IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER.

ITA No.1013/Hyd/2006	**:**	**Assessment Year 2002-03**
ITA No.1014/Hyd/2006	**:**	**Assessment Year 2003-04**
ITA No.869/Hyd/2008	**:**	**Assessment Year 2004-05**
ITA.No.870/Hyd/2008	**:**	**Assessment year 2005-06**
ITA.No.493/Hyd/2005	**:**	**Assessment year 2001-02**

M/s. Venkateswara Feeds & Feeds, Hyderabad V/s Asstt. Commissioner of Income-tax Circle 4(1) Hyderabad

(PAN - AACFV 4204 H)

(Appellant) (Respondent)

Appellant by **:** *Shri Jitendra Jain & Shri U.L.N.Sudhakar*

Respondent by : *Shri V.Srinivas*

Date of Hearing	23.2.2012
Date of Pronouncement	26/04/2012

O R D E R

Per Asha Vijayaraghavan, Judicial Member

These five appeals are filed by the assessee and they are directed against four orders of the CIT(A)-V, Hyderabad for the assessment years 2001-02 to 2005-06. While appeals for the assessment years 2001-02 and 2002-03 are directed against similar but separate orders of the CIT(A)-V Hyderabad dated 31.8.2006; the same for the assessment years 2004-05 and 2005-06 are directed against the order of the CIT(A) dated 7.3.2008; and the appeal for the assessment year 2001-02 is directed against the order of the CIT(A) dated 1.2.2005. Since

common issues are involved, these appeals are being disposed of with this common order for the sake of convenience.

2. The main grievance of the assessee, common in all these appeals, relates to denial of its claim for relief under S.80IB of the Income-tax Act, 1961.

3. Facts of the case in brief, as taken from the appeal folder for the assessment year 2001-02, are that the assessee derives income from production and sale of poultry feed. For the assessment year 2001-02, assessee filed return showing gross total income at Rs.2,87,89,710 from which deduction under S.80IB was claimed to the extent of RS.94,41,829, computing the taxable income at Rs.1,93,47,881.

4. As against this, the assessment was completed determining the total income of the assessee at Rs.2,94,80,875. During the course of assessment, assessing officer noted that the assessee claimed deduction under S.80IB in respect of pellet feed division, for which separate computation of income was filed. An Audit Report in Form No.10CCD was filed along with the return of income in support of the claim made under S.80IB of the Act. As per the said audit report, the assessee had two separate divisions. In one division, mash feed was manufactured and the other division was meant for pelletisation of such mash feed. The assessing officer carried out inspection of the factory premises of the assessee to ascertain the manufacturing activity, if any, conduced in the pelletisation unit on which the assessee claimed deduction u/s. 80IB of the Act. A sworn statement was also recorded from the Dy. Manager of the factory about the scheme of manufacturing, if any, involved in the pelletisation of feed. According to the said statement, various feed ingredients such as maize, rice bran, de-oiled soya etc., along with certain

feed premixes are mixed in different proportions and then ground to form a course powdered material which is called mash feed. Such feed undergoes a certain kind of physical changes before again converted into small pellets. The actual process involved is that the mash feed is carried through an elevator to a pellet making machine where it gets mixed with steam and then forced through a press containing small holes to convert the feed into small pellets. There is no change of composition in the mash feed and the pellet feed. Hence according to the assessing officer the conversion of physical shape of the feed involves only processing and no manufacture. On the basis of these findings, the assessee was given an opportunity to show cause as to why the claim of deduction u/s. 80IB should not be disallowed. The assessee, relying on various judicial pronouncements on the issue, objected to the action proposed by the assessing officer. However, the assessing officer after considering the submissions of the assessee held that though the assessee's claim is in order in respect of conversion of individual raw materials to mash feed, as far as pelletisation is concerned, though the product is commercially different commodity, yet the composition remains the same. The difference lied in texture and shape and there is only a physical change. The assessing officer referred to the decision of the Apex Court in the case of Venkateswara Hatcheries which is a sister concern of the assessee, wherein it was held that use of mechanical methods alone does not always result in manufacture. He further held that even though the word 'manufacture' has not been defined in the Act, in a literal sense, a manufacture involves some transformation or change as a result of application of art or mechanical manipulation. The word 'manufacture' used as a verb is generally understood to bring into existence a new substance and not merely to produce some change in the substance. Therefore, in a manufacturing

process, a new and different articles must emerge which is distinct from the original substance. The assessing officer also relied on several other judicial decisions to hold that when the original commodity has undergone degrees of change, but yet has not lost its original identity, it cannot be said to have undergone manufacturing process.

