 'industrial undertaking'. The question was as to whether execution of the project railway tract would amount to production of goods/articles. It is because of the reason

goods/articles, which provisions are invoked by the assesse

relevant portions of Sections 80-HH and 80-I read as under :-

> "80HH. (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of a hotel, to which this section applies, 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 twenty per cent thereof.
>
> xx xx xx
>
> (4) The deduction specified in sub-section (1) shall be allowed in computing the total income in respect of each of the ten assessment years beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or the business of the hotel starts functioning.
>
> Provided that...
>
> xx xx xx
>
> 80-I. (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel or the business of repairs to ocean-going vessels or other powered craft, to which this section applies, 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 twenty per cent thereof :
>
> Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel as if for the words "twenty per cent," the words "twenty-five per cent" had been substituted.
>
> 1A. Notwithstanding anything contained in sub-section (1), in relation to any profits and gains derived by an assessee from–
>
> (i) an industrial undertaking which begins to manufacture or produce articles or things or to operate its cold storage plant or plants; or
>
> ....."

by the Assessing Officer (for short, 'AO') holding t manufacturing activity carried by the assessee would be that of goods/articles. In the next assessment year 1983-84, the AO again allowed the benefit under the aforesaid provisions. The Commissioner of Income Tax (CIT), however, directed the AO to withdraw the relief granted. The assessee appealed against the order of the CIT to the Income-Tax Appellate Tribunal (ITAT), Delhi. This appeal was allowed by the ITAT vide its order dated 20.8.1991 and the order of the CIT was quashed. The department moved reference application, which was also rejected. Another miscellaneous application moved by the Revenue was also rejected by the ITAT.

5. In these appeals, we are concerned with the assessment years 1984-85, 1985-86, 1986-87, 1987-88 and 1991-92. For the assessment year 1984-85, the Assessing Authority again allowed the claim of the assessee. However, the CIT, exercising its revisional powers under Section 263 of the Act, disallowed the claim vide his orders dated 7.2.1989. Appeal filed thereagainst by the assessee stands allowed by the ITAT vide its order dated 28.4.2006, which is the subject matter of ITA No. 222/2007. Same is the position in other appeals.

6. To complete the narration of facts, we may point out that for the year 1988-89, the AO himself disallowed the claim. However, CIT (Appeals), relying upon the orders of the ITAT passed in respect of

For the year 1988-89, again the AO has disallowed the clain assessee, but CIT (Appeals) has allowed the deduction on the same basis as it is done in 1988-89. In respect of assessment year 1990-91, the AO has himself allowed the deductions under Sections 80-HH and 80-I of the Act. For the year 1991-92, the AO has disallowed the claim and CIT (Appeals) also rejected the appeal, but ITAT allowed the appeal, against which another appeal is filed by the Revenue. The position in respect of various orders, thus, can be summarised as under :-

S.No.	Assessment Year	Particulars
1.	1982-83	AO – Allowed the claim of the assessee for deductions under Sections 80-HH and 80-I of the Act.
2.	1983-84	AO – Allowed the claim but CIT directed the AO to withdraw the relief granted. This order of CIT was quashed by the ITAT, Delhi vide order dated 20.8.1991. Department moved a reference application which was also rejected. Thereafter, department moved a miscellaneous application which was also rejected by ITAT.
3.	1984-85	AO – Allowed the claim of the assessee, but CIT, exercising its revisional powers under Section 263 of the Act, disallowed the claim vide its order dated 7.2.1989. Appeal was made by the assessee before the ITAT which was allowed vide order dated 28.4.2006.
4.	1985-86	AO – Disallowed the claim of the assessee. CIT (Appeals) also rejects the claim of the assessee by following the Supreme Court judgment in the case of *Minocha Brothers*

6.	1987-88	AO – Disallowed the claim of the assessee. CIT (Appeals) also rejects the claim of the assessee by following the Supreme Court judgment in the case of *Minocha Brothers*
7.	1988-89	AO – Disallowed the claim of the assessee. However, CIT (Appeals) relying upon the order of ITAT for the assessment year 1983-84 allowed the claim of the assessee.
8.	1989-90	AO – Disallowed the claim of the assessee. However, CIT (Appeals) relying upon the order of ITAT for the assessment year 1983-84 allowed the claim of the assessee.
9.	1990-91	AO – Allowed the claim of the assessee for deductions under Sections 80-HH and 80-I of the Act.
10.	1991-92	AO – Disallowed the claim of the assessee by following the Supreme Court judgment in *N.C. Budhiraja.* CIT (Appeals) also rejects the claim of the assessee.

