

*Khandappa Magdum's case* (supra) is only for the proposition that a female member of HUF inherits an interest in the HUF property by virtue of section 6(1) of the Hindu Succession Act and on a notional partition under that section, she is not only entitled to inherit the interest as a heir to the deceased but also the share she would have been notionally allotted as per Explanation (1) to section 6 of the Hindu Succession Act. Similarly, reliance placed upon *Alladi Kuppuswamy's case* (supra) to hold that a wife could claim partition/had a coparcenary interest, is also wrong. In *Alladi Kuppuswamy's case* (supra), their lordships were dealing with a special provision contained in the Hindu Women's Rights to Property Act, 1937. Section 3(2) and (3) of this Act, by fiction, created a coparcenary interest and right to claim partition in a female. Otherwise, it has been held that but for the Act of 1937, a Hindu women had no right or interest in a Hindu coparcenary. She was neither a coparcener nor a member of a coparcenary and had no interest in it, except the right to get maintenance; that she could not, as of right, demand partition of the coparcenary property.

25. Present case is not being considered under the Act of 1937. Their lordships of the Bombay High Court in P.G. Chaware's case (supra) were also not considering a case under the Act of 1937 and, therefore, *Alladi Kuppuswamy's case* (supra) has no applicability.

26. For the reasons stated above, we answer the question referred to us in the affirmative i.e. against the assessee and in favour of the revenue.

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R.N.R.

*Before Ashok Bhan, N.K. Sodhi & N.K. Agrawal, JJ.*

THE COMMISSIONER OF INCOME TAX,  
JALANDHAR—Appellant

*versus*

M/S KISSAN FRIENDS ICE FACTORY AND COLD  
STORAGE,—Respondent

I.T.R. No. 94 of 1984

29th September, 1997

*Income Tax Act, 1961—S. 32—A(2), b(11)—Investment Allowance—Cold storage business—Machinery installed therein—Whether entitled to claim investment allowance as provided under*

*the section.*

*Held*, that the controversy before the Supreme Court in Delhi Cold Storage (P) Limited's case related to the meaning of words 'industrial company' as laid down in Section 2(7) (c) of the Finance Act, 1973. The said words had been defined in the said section. According to that definition, a company, which was mainly engaged in the business of the manufacture or processing of goods, was an industrial company. The Supreme Court specifically examined whether an assessee, running a cold storage plant, was engaged in the manufacture or processing of goods and then answered in the negative. The ratio of the decision would be, therefore, relevant to decide whether a cold storage plant was eligible for investment allowance under clause (b)(iii) of Section 32-A(2) of the Act. As has been seen, the emphasis in clause (b)(iii) was on an industrial undertaking which had installed a new machinery or plant for the business of manufacture or production of any article or thing. Thus, the question to be decided is whether the assessee, running a cold storage, was engaged in the business of manufacturing any article or thing. The Supreme Court has, in Delhi Cold Storage (P) Limited's case laid down that an assessee, running a cold storage, was not engaged "in the manufacture or processing of goods". The law laid down by the Supreme Court, therefore, settles the controversy. The view taken by this Court in S. Warriam Singh Cold Stores' case cannot, therefore, be said to be laying down a good law.

(Para 22)

B.S. Gupta, Senior Advocate, with Sanjay Bansal,  
Advocate, *for the Petitioner*

Rakesh Garg, Advocate and P.S. Thiara,  
Advocate, *for the Respondent.*

### **JUDGMENT OF FULL BENCH**

*N.K. Agrawal, J.*

1. The following question of law was referred to this court by the Income-tax Appellate Tribunal, Amritsar (for short, "the Tribunal") under section 256(1) of the Income Tax Act, 1961 (for short, "the Act") :—

"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is right in law in holding that cold storage business is covered under the language of section 32-A (2) (b) (ii) of the Income-Tax

Act, 1961, and that machinery installed in cold storage is entitled to the Investment Allowance ?"