5. The assessing officer further noted that the plant and machinery which were used for production of mash feed were also put into use for production of pellet feed. The raw material, in the case of the assessee, such as maize, rice bran etc. could not have been fed directly into the pellet unit and the mash feed unit remained an essential part or heart of the production process of the pellet feed without which the pellets could not have been made. Moreover, the assessee did not purchase mash feed from outside market and the entire pelletisation was from out of the mash feed produced by it. Therefore, the pelletisaton unit is nothing but a simple extension of the basic unit i.e. mash feed unit. The assessing officer also held that the pelletisation unit is incapable of converting raw materials into pellets. It needs ground raw material which is the mash. Therefore, he concluded that the assessee's argument that the pellet unit had independent existence was not substantiated.

6. The assessing officer further noted that the assessee by using exiting old plants and machineries on which the claim under S.80IA was fully availed, sought to claim deduction twice. The profit earned by the assessee was not solely attributable to the pellet unit alone. With the contribution of both the units, the profit was earned. Both the units were integrated as one unit. This is also evident, according to the assessing officer, from the fact that the mash feed was not purchased from outside but was

made available from a part of the assessee's own unit. In terms of the provisions of sub-section (2) of S.80IB, assessee is not entitled to ail the deduction on the same item twice.

7. Based on these findings, the assessing officer rejected the claim of the assessee made under S.80IB amounting to Rs.94,41,829.

8. On appeal, the CIT(A) after detailed consideration of the submissions of the assessee in the light of the ratio laid down in various decisions on the issue, concluded that there cannot be any dispute that the poultry feed whether in the form of a powder (mash feed) or in the form of a particular sold shape (pellet) remains nothing but poultry feed and no new and different commodity, in a commercial senses, is born from out of such pelletsiation. The ingredients remain the same. The utility remains the same, so also the intended consumers and customers. The only change that such feed undergoes is of shape, i.e. from powder form to solids of fixed shape. The process is that of simple "solidification" and nothing else. He accordingly, upheld the disallowance made by the assessing officer. .

9. With respect to the other issue as to whether the assessee can claim deduction u/s 80IB when it uses a plant and machinery, which had already exhausted the claim u/s 80IA, the learned AR of the assessee before the CIT(A) submitted that the old machinery were used in the mash feed plant and not in the pellet feed plant. The deduction u/s 80IB has been claimed only in respect of the pellet feed plant. Hence, the assessee did not claim the deduction twice on the same machinery. It was submitted that the Assessing Officer wrongly concluded that the

pellet unit is not a new unit having its own building and plant & machinery eligible for deduction u/s 80IB.

10. Without prejudice to the above, it was submitted that even if old machinery is construed as a part of the new plant, the value of old plant & machinery was much less than 20% of the total value of plant & machinery and hence, as per Explanation-2 to section 80IB(2), the conditions specified u/s 80IB(2)(ii) are not violated and the assessee is entitled to deduction u/s 80IB. The AR of the further submitted as under:-

> "*2.10 .....the contention of the Assessing Officer that two separate units does not exist is incorrect. It is not necessary that all the units should have both mash and pellet plants. The pellet plant can function independently. It can use mash feed bought out and convert the same to pellets. Mash feed is easily available in the market. Just because both the units are in adjacent buildings, it cannot be said that they are one unit for the purpose of denying deduction u/s 80IB. The pellet unit is a new and separate unit having its own building and plant and machinery. The profit attributable to it are eligible for deduction u/s 80IB. Even though the old machinery is used for manufacturing mash feed, the deduction claimed in respect of pellet unit cannot be denied. Only when in a new plant, some old machinery is transferred, it can be said that old machineries are used in the new unit. But when the profit is separately computed for pellet unit and deduction u/s 80IB is claimed is only for that unit, it cannot be said that the appellant has used old machinery of the mash feed unit."*

11. After considering the submissions of the assessee, the CIT(A) held as under:-

> "*2.20 I have carefully considered the facts of the case and the submissions of the appellant. Sec. 80IB provides for a deduction from the profits and gains of an amount equal to a certain percentage and for a certain number of assessment years as specified in sub-section (3) and sub-section (4) of that section. One of the conditions of eligibility is that the assessee must be an industrial undertaking which manufactures of produces an article or thing not being an 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."*

Aggrieved by the order of the CIT(A) dated 1.2.2005, confirming the disallowance made by the assessing officer, assessee preferred the second appeal, ITA No.493/Hyd/2005 before us and raised the following grounds of appeal:-

"*1. Disallowance of claim of deduction u/s 80IB*

1.1 On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the order of the Assessing Officer holding that the appellant firm is not eligible for deduction u/s 80IB on the grounds that production of pellet feed from mash feed is only processing and not manufacturing.