7. What follows from the above is that deductions under Section 80-HH and 80-I were allowed in favour of the assessee in the first year. In the second year also it was ultimately allowed. From third year, disputes started. However, for the assessment years 1989-90 and 1990-91, the deduction again stands allowed in favour of the assessee. We have mentioned this fact for the reason that, predicated on these facts, argument is raised by the assessee that once the benefit of deduction is allowed in the first year, it has to be necessarily given to the assessee for the subsequent years as well until the expiry of the statutory stipulated period of benefits, namely, for 10 years.

"1) Whether ITAT was correct in law in holding that th CIT had no power to direct the withdrawal of claims unde Section 80HH and 80-I of the Act in the order passed unde. Section 263 of the Act, as it would amount to review the order passed by the Assessing Officer for assessment year 1982-83, which had been barred by limitation?

2) Whether ITAT was correct in law in holding that once the conditions for allowing claim under Section 80HH and 80-I of the Act were found to be satisfied in the initial year, the department could not deny such claim in the subsequent years?

3) Whether manufacturing of an intermediary product for construction of an end product would be relevant for deciding eligibility of deduction under Section 80HH and 80-I of the Act?"

9. With the consent of the parties, arguments were also heard and concluded on the same date.

10. The submission of learned counsel appearing for the assessee that once benefit is allowed in the first year, it cannot be denied in the subsequent years is formulated in question No.2 above. It would be appropriate to deal with this question in the first instance.

11. Question No.2

Submission of Mr. Ganesh, learned senior counsel appearing for the assessee in this behalf was that it is settled position that if a decision has been taken, either at the assessment stage or at the appellate stage, in the first relevant assessment year to grant the said benefit to the assessee, then the said benefit cannot be withheld in the subsequent years on the ground that the decision taken in the first

decisions, that Sections 80-HH and 80-I do not contain any p empowering or authorizing the tax authorities to withhold or withdraw or deny the benefit of deduction under these provisions in the years subsequent to the first relevant assessment year where the issue of eligibility was decided in favour of the assessee.

12. He further submitted that in the present case, in the first relevant assessment year 1982-83, the AO himself allowed claim for the deductions under Sections 80-HH and 80-I and that order has become final for that assessment year. Thereafter, in assessment year 1983-84, though the AO allowed the claim of deduction, the same was set aside by the Commissioner of Income Tax in exercise of his revisional powers under Section 263 of the Act. However, the said order of CIT was set aside by the ITAT by its order dated 20.8.1991 and this order also became final. It is, therefore, submitted that, on this ground alone, the present appeals filed by the Revenue deserve to be dismissed and the appellate orders of the ITAT are required to be upheld.

13. Learned counsel relied upon the following judgments to support this submission:-

i) *Saurashtra Cement & Chemical Industries Ltd.* v. *CIT, Gujarat-V*, 1980 (123) ITR 669 (Guj.), and

ii) *Commissioner of Income Tax* v. *Paul Brothers*, 1995 (216) ITR 548 (Bom.)

"The questions which have been referred to us at the insta of the Commissioner are as under :

(1) Whether, on the facts, the Tribunal was fight in law in holding that there was no case for the revenue to withdraw the assessee's claim under section 80J for the year under reference, when such claim had been accepted in the earlier assessment year, which assessment had not been disturbed?

xx xx xx

....The next question to which the Tribunal addressed itself, and in our opinion rightly, was whether the ITO was justified in refusing to continue the relief of tax holiday granted to the assessee-company for the assessment year 1968-69, in the assessment year under reference, that is, 1969-70, without disturbing the relief granted for the initial year. It should be stated that there is no provision in the scheme of s.80J similar to the one which we find in the case of development rebate which could be withdrawn in subsequent years for breach of certain conditions. No doubt, the relief of tax holiday under s.80J can be withheld or discontinued provided the relief granted in the initial year of assessment is disturbed or changed on valid grounds. But without disturbing the relief granted in the initial year, the ITO cannot examine the question again and decide to withhold or withdraw the relief which has been already once granted."

15. His submission was that though this judgment was overruled by the Supreme Court in *C.I.T.* v. *N.C. Budhiraja & Co.*, 204 ITR 412, but on other aspects. Insofar as the aforesaid principle is concerned, it was not tinkered with by the Apex Court. He further submitted that the aforesaid judgment of the Gujarat High Court was followed by the Bombay High Court in *Paul Brothers* (supra) and, therefore, this principle still holds the field.