2. The assessee, as a partnership firm, commenced business of cold storage during the previous year relevant to the assessment year 1979-80, and derived income from cold storage. Accounting year ended on 31st March, 1979. Return was filed, declaring loss of Rs. 49,160. That return was revised and loss was enhanced to Rs. 61,630. The assessee claimed investment allowance on the purchase of new machines at Rs. 44,370 under section 32-A of the Act. Assessing Officer was of the view that cold storage of the assessee was not an industrial undertaking manufacturing or producing any article or thing and was, therefore, not eligible for investment allowance. The assessee went in appeal and the Commissioner of Income-Tax agreed with the assessee and granted investment allowance. Department's appeal against the order of the Commissioner was dismissed by the Tribunal. Investment allowance is allowed to an industrial undertaking on the purchase of a new machinery or plant for the purposes of its business of manufacture or production. Such allowance is admissible where the machinery or the plant is owned by the assessee and it is wholly used for the purpose of business carried on by the assessee. Such machinery or plant should be installed or first put to use in the relevant year.

3. The relevant sub-clause in section 32-A, which is required to be examined, reads as under :—

“32-A(1) \* \* \* \* \*

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

(a) \* \* \* \*

(b) any new machinery or plant installed after the 31st day of March, 1976 :—

(i) \* \* \* \*

(ii) \* \* \* \*

(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 :

\* \* \* \* \*

It is obvious from a perusal of the aforesaid sub-clause that a machinery or plant is eligible for investment allowance when installed for the purposes of any specified business. It is necessary that the assessee must be running an industrial undertaking and must be engaged in the business of manufacture or production of any article or thing. Such article or thing should be one other than that specified in the List in the Eleventh Schedule to the Act. An assessee may be an industrial undertaking but that does not by itself make the assessee eligible for this allowance unless the plant and machinery are installed for the purposes of manufacture or production of an article or thing. The word "thing" would mean a property as distinguished from a person. This word comprehends incorporeal assets also. The plea of the assessee is that the provision did not place any restriction on the type of article or thing manufactured by the assessee. The assessee claimed that the cold storage produced cool air which was utilized for the purpose of preservation of articles and goods. Plant in a cold storage thus fulfilled the condition of producing an article or thing.

4. Shri Rakesh Garg, learned counsel for the assessee, has argued that the working of the cold storage was in the nature of manufacturing process inasmuch as the assessee produced cool air/cold temperature for carrying on the business of preservation of articles and goods. Since it was in the nature of an intermediate manufacturing process, it fulfilled the requirement of sub-clause (iii) of clause (b) of section 32-A (2) of the Act.

5. Shri Sanjay Bansal, learned counsel for the Department, has opposed the assessee's contention with the plea that the cold storage plant was like any plant or machinery whereby nothing was produced. Such a plant kept the goods in a preserved condition. The function of the cold storage was not to manufacture or produce any article or thing but only to preserve an article or thing stored there. Shri Bansal has further argued that, if it was assumed that a cold storage plant manufactured or produced cool air, it did not produce it as a distinct commercial commodity which had a market where it could be sold. Cool air produced in the cold storage plant was not an article or thing sold by the assessee but it was used to preserve commodities. An article or thing produced by a machinery or a plant must have a market where it could be sold. A plant

cannot be said to be producing or manufacturing articles or things which have no market. The assessee, operating a cold storage, required cool air for the purpose of carrying on his business. He thus produced cool air for the preservation of articles or things and did not sell it as a distinct commercial commodity. Shri Bansal has attempted at making a point in favour of the Department with the plea that oxygen gas and cooking gas were distinct commercial commodities having a market and, therefore, an industrial undertaking, producing oxygen gas or the cooking gas as a distinct commercial commodities having a market and, therefore, an industrial undertaking, producing oxygen gas or the cooking gas as a distinct commercial commodity, shall be eligible for investment allowance. An assessee, operating a cold storage, cannot call himself to be running a business as a manufacturer or producer. He will be called to be running a business of cold storage for preserving articles or things. Cool air, produced by the cold storage plant, was not a saleable commodity and was simply used for the preservation of articles and goods.