1.2 The appellant submits that conversion of mash feed into pellet feed amounts to manufacturing and not processing. Mash feed and pellet feed are commercially two distinct products having their own peculiar features and advantages and disadvantages. As per the settled legal position, if commercially two products are regarded separate, then it amounts to manufacturing. Hence production of pellet feed amounts to manufacturing and appellant is eligible for deduction u/s 80IB.

1.3 The appellant, therefore, prays your honour to allow the deduction u/s 80IB.

II. Calculation of deduction u/s 80IB.

2.1 On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of the Assessing Officer of reducing an amount of Rs. 15,47,946/- from the amount of deduction claimed by the appellant u/s 80IB, on the ground that they were not derived from the industrial undertaking.

2.2 The appellant submits that all the items referred to in the assessment order were derived from the industrial undertaking of pellet feed unit and hence eligible for deduction u/s 80IB.

2.3 Without prejudice to the above, the appellant submits that if at all any amount is to be reduced from the claim, it should be the profit attributable to the sale of miscellaneous items and not the sales proceeds itself. The costs

attributable to these items have to be reduced to arrive at the profit.

2.4 The appellant therefore, prays your Honour to direct the learned ACIT to calculate and allow the due deduction u/s 80IB.

III. Disallowance of foreign travel expense Rs. 6,65,977/-.

3.1 On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the disallowance by foreign travel expenses to the tune of Rs. 6,65,971/- on the ground that the expenditure was not incurred by the partners or employees of the appellant firm.

3.2 The appellant submits that the expenditure was incurred wholly and exclusively for the purpose of the business and hence is an allowable deduction u/s 37(1). The appellant submits that it is not always necessary that the expenses have to be incurred on employees or partners. The expenditure incurred on business associates is also business expenditure allowable u/s 37(1) of the Act.

3.3 The appellant further submits that it is not always necessary that foreign travel should result in happening of transaction and merely the absence of the same does not necessitate the disallowance.

3.4 The appellant therefore prays your Honour to direct the ACIT to allow the foreign travel expense as a deduction."

12. For the other three years also, viz. assessment year 2003-04 to 2005-06, the assessing officer while completing the assessment under S.143 of the Act, following the stand taken for the assessment year 2001-02 which has been upheld by the CIT(A) as well, completed the assessments rejecting the claims of the assessee inter-alia under S.80-B of the Act of Rs.2,04,68,538 for assessment year 2003-04; of Rs.15,14,971 for assessment year 2004-05; and of Rs.15,73,700 for assessment year 2005-06.

13. On appeal, the CIT(A), by the orders impugned in the appeals for assessment year 2002-03 to 2005-06, mainly following the appellate order dated 1.2.2005 for the assessment year 2001-02, upheld the disallowance of the assessee's claims for relief under S.80IB of the Act in respect of pelletisation unit for these years as well.

14. The learned counsel for the assessee besides reiterating the contentions urged before the lower authorities, submitted that conversion of mash feed into pellet feed is a manufacturing activity and not a processing activity. The learned counsel for the assessee submitted that the contention of the AO that two separate units does not exist is incorrect, as it is not necessary that all the units should have both mash and pellet plants and the pellet plant can function independently & can use mash feed bought out and convert the same to pellets as mash feed is very well available in the market. It is contended that the AO denied the assessee's claim of deduction u/s 80IB on the ground that both the units are in adjacent buildings as the same is not proper to deny the claim of the assessee on the said ground that jut because both the units are in adjacent buildings it cannot be said that they are one unit for the purpose of denying deduction u/s 80IB. It is pointed out that the pellet unit is a new and separate unit having its own building and plant & machinery, therefore, the profit attributable to it are eligible for deduction u/s 80IB. It is submitted that even though the old machinery is used for manufacturing mash feed, the profit is separately computed for pellet unit and deduction u/s 80IB is claimed and, therefore, it cannot be said that the assessee has used old machinery o the mash feed unit.