16. Ms. Bansal, learned counsel appearing for the Revenue, submitted that order passed by the AO in the first year cannot be allowed to be

formed a separate unit and even if the benefit was granted in initial year, without carrying out the assessment for the subsequent years, it is found that as per the judgment of the Supreme Court, now available, such a direction cannot be granted. The Assessing Authority is bound to follow the said principle. Her submission was that the order passed by the CIT (Appeals) in assessment year 1985-86, order passed by CIT under Section 263 of the Act for the assessment year 1984-85 and the order passed by ITAT for the assessment year 1983-84 as well as the assessment order of 1982-83 are the orders passed before the date of passing of the judgment of the Supreme Court in *N.C. Budhiraja* (supra), which is rendered on 7.9.1993. She submitted that it is a well established principle of law that the Supreme Court does not enact the law. It interprets the law. Therefore, once there is an interpretation from the Apex Court, the law should be so understood from the inception and not from the date of the judgment. All the decisions contrary to such interpretation become erroneous. She has also referred to the judgment of the Supreme Court in *CIT* v. *Model Mills Nagpur Limited*, 64 ITR 67, wherein the Court held that in such circumstances power of rectification under Section 164 or re-opening under Section 148, if within time, are justified on the basis of the Supreme Court judgment.

17. As far as allowing deductions in the assessment year 1982-83 and

proceedings, whether at the assessment stage or the appellat the Courts are bound to give effect to the judgment of the Supreme Court and, therefore, in these appeals the judgment of the Supreme Court in *N.C. Budhiraja* (supra) is squarely applicable as this judgment makes the years in question distinct from the earlier years.

18. She further submitted that the ITAT in 1983-84 has relied upon the judgment of the Orissa High Court in *CIT* v. *N.C. Budhiraja*, 121 ITR 212 and that of the Bombay High Court in *CIT* v. *Pressure Piling Co. (P) Ltd.*, 126 ITR 333, which judgments have been reversed by the Supreme Court in *N.C. Budhiraja* (ibid).

19. No doubt, normally when benefit of deduction is granted in the first year, the same should continue to be applied in the subsequent years as well. However, before the assessment is made in the subsequent year, principle of law which is applicable to such assessments is clarified by the Supreme Court, and that is contrary to the basis on which deduction was allowed in the previous years, the Assessing Authority would be within its right to take note of the law laid down by the Supreme Court, which had become available by that time. The principle of law, thus, laid down, becomes binding on all judicial and quasi-judicial authorities under Article 141 of the Constitution and cannot be ignored. In the present case itself, while allowing the deductions for the year 1983-84, the ITAT had relied upon certain

Supreme Court in *N.C. Budhiraja* and continue to give the which was granted in previous years based on the judgment of the High Court, which stands overruled, would not be proper.

20. Learned counsel for the Revenue was right in her submission that in such circumstances there is even a power of rectification under Section 164 or reopening of the earlier assessment under Section 148 if it is within time. We may also refer to the judgment of the Calcutta High Court in *Jayashree Tea & Industries Ltd.* v. *C.I.T. & Ors.*, 288 ITR 386, where the Court held that subsequent judgment of the Supreme Court is applicable to the pending proceedings either at the assessment stage or at the appellate stage.

21. Therefore, as a matter of law, if *N.C. Budhiraja* (supra) covers the present case in favour of the Revenue, it was open to the Assessing Authority to depart from the course of action taken in the earlier assessments and take a contrary view. The 2nd question of law, as framed, is answered accordingly.

22. There was heated debate between the counsel for the parties as to whether on the application of *N.C. Budhiraja* (supra), the assessee would be disentitled to deductions under Sections 80-HH and 80-I of the Act, as the contention of Mr. Ganesh was that even on the applicability of the principles laid down in *N.C. Budhiraja* (ibid), the

23. Question No. 3

The moot question is, therefore, as to whether the activity of laying down the railway track amounts to manufacturing of goods/articles. It was the submission of Ms. Bansal that laying down of railway tract did not constitute an article or a thing being of immovable character. Submission was that though such activity had involved minor activity of manufacture of articles, but the end product, after the execution of the project, was a railway track or a bridge, which cannot be equated with manufacture or production of an article or thing. Heavily relying upon the judgment in *N.C. Budhiraja* (supra) for this purpose, she argued that the term *'construction'* has not been defined in the Act and the same should be understood as per the normal connotation of the word. The expressions *'manufacture'* and *'produce'* are normally associated with movables – articles and goods but they are never employed to denote construction activity, which may involve manufacturing of some articles but that makes little difference to the principle.