6. It would be seen that the controversy revolves round sub-clause (iii) which requires the following conditions to be fulfilled:—

- (i) a new plant or machinery is installed in an industrial undertaking;
- (ii) it is for the purposes of business of manufacture or production; and
- (iii) it should manufacture or produce any article or thing, not being an article or thing specified in the Eleventh Schedule.

7. An assessee should, therefore, establish that it was an industrial undertaking and was engaged in the business of manufacture or production of any article or thing. The crucial question thus centres at the expression "manufacture or production of an article or thing."

8. A question, whether a cold storage plant was eligible for claiming investment allowance, as examined by the Madhya Pradesh High Court in *Mittal Ice and Cold Storage v. Commissioner of Income-tax* (1). It was noticed that the words "manufacture" and "production" were not defined in the Act and, therefore, the Legislature must be taken to have used that word in its ordinary

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dictionary meaning. In common parlance, the words "making", "manufacture" and "produce" are all used as synonyms and they relate to the turning out of finished products by the shaping or combination of raw materials or parts. It was observed that the words "manufacture" and "production" used in section 32-A of the Act have to be understood in the context as meaning bringing into existence a new and distinct commercial commodity and, therefore, that section could not be invoked by the assessee as the operation of a cold storage plant did not result in bringing into existence any new and distinct marketable commodity. The articles or goods preserved in a cold storage plant remained the same as they were prior to their preservation. There is no manufacture or production of "cool air" because no marketable product was brought into existence by the operation of a cold storage plant.

9. The aforesaid view has been followed by the same high Court in a subsequent case, *Commissioner of Income Tax v. Everest Cold Storage* (2). It was again held that the operation of a cold storage plant did not result in bringing into existence any new and distinct marketable commodity and, therefore, the assessee was not entitled to claim investment allowance under section 32-A of the Act in respect of the machinery or plant.

10. The Calcutta High Court had also an occasion to examine a similar controversy in *S.B. Cold Storage Industries Pvt. Ltd. v. Commissioner of Income Tax*, (3). It was observed that the expressions "processing" and "production" were not identical. It was noticed that section 32-A laid down that there should be manufacture or production of an article or thing. An assessee, which stored potatoes in its cold storage plant, carried out an operation of processing within the meaning of the said expression as understood in legal parlance. The object of putting the goods in cold storage was mainly to preserve their original condition and not to produce anything new. By such preservation, no new article was brought into existence. The Court reached a conclusion that, even if as a result of storage some chemical changes resulted in the potatoes, it was of no consequence because chemical changes could also occur even if the potatoes were not kept in the cold storage but stored in the ordinary way.

11. The Allahabad High Court in *Commissioner of Income*

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2. (1996) 220 ITR 241

3. (1987) 166 ITR 646

*Tax v. Nandlal Cold Storage* (4), has also followed the view taken by the Madhya Pradesh and Calcutta High Courts. It was noticed that "manufacture" implied a change but every change was not manufacture. Every change of an article was the result of treatment, labour and manipulation but something more was necessary and there must be transformation, a new and different article must emerge, having a distinct name, character or use. It was held that the operation of a cold storage did not result in bringing into existence any new or distinct article or thing. The article or thing, stored in a cold storage, retained its essential character and properties. That was the basic purpose of a cold storage.

12. The Patna High Court in *Commissioner of Income Tax v. Pawansut Cold Storage* (5), has also taken a view that the operation of a cold storage plant did not result in the manufacture or production of any article or thing and, thus, the condition precedent for claiming investment allowance did not exist in the case of a cold storage.