15. The learned counsel referring to the definition of the term 'manufacture' under different enactments, submitted that in the absence of definition under the IT Act, the definition given in other enactments should be taken into consideration and section 80IA being a beneficial legislation requires liberal interpretation in the light of the decision of the Hon'ble Supreme Court in the case of Bajaj Tempo Ltd., 196 ITR 188. He further submitted that since the words 'manufacture' and 'production have not been defined in the Act, one would have to go by the ordinary meanings of the words for deciding whether an activity constitutes manufacturing, one has to see whether the original product is consumed in the manufacture of new product and a commercially new product emerges out of the same. For the said propositions, he relied upon the following case laws:-

i) In the case of Pio Food Packer's case, 46 STC 63, the Hon'ble Supreme Court defined the term 'manufacture' in the following words:

"*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*"

ii)) In the case of State of Rajasthan Vs. Rajastha Agricultural Input Dealers Association, AIR 1996 2179, the Hon'ble Supreme Court held that " when food grain becomes seeds it loses its character of being consumed as food by human being or animals. Therefore, the Apex Court held that the process involved in bringing in a distinct

product and hence the AO is not correct in mentioning that the same product has been produced.

iii) In the case of EID Parry, 218 ITR 713 Mad, it has been held that processing of seeds would amount to manufacture as raw seeds after processing are converted into seed for cultivation and no longer fit for human consumption.

iv) In the case of M/s OK Play (India) Ltd. Vs. CIT, 180 ELT 291, the Honb'e Apex Court observed that conversion from granules into moulding powder amounts to 'manufacture'. In the case of M/s Kores India Ltd., 174 ELT 7, the Court held that cutting of ribbons into smaller size and spooling them amounts to manufacture. In the case reported in 80 STC 249, the Apex Court held that fibre is different from coconut husk and by applying commercial parlance principle, the said process was held to be a manufacturing activity. Similarly in the case of Pio Packer, 46 STC 63, the Apex Court applied commercial parlance test.

v) The Apex court in the case of India Cine Agencies v CIT (308 ITR 98) has held that cutting Jumbo rolls of photographic films into small flats and rolls in desired sizes amounts to manufacture or production eligible for deduction u/s 80HH and 80I.

vi) The Apex Court in the case of Aspinwall & Co Ltd v CIT (251 ITR 323) has held that processing raw coffee berries and converting into coffee beans would amount to manufacture or production entitled to Investment Allowance.

vii) In the case of Bajaj Temp Ltd. (supra), the Court held that in the absence of definition under the IT Act the

definition given in other enactments should be taken into consideration and section 80IA being a beneficial legislation it requires liberal interpretation.

viii) In the case of Sesa Goa Ltd., 271 ITR 331, the Court observed that extraction and processing of iron ore amounts to production within the meaning of section 32A(2)(b)(iii) of the Act.

16. The Learned Departmental Representative on the other hand, strongly supported the orders of the lower authorities. The learned DR submitted that there is no change of composition in the mash feed and the pellet feed and, therefore, the conversion of physical shape of the feed involves only processing and no manufacture. He further submitted that mash feed which simply changes shape on pellitisation and remains the same commodity even after the aforesaid processing meant for the same use cannot be said to have undergone the process of manufacture. It is submitted that there cannot be any dispute that the poultry feed, whether in the form of a powder (mash feed) or in the form of a particular solid shape (pellet) remains nothing but poultry feed and no new and different commodity, in a commercial sense, is born from out of such pellitisation The ingredients remain the same. The utility remains the same, so also the intended consumers and customers. The only that such feed undergoes is a change of shape, i.e. from power form to solids of fixed shape. He, therefore, submitted that the process is that of simple, 'solidification' and nothing else. In the support of his submissions, the learned DR has relied upon the following case laws:

1) Venkateswara Hathcery Pvt. Ltd., 237 ITR 174
2) CIT Vs. Relish Foods, 237 ITR 59 (SC)

3) CIT Vs. T.S. Sundaram, 237 ITR 61 (SC)
4) DXN Herbal Mfg. (India) P. Ltd. Vs. ITO, 110 ITD 99 (Chennai)
5) CIT Vs. Srinivasa Sea Foods Ltd., 284 ITR 348 (AP)
6) CIT Vs. Parry Agro Industries Ltd., 284 ITR 353 (Kel.)
7) Kwal Pro Exports Vs. ACIT, 297 ITR (AT) 49 (Jodhpur)

17. We have considered the rival submissions and perused the orders of the lower authorities. We have also carefully examined the case-law relied upon by the parties before us.