24. She also referred to *Builders Association of India* v. *Union of India & Ors.*, 209 ITR 877 wherein the Apex Court has again held that construction activity cannot be equated with manufacture/ production activity since dam, building, bridge or road cannot be brought with the purview of article or thing. Learned counsel also

on the business of civil engineering contracts as a whole, th no scope for fining out whether part of activity resulting in manufacture or production of articles within the meaning of Section 80-HH, 80-I or 80-J of the Act. Reliance in this regard is placed on the Apex Court decision in *N.C. Budhiraja* (ibid). Reliance is also placed on the decision in *C.I.T.* v. *Madgul Udgyog*, 208 ITR 541 rendered by the Calcutta High Court where it has been held that the word *'articles'* cannot include an immovable property. Construction of building cannot be equated with manufacture or production of articles.

25. Submission of Mr. Ganesh, on the other hand, was that it was not in dispute that the assessee was manufacturing large number of items, already taken note of. On that basis, he proceeded to argue that it is these items which are used in fabrication and installation of railway tracks. Therefore, the main activity in which the assessee is engaged is the manufacture of these products/articles and the relatively minor and insignificant final operation is that of laying the tracks and bolting down to the sleepers. It is totally insignificant as compared to the earlier operation of manufacturing of various items. On that basis, submission was that the basic eligibility condition for availing of the benefit of Sections 80-HH and 80-I stands completely fulfilled in the present case. It is further submitted that the judgment of the

dam are cement, steel, bricks, stone jelly etc. It was not the a contention or claim in that case that all these manufacturing products were manufactured or produced by the assessee. The assessee's only claim was that the assessee had constructed the dam and that constituted manufacture of goods, which was rejected by the Supreme Court on the short ground that a dam is immovable property which cannot be considered to be either goods or articles. The Supreme Court in its judgment specifically stated that the assessee was not claiming any deduction provided by Section 80-HH of the Act on the value of the materials which went into the construction of the dam or the same had been manufactured by the assessee or that the assessee was entitled to the benefit of Sections 80-HH and 80-I of the Act on the basis of that manufacturing activity carried out by the assessee. In sharp contrast, in the present case, there is an extremely significant extent and volume of manufacturing activity carried on by the assessee; all numerous items, parts, components, etc. all of which go into the working and operational railway tracks. In the present case, the assessee is making its claim for the benefit under Sections 80-HH and 80-I on the strength of such manufacturing activity, while no such claim was at all made by the assessee in *N.C. Budhiraja* (supra). The manufacturing activity of the assessee is not like the construction of a dam, bridge or canal or other similar construction.

That was a case where assessee was a firm of Cor constituted for the purpose of construction of a dam in Orissa. The issue was as to whether construction of a dam can be treated as manufacture or production of an article. The Assessing Authority had allowed the claim of the assessee under Section 80H-H of the Act. CIT, however, revised the order and disallowed the said claim. The appeal preferred by the assessee before the ITAT was allowed on the following reasoning and findings :-

> "(a) The activity of constructing a dam can be characterized as an industrial activity. The work undertaken by the assessee-firm can, therefore, be called an "industrial undertaking".
>
> (b) The word "articles" occurring in clause (i) of sub-section (2) of section 80HH is not confined to movables nor to small things produced in large quantities.
>
> (c) The activity of construction of a dam can be characterized as processing as well as manufacturing."

27. The Revenue sought reference of question for the opinion of the High Court, which request was acceded to. The High Court, while deciding the question, agreed with the Tribunal that the assessee-firm constituted for the purpose of constructing a dam for storing water can be called an "industrial undertaking". The High Court opined that the definition of "industry" in the Industrial Disputes Act can well be relied upon to ascertain the meaning of the expression "industrial undertaking", inasmuch as the said expression has not been defined in the Act or the Rules. The High court also agreed

28. The Supreme Court, in appeal preferred by the Revenue ag judgment of the High Court, reversed the decision of the High Court. The Supreme Court noted that Section 80HH occurs in Chapter VI-A, which provides for "deductions to be made in computing total income". Sub-section (1) of Section 80HH provides that "where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of a hotel, to which this section applies, 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 twenty per cent thereof". Sub-section (2) says that section 80HH applies to any industrial undertaking which fulfils al the four conditions prescribed therein.