13. The Delhi High Court in *Delhi Cold Storage (P) Ltd. v. Commissioner of Income Tax, Delhi-I* (6), examined the case of an assessee who earned income by running a cold storage. The question, which arose before the Court, was whether the assessee-company was an industrial company for the purposes of section 2(7)(c) of the Finance Act, 1973 and the First Schedule thereto. The expression "industrial company" was defined, under section 2(7)(c) of the aforesaid Act, as a company which was mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining. The controversy revolved round the words "Processing of goods". It was to be seen whether the activity carried on in a cold storage was one of manufacture or processing of goods. It was noticed that the question had been settled by the decision of the Supreme Court in the case of *Chowqule and Company Pvt. Ltd. v. Union of India*, (7) Following the *ratio* laid down by the Supreme Court, it was held that the word "processing" implied that a commodity must, as a result of the operation, experience some change. The keeping of goods in a cold storage did not bring about any change whatsoever in the goods stored therein. To the contrary, they are kept intact in the same

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4. (1993) 199 ITR 327  
5. (1997) 225 ITR 51  
6. (1985) 156 ITR 97  
7. (1981) 47 STC 124

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nature and form in which they were originally stored. It was, therefore, held that running of a cold storage could not be said to involve processing of goods stored therein.

14. The aforesaid decision of the Delhi High Court was examined in appeal by the Supreme Court and the view taken by the Delhi High Court was upheld in *Delhi Cold Storage (P) Ltd. v. Commissioner of Income-Tax* (8). Reference was made to an earlier decision of the Supreme Court in *Chowqule and Pvt. Limited's case* (supra) wherein the word "Processing" had been examined. The view taken earlier in *Chowqule and Pvt. Limited's case* (supra) was followed with the following observation (at page 660):—

"We have already noted that processing is a term of wide amplitude and has various aspects and meanings.

In common parlance, "Processing" is understood as an action which brings forth some change or alteration of the goods or material which is subjected to the act of processing. The dictionary meaning of the term is not very different from this meaning in one sense, while various other meanings of wider amplitude are also available. The view taken by the Allahabad and Calcutta High Courts did not find favour with the three-Judge Bench of this Court and, in clear terms, the judgment indicates that processing involves bringing into existence a different substance from what the material was at the commencement of the process.

In a cold storage, vegetables, fruits and several other articles which require preservation by refrigeration are stored. While as a result of long storage scientific examination might indicate loss of moisture content, that is not sufficient for holding that the stored articles have undergone a process within the meaning of section 2(7)(c) of the Finance Act, 1973. The three-Judge Bench decision must be taken to have overruled the view of the Allahabad High Court in *Addl. CIT v. Farrukhabad Cold Storage*, (1977) 107 ITR 816 and that of the Calcutta High Court in *CIT vs. Radha Nagar Cold Storage (P) Ltd.*, (1980) 126 ITR 66."

15. Shri Rakesh Garg, learned counsel for the assessee, has argued that this Court has taken a view that a cold storage plant was eligible for investment allowance under section 32-A of the Act. The question, whether a cold storage plant was a factory or not for the purpose of depreciation allowance under section 32 of



the Act, was examined by a Division Bench of this Court in *Commissioner of Income-Tax, Patiala-II V. Yamuna Cold Storage*(9). The question there arose whether the assessee, engaged in the business of cold storage, was entitled to depreciation allowance at a higher rate on the building, treating it to be a factory. The Income Tax Officer had allowed 10 per cent. Depreciation on the building, treating it to be a factory and 15 per cent on thermo-cole insulation, treating it as a machinery. The Appellate Assistant Commissioner reduced the depreciation to 5 per cent on both the items, treating it to be a godown and, as such, an ordinary building. The assessee went in further appeal before the Tribunal which restored the order of the Income Tax Officer, holding that the cold storage was a factory building and that the thermo-cole insulation was covered by the definition of "plant" as defined in section 43(3) of the Act. The Court noticed that the words "factory building" had not been defined in the Act but, under the Factories Act, 1948, the word "factory" was defined to mean any premises where ten or more workers were working and in which a manufacturing process was carried on with the aid of power or where twenty or more workers were working and a manufacturing process was carried on without the aid of power. The words "manufacturing process" had been defined in section 2(k) of the Factories Act. The Court noticed that, according to the definition of the words "manufacturing process" in section 2(k), a process of treating the articles or goods to preserve them for their use or sale amounted to "manufacturing process" and, therefore, the process undertaken in the cold storage was fully covered by the definition. The Court arrived at the conclusion that the building of cold storage was a factory building on three grounds. First, the view taken by the Tribunal had stood the test of time for all the years and more so because no decision to the contrary had been brought to the notice of the Court. Second, the process undertaken in the cold storage was fully covered by section 2(k) (i) of the Factories Act and, third, the cold storage was subject to the control and supervision of the Factories Inspector and has been always recognized as a factory under the Factories Act.