17.1 We have perused the entire process by which pellet feed is obtained and shall enumerate the same seriatum:

1) Various feed ingredients such as maize, rice bran, de-oiled soya etc., along with certain feed premixes are mixed in different proportions and then ground to form a course powdered material which is called mash feed.

2) Such feed undergoes a certain kind of physical changes before again converted into small pellets. The mash feed is carried through an elevator to a pellet making machine where it gets **mixed with steam** and then forced through a press containing small holes to convert the feed into small pellets.

3) At the stage of grinding, grinding is done to reduce particle size of ingredients.

4) After grinding the ingredients will be sent to mixture by elevators in the process of pre-mixing.

5) In the last process of mixing, all ingredients like vitamins, mineral and medicines are properly mixed to provide a balance diet as prescribed by the Nutritional Doctor who is stationed at the plant 24 hours.

8) After mixing, conditioning is done where after collecting mixed feed from the feeder, the feed is conditioned with dry steam in the conditioner. Perfect mixing of dry steam with feed results in a consistent pellet.

9) Gelatinized starch is gummy, desirable to form a pellet as a binding agent. The conditioned feed formed into pellets by pressing the through a die (3mm, 4.5 mm & 6 mm).

10)Pellet Cooling is also a part of conditioning, where, cooling is achieved by passing draft of air through the pellets to evaporate moisture resulting in temperature reduction.

11) After the cooling process, the material is being passed to the Pellet Crumbler through pellet elevator, where the crumbler is used to crumble a whole pellet into smaller size.

12) In the Sieving process, Sieve is used to grade the pellets by size and the feed goes to bagging bin and depending upon the requirement, packing is done in the bags of 50 to 70 kgs.

17.2 We have examined the stages through which the mash feed is converted into pellet feed. In deciding the issue whether there has been any manufacture of pellet feed, we are inclined to hold that there has been only processing' while the production of pellet feed is done by following various stages, namely, i) batch weighing, ii) grinding, iii) mixing, iv) conditioning with steam, v) pelleting, vi) cooling, vii) crumbling and, finally, viii) packing.

17.3 The learned counsel for the assessee also submitted a chart showing the difference between the pellet feed and mash feed, which is a note on the difference in the quality of the feed and does not throw any light on the manufacture and is of any significance while discussing whether there is manufacture for the purpose of claiming deduction u/s 80IB.

17.4 The question before us is whether 'Mash Feed' undergoes any process of manufacture to produce an article or thing called 'Pellet', which is different and distinct from the input material. In this case though the original commodity has undergone certain degree of change still it has not lost its original identity and hence, it cannot be said that it amounts to manufacture. The word 'manufacture' and 'produce' applied to bringing into existence something which is different from its components. In the case of Casino P. Ltd., 91 ITR 289, the Hon'ble Kerala High Court held that doing something to the goods to change or alter their form can be termed as processing and does not amount to manufacture. The Hon'ble Supreme Court has drawn the distinction between the processing and manufacture in the case of Union of India Vs. Delhi Cloth & General Mills Co. Ltd., AIR 1963 SC 791 and it was held in that case the word manufacture used as verb is generally understood to mean bring to 'existence a new substance' and does not mean merely to 'produce some change in the substance'.

17.5 In the conversion, whether the identity of the commodity before and after it undergoes various processes/changes remains the same. In manufacturing a new and different article must emerge from the original substance and new substance does not mean that merely a change in the substance is effected. Manufacture and production implies that

something is brought into existence which is different from its components. Moreover, the 'term' processing is distinguishable from the term 'manufacture' and mere processing does not amount to change loosing its original identity whereas in manufacturing, the original articles loose their identity. In the case under consideration, doing something to substance to change or alter their form can be termed as processing and does not amount to manufacture as a production of a new substance does not mean merely to produce some change in the substance. There is no change in the basic component except a physical change in the structure and shape in the form of pellet as no new substance comes into existence.