29. Thereafter, sub-section (2) of Section 80-HH was set out by the Apex Court, which lays down the conditions for the applicability of this provision in respect of industrial undertakings. The Supreme Court proceeded on the basis that the assessee was an industrial undertaking and delineated following question which arose for consideration :-

> "In short, the limited question is whether the construction of a dam to store water (reservoir) can be characterized as amounting to manufacturing or producing an article or articles, as the case may be."

"The word "production" or "produce" when used juxtaposition with the word "manufacture" takes in bring into existence new goods by a process which may or may not amount to manufacture. It also takes in all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods. The next word to be considered is "articles", occurring in the said clause. What does it mean? The word is not defined in the Act or the Rules. It must, therefore, be understood in its normal connotation – the sense in which it is understood in the commercial world. It is equally well to keep in mind the context since a word takes its colour from the context. The word "articles" is preceded by the words "it has begun or begins to *manufacture* or *produce*". Can we say that the word "articles" in the said clause comprehends and takes within its ambit a dam, a bridge, a building, a road, a canal and so on? We find it difficult to say so. Would any person who has constructed a dam say that he has manufactured an article or that he has produced an article? Obviously not. If a dam is an article, so would be a bridge, a road, an underground canal and a multi-storeyed building. To say that all of them fall within the meaning of the word "articles" is to overstrain the language beyond its normal and ordinary meaning. It is equally difficult to say that the process of constructing a dam is a process of manufacture or a process of production. It is true that a dam is composed of several articles; it is composed of stones, concrete, cement, steel and other manufactured articles likes gates, sluices, etc. But to say that the end product, the dam, is an article is to be unfaithful to the normal connotation of the word. A dam is constructed; it is not manufactured or produced. The expressions "manufacture" and "produce" are normally associated with movables – articles and goods, big and small – but they are never employed to denote the construction activity of the nature involved in the construction of a dam or for that matter a bridge, a road or a building.

(emphasis supplied)"

30. It is clear from the above that:

(i) while interpreting the words 'manufacture' or 'production', the Court drew distinction between manufacture/produce on the one hand and 'construction' on the other hand;

(ii) things like dam or, for that matter, bridge, roads, canals,

(iii) the expression 'manufacture' or 'produce' are n associated with movables, i.e. articles and goods, but not with construction activity;

(iv) the construction activity may be composed of articles, but that by itself will not become production of articles. For this purpose, it is the 'end product' which is the test and not various components/articles which go into the construction of the said end product.

31. Applying the aforesaid test, when we examine the case of the assessee in the context of end product, it is difficult to come to the conclusion that the activity of laying railway line can amount to *'manufacture'* or *'produce'*. It would definitely be a construction activity.

32. We may, however, note the argument of learned counsel appearing for the assessee, who sought to draw a fine distinction by making a submission that the assessee was not claiming benefit of Section 80-HH and 80-I on the strength of such manufacturing activity. On the contrary, the assessee was seeking benefit under the aforesaid provisions on the strength of manufacturing activity carried on by the assessee, namely, manufacture of numerous items, parts, components, etc. which go into the working and operational railway tracks. In this behalf, he had relied upon the following observations

principle. *The petitioner is not claiming the deduc provided by section 80HH on the value of the . manufactured articles but on the total value of the dam as such.* In such a situation, it is immaterial whether the manufactured articles which go into the construction of a dam are manufactured by him or purchased by him from another person. We need not express any opinion on the question what would be the position if the respondent had claimed the benefit of section 80HH on the value of the articles manufactured or produced by him which articles have gone into/consumed in the construction of the dam."

33. The learned counsel is right to the extent that in *N.C. Budhiraja* the Supreme Court categorically mentioned that the assessee had claimed benefit of Section 80-HH and 80-I on the total value of the construction of dam as such and not on the value of manufactured articles which go into the construction of a dam. At the same it is also clear that the Court did not express any opinion as to whether such a claim which is made on the manufacture of articles which go into the construction of a dam would be admissible or not. Obviously, it was left open.

34. Be that as it may, the issue in question has not been examined by the ITAT from this angle at all. Simply relying upon its order in respect of the assessment year 1983-84 (which was based on the High Court judgment in *N.C. Budhiraja* and overruled by the Supreme Court), the Tribunal allowed the appeal of the assessee herein. We are of the opinion that the matter needs to be re-examined by the ITAT keeping in view the aforesaid parameters laid down by the Supreme

35. Accordingly, impugned orders of the ITAT are set aside and remitted for fresh consideration. These appeals are allowed and disposed of in the aforesaid terms.

No costs.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

April 21, 2009
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