16. It would be thus seen that the decision of this Court in *Yamuna Cold Storage's case* (supra) was on a different question as to whether a cold storage was a factory building entitled to depreciation at a higher rate.

17. In *Commissioner of Income Tax v. S. Warriam Singh Cold*

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*Stores* (10) the question of investment allowance was specifically examined by this Court and the view taken in *Yamuna Cold Storage's case* (supra) was followed. The Division Bench of this Court dissented from the view taken by the Calcutta and Madhya Pradesh High Courts in *S.B. Cold Storage Industries' case* (supra) and *Mittal Ice and Cold Storage's case* (supra) respectively. The Court concurred with the view expressed by the Tribunal in that case that a cold storage plant fulfilled the condition of producing an article or thing first and the thing produced is later on used for carrying on the business of preservation of articles and goods.

18. The view taken by this Court in *S. Warriam Singh Cold Stores' case* (supra) has been followed in *Commissioner of Income Tax v. Partap Steel Rolling Mills (Asr.) (P) Ltd.* (11). That was a case where the assessee had installed an oxygen plant for use in the production of iron and steel. The oxygen unit had been set up as a captive unit for the supply of oxygen to the iron and steel plant of the assessee. Eighty to ninety per cent of the oxygen was supplied to the steel plant. It was noticed that oxygen was an essential article for the production of iron and steel. The Income Tax Officer had refused to allow investment allowance on the new machinery purchased by the assessee for producing oxygen on the ground that it was not meant for producing iron and steel. The Court took the view that the assessee was entitled to the investment allowance in respect of the oxygen unit set up by it.

19. Shri Sanjay Bansal, learned counsel for the Department, has urged this Court to take a fresh look at the question whether a cold storage was engaged in the manufacture or production of any article or thing and not to follow the view taken earlier by this Court in *S. Warriam Singh Cold Stores' case* (supra) and *Partap Steel Rolling Mills' case* (supra). Since the controversy has been finally settled by the Supreme Court in *Delhi Cold Storage (P) Limited's case* (supra), the view taken by this Court is said to have been impliedly overruled and not approved.

20. The Delhi High Court in *Delhi Cold Storage (P) Ltd. v. Commissioner of Income-Tax, Delhi-I* (supra) considered the view taken by this Court in the case of *Yamuna Cold Storage* (supra) and observed that the said case, having been decided prior to the decision of the Supreme Court in *Chowgule and Company Private Limited's case* (supra), could no longer be considered to be lying

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10. (1989) 178 ITR 585

11. (1989) 45 Taxman Tax Reports 304

down a good law. The Allahabad High Court in *CIT v. Nandlal Cold Storage* (supra) and the Patna High Court in *CIT v. Pawansut Cold Storage* (supra) considered the view taken by this Court in *CIT v. S. Warriam Singh Cold Stores* (supra) and expressed their inability to agree with the same. The Allahabad High Court followed the view taken by the Calcutta and Madhya Pradesh High Courts and the Patna High Court followed the view taken by the Allahabad, Madhya Pradesh and Calcutta High Courts. It may be noticed that the decision of the Supreme Court in *Delhi Cold Storage (P) Limited's case* (supra) came on 14th August, 1991 whereas the Division Bench of this Court had decided the case of *S. Warriam Singh Cold Stores* (supra) on 23rd February, 1989. It is for these reasons that the view taken by this Court in *S. Warriam Singh Cold Stores' case* (supra) is required to be reconsidered.