17.6 The ITAT coordinate bench held in the case of M/s Daftri Agro, as follows:

> "*We find merit in the observations of the Assessing Officer that the assessee firm processed only raw seed to final seeds and hence the assessee firm has not taken any manufacturing activity and, therefore, the assessee is not eligible for claim of deduction u/s 80IB of the Act. It is well settled law that process of standardization and pasteurization of milk does not amount to manufacture/production for the purpose of claiming deduction u/s 80IB of the Act (B.G. Chitale Vs. DCIT [2008] 115 ITD 97 (Pune)(SB). Like wise the processing of mineral water also not amounts to manufacture. The activity of the assessee firm is similar to the activity referred to in the case of B.G. Chitale (supra). Hence, the decisions relied on by the learned counsel for the assessee is distinguishable on facts. Hence, the appeal of the revenue is allowed.*"

17.7 In the case of Shri Raghavendra Industries Vs. ITO, the coordinate bench in ITA No. 324 to 326/Hyd/04 for ASSESSMENT YEAR 1996-97, 1997-98 & 1999-2000, order dated 30/11/2005, held as under:-

> "8. *Even on merits we are unable to persuade ourselves to take a different view from the view already taken. In the*

assessee's own case for assessment year 1998-99 (ITA No. 175/Hyd/2001 dated 11th Sept. 2003) the Bench has considered the issue in great detail and applied the decision of Supreme Court in the case of N.C. Buddiraja & Company (supra) while holding that no new commodity has come into existence with a new chemical composition. Though the contention of the assessee, supported by case-law, is attractive, none of the cases were directly on the point. In other works, the issue as to whether pressing of cotton into bales would amount to manufacture or not was not the subject matter of consideration. It is not out of place to mention that the definition given under the Central Excise Act and under different enactments have taken in its fold any process, in order to consider it as a manufacturing process, whereas the Hyderabad Bench has taken into consideration the dictionary meaning of the term 'manufacture' and the decision of the Apex Court, wherein the term 'manufacture' was interpreted, to come to the conclusion that the activity of pressing the cotton and converting into bales would not amount to manufacture. Consistent with the view taken by the Hyderabad Bench in the assessee's own case we uphold the order of the learned CIT(A) and dismiss the appeals filed by the assessee."

17.8 In the case of Chowgule & Co. Pvt. Ltd. Vs. Union of India [1981] 47 STC 124 (SC) wherein blending of different qualities of ore of the contractual specifications was held not to involve the process of manufacture.

17.9 In the case of CST Vs. Bombay Traders, [1976] 38 STC 286 (Bom), the Hon'ble Court held that plain-cashew nuts were fried and salted, still to be cashew-nuts.

17.10 In the case of Sandoz (India) Ltd. Vs. Union of India [1980] Tax LR 2332 (Bom.), the Hon'ble Court held that formulation of foron pigments in the form of Foron liquid does not amount to manufacture.

17.11 In the case of Bheraghat Mineral Industries Vs. Division Dy. CST [1990] 79 STC 156 (MP), the Court held that preparation of chips and powder from dolomite lumps held not manufacture.

17.12 In the case of Sri Vinayaka Oil Industries Vs. State of Karnataka [1993] 91 STC 253 (Karn.), the Court held that dehusking of tamarind seeds to give white tamarind 'pappu' is merely a change of form and conversion of tamarind seed into powder does not result in the manufacture of new article.

17.13 In the case of Appeejay Pvt. Ltd. Vs. CIT, [1994] 206 ITR 367, 381 (Cal.), the Court held that the blending of different kinds of tea does not constitute manufacture or production of articles.

17.14 In the case of CIT Vs. Tata Locomotive Engineering Co., 68 ITR 325, the Court held that the word or expression manufacture and produce apply to bringing into existence of something which is different from its components.

17.15 In the case of Raghbir Chand Somchand Vs. Excise and Taxation Officer, 11 STC 149 (P&H), the Court held that where the commodity retains a substantial identity through the processing stage is said to have been processed.

7.16 In view of the above discussion and the ratios laid down by the respective Hon'ble High Courts/Supreme Court, it can be concluded that the activity followed by the assessee-firm is a processing activity and it is not entitled for the deduction under s. 80-IB of the IT Act, 1961. Thus, we confirm the orders of the CIT(A) passed in respective appeals and dismiss the

assessee's claim u/s 80-IB of the Act, in A.Ys 2001-02, 2002-03, 2003-04, 2004-05 & 2005-06 respectively.

18. In the appeal for the assessment year 2002-03, viz. ITA 1013/Hyd 2006, the assessee has raised further grounds questioning the legality and validity of the reopening of the assessment under S.147 of the Act.