21. It may be seen that the Supreme Court in *Delhi Cold Storage (P) Limited's case* (supra) followed its earlier view taken in *Chowgule and Co. Pvt. Limited's case* (supra) to find out the true meaning of the two words "manufacture" and "processing". The meaning given to the word "processing" and the test laid down by the three-Judge Bench of the Supreme Court in *Chowgule and Co. Pvt. Limited's case* (supra), to find out whether the operation amounts to "processing", were held to run counter to the conclusion reached by the Allahabad High Court in *Farrukhabad Cold Storage's case* (supra) and the Calcutta High Court in *Radha Nagar cold Storage (P) Limited's case* (supra). The High Courts of Allahabad and Calcutta had earlier taken a view that a cold storage was engaged in the business of processing of goods by applying a method of preservation whereby the goods were prevented from taking their normal course. The Supreme Court, however, did not consider the view of this Court taken in *Yamuna Cold Storage's case* (supra) or in *S. Warriam Singh Cold Stores' case* (supra). Since now the authoritative verdict has been laid down by the Supreme Court to the effect that a cold storage was not processing the goods, the controversy must be set at rest.

22. It may be noticed that the controversy before the Supreme Court in *Delhi Cold Storage (P) Limited's case* (supra) related to the meaning of words "industrial company" as laid down in section 2(7)(c) of the Finance Act, 1973. The said words had been defined in the said section. According to that definition, a company, which was mainly engaged in the business of the manufacture or processing of goods, was an industrial company. The Supreme Court specifically examined whether an assessee, running a cold storage

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plant, was engaged in the manufacture or processing of goods and then answered in the negative. The *ratio* of the decision would be, therefore, relevant to decide whether a cold storage plant was eligible for investment allowance under clause (b)(iii) of section 32-A(2) of the Act. As has been seen, the emphasis in clause (b)(iii) was on an industrial undertaking which had installed a new machinery or Plant for the business of manufacture or production of any article or thing. Thus, the question to be decided is whether the assessee, running a cold storage, was engaged in the business of manufacturing any article or thing. The Supreme Court has, in *Delhi Cold Storage (P) Limited's case* (supra) laid down that an assessee, running a cold storage, was not engaged "in the manufacture or processing of goods". The law laid down by the Supreme Court, therefore, settles the controversy. The view taken by this Court in *S. Warriam Singh Cold Stores' case* (supra) cannot, therefore, be said to be laying down a good law.

23. The view taken by this Court in *Yamuna Cold Storage's case* (supra) that cold storage building was a factory building for the purposes of depreciation allowance under section 32 of the Act. is not required to be examined by us in-as-much-as the question there was entirely different. In that case the question was examined in a different context and under a different provision of the Act. However, the view taken by the Division Bench in that case that cold storage was engaged in "manufacturing process" runs counter to the view taken by the Supreme Court in *Delhi Cold Storage (P) Limited's case* (supra) and, to that extent, it also did not lay down a good law.

24. The decision of this Court in *Partap Steel Rolling Mills' case* (supra) is, however distinguishable as the oxygen plant installed by the assessee in that case for producing oxygen used in the manufacturing process of iron and steel qualified as a plant for the purposes of business of manufacturing and production. That decision would not, therefore, stand over-ruled in the light of the view taken by the Supreme Court in *Delhi Cold Storage (P) Limited's case* (supra).

25. In the result, the question, referred to this Court, is answered in the negative, i.e. in favour of the Department and against the assessee. No order as to costs.

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J.S.T.