19. The facts are, in brief, that the assessee had filed its return of income on 30/10/12 showing income of Rs. 1,49,84,101/-, which was processed u/s 143(3) on 26/11/2002. However, from the enclosures filed with the said return, the AO noticed that thought the assessee had claimed deduction for an amount of Rs. 1,73,95,115/- u/s 80IB of the Act, in respect of its Pellet Feed Division, such claim was not supported by any documentary evidence in as much as no profit & loss account had been filed by the assessee in support of the said claim. The AO, therefore, noted that the assessee had not satisfied the condition specified in the Act for grant of deduction u/s 80IB of the Act. From the TDS certificates filed with the said return, the AO further noticed that though the assessee had received a sum of Rs. 6,41,450/- towards professional fees from Venkateswara Hatcheries Ltd., the same had not been offered as income. In view of the above finding, the AO had reopened the assessment u/s 147 of the Act. In response to the notice issued u/s 148 of the Act, the assessee had filed revised return on 10/11/05 showing same amount of income as shown in the original return filed on 30/11/02. After considering the information furnished by the assessee and following the stand taken in the assessment order passed for AY 2001-02, wherein it was held that the

assessee is not eligible for claim of deduction u/s 80IB, which was confirmed by the CIT(A), the AO disallowed the claim of deduction u/s 80IB. Also disallowed the claim foreign travel expenditure of Rs. 3,98,174/- on the ground that there was no satisfactory explanation with supporting evidences on the said claim. Aggrieved, the assessee carried the matter in appeal before the CIT(A).

20. Before the CIT(A), the assessee filed written submissions and the contents regarding claim of deduction u/s 80IB stated in the written submission were the same as stated in AY 2001-02 and followed various case laws in support of its claim, which were extracted by the CIT(A) at 3 of his order. As regards, reopening of assessment, it was submitted that based on the reasons for reopening of the assessment as communicated by the AO vide letter dated 22/11/04, the assessee had filed its objection to the vide letter dated 04/03/05. However, the AO had passed the order without disposing off the objection raised by the assessee vide its letter dated 04/03/05. He, therefore, contended that it had resulted into lack of adequate opportunity to the assessee and violation of principle of natural justice. For this proposition, the assessee relied upon the judgment of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd Vs. ITO, 125 Taxman 963 and the Hon'ble Madras High Court in the case of K.S. Suresh Vs. DCIT, 279 ITR 61. It had been contended that non-consideration of the objection raised by the assessee vitiated the proceedings u/s 147 of the Act. The CIT(A) after considering the submissions of the assessee, disallowed the assessee's claim of deduction u/s 80IB following his order in the assessee's case for AY 2001-02. He also confirmed the action of the AO in reopening the assessment u/s 147. Still aggrieved, the assessee is in appeal before us.

21. We have heard the learned representatives of the parties and perused the record. In the case under consideration, the AO reopened the assessment u/s 147 for the reasons that the assessee had not substantiated its claim u/s 80IB by way documentary evidence and also not satisfied the condition specified in the Act for grant of deduction u/s 80IB. As also in respect of the foreign travel expenditure. The assessee's contention before the CIT(A) was that the assessee filed its objection to the reassessment vide its letter dated 04/03/05, however, the AO had passed the order without disposing off the objection raised by the assessee, thus, resulted into lack of adequate opportunity to the assessee and violation of principle of nature justice. In the case of GKN Driveshafts, the Apex Court has held as under:-

> "*When a notice under section 148 of the IT Act, 1961, is issued, the proper course of action for the noticee is to file the return and, if he so desires, to seek reasons for issuing the notices. The AO is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the AO is bound to dispose of the same by passing a speaking order.*"

From the reading of the said decision, the assessee is initially to file a return and after that the assessee can ask reasons for issuing the notices. In the present case, the assessee has not at all filed the return of income in the first place to seek for reasons recorded and hence the reopening u/s 148 is valid. Thus, this ground of appeal of the assessee is dismissed.

22. Similarly, in the appeal for assessment year 2003-04, viz. ITA No.1014/Hyd/2006, the assessee has raised grounds contesting the levy of interest under S.234D of the Act.

23. The assessee filed its return of income on 30/10/2004 and claimed refund and the return was processed u/s 143(1) on

15/06/2004 and granted refund of Rs. 52,93,783. Later on, the case was selected for scrutiny and the assessment order u/s 143(3) dated 27/01/06 was passed raising demand of Rs. 87,74,0389/-. The AO levied interest u/s 234D of Rs. 1,63,215/- on the said demand. The CIT(A) confirmed the action of the AO. Still aggrieved the assessee is in further appeal before us.

24. Before us, the learned counsel for the assessee submitted that in the relevant assessment year the provisions of section 234D did not exist since the same has been introduced with effect from 01/06/2003.

25. We have heard the parties on this issue. In this connection, the Delhi Special Bench of the Tribunal in the case of M/s. Ekta Promoters (P) Ltd., 305 ITR 1 (AT)(Del.), held that the provisions of section 234D having been inserted in the statute with effect from 1st June 2003, the same are applicable only from the assessment year 2004-05. Since the assessment year under consideration is 2003-04, we delete the interest charged u/s 234D and this ground of appeal is allowed.

26. Similarly, in the appeal for assessment year 2001-02, viz. 493/Hyd/2005, the assessee has raised grounds contesting the quantification of the relief under S.80IB of the Act, as Ground No. II.

27. Ground No. 2 in A.Y. 2001-0-2 on the issue of computation of deduction allowable u/s 80IB, which has been raised by the assessee is dismissed. As the very deduction u/s 80IB has been disallowed, this ground becomes infructuous and the same is dismissed as infructuous.

28. The assessee has raised another issue in AY 2001-02 regarding disallowance of foreign travel expenses of Rs. 6,65,977/-, as Ground No. III.

29. The AO noted that the assessee had incurred an amount of Rs. 6,65,977/- towards foreign travelling expenses of two persons, who were neither employees of the firm nor the partners. The explanation of the assessee is that the purpose of expenditure was to explore the feed market in USA and Europe and to meet the overseas suppliers of feed material. According to the assessee, the expenditure was allowable u/s 37(1) as the same was incurred wholly and exclusively for the purpose of business. After considering the said explanation, the AO disallowed the claim of the assessee on the ground the two persons travelling to United States and Europe at the cost of the assessee firm, did not have any relationship with either the business affairs of the assessee or any other activity relating to earning of income of the assessee.

30. On appeal, before the CIT(A), the assessee reiterated the submissions as made before the AO. The CIT(A) noted that it transpired during the discussion that the two persons travelling abroad were actually friends of partners and they had no connection whatsoever with the firm, much less as business connection. The CIT(A) following the Hon'ble Jurisdictional High Court in the case of Transport Corporation of India, 256 ITR 701, (wherein it was held that the burden of proof to justify a particular expenditure lines on an assessee), held that the claim cannot be said to be admissible u/s 37(1) of the Act since the assessee was not in a position to justify the visit of the two

persons in terms of furthering the business nor was it in a position to furnish the details of the activities supposed to have been undertaken by the said persons abroad with an intention to either promote or to further the business of the assessee, the claim was rightly disallowed. Aggrieved, the assessee is in appeal before us.

31. Before us, the learned counsel for the assessee submitted that the expenditure was incurred wholly and exclusively for the purpose of the business and hence is an allowable deduction u/s 37(1). He further submitted that it is not always necessary that the expenses have to be incurred on employees or partners. The expenditure incurred on business associates is also business expenditure allowable u/s 37(1) of the Act.

32. On the other hand, the learned DR has relied upon the orders of the authorities below.

33. After hearing both the parties and perusing the record as well as the orders of the authorities below, it is observed that neither before the revenue authorities nor before us the assessee failed to prove that the expenditure of Rs. 6,65,977/- incurred towards foreign travelling expenses of two persons is wholly and exclusively for the purpose of its business by way of documentary evidence. Therefore, we find no infirmity in the order of the CIT(A) in confirming the action of the AO in disallowing the said foreign travel expenses. Accordingly, we uphold the order of the CIT(A) and dismiss this ground of appeal of the assessee.

34. In the result, appeals being ITA No. 493/Hyd/05 for AY 2001-02, ITA No. 1013/Hyd/06 for AY 2002-03, 869/Hyd/08 for

AY 2004-05, and 870/Hyd/08 for AY 2005-06 are dismissed, and appeal being ITA No. 1014/Hyd/06 for AY 2003-04 is partly allowed.

Order pronounced in the court on 26/04/2012.

Sd/-	Sd/-
(Chandra Poojari)	**(Asha Vijayaraghavan)**
Accountant Member.	**Judicial Member.**

Dt/-26th April, 2012

Copy forwarded to:

1. M/s. Venkateswara Feeds & Feeds, Venkateswara House, Hyderguda, 3-4-808/808/1, Hyderabad 29.

2. Asst Commissioner of Income-tax, Circle 4(1) Hyderabad
3. Commissioner of Income-tax(Appeals)-V Hyderabad
4. Commissioner of Income-tax, IV Hyderabad
5. Departmental Representative , ITAT, Hyderabad

B.V.S.

By Order

//true copy//

Asst. Registrar,
I.T.A.T., Hyderabad