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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA No.519-2009

COMMISSIONER OF INCOME TAX
Date of decision : 11th August, 2009
...Appellant.

Through: Ms. Prem Lata Bansal, Advocate with
Mr. Paras Chaudhry, Advocate.

VERSUS

SOPHISTICATED MARBLES & GRANITE INDUSTRIES
....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE A. K. SIKRI

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers 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?

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JUDGMENT

A. K. SIKRI, J (ORAL)

1. The question that arose for consideration before the Tribunal was as to whether the process activity undertaken by the assessee would fall within the
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expression ‘manufacturing process’. Manufacturing process is not defined in the Income Tax Act though Finance Amendment Act, 2009 defines this expression. In the case titled as *Aspinwall and Company Limited Vs. CIT 251 ITR 323* the Supreme Court opined that in the absence of any expressed definition of the word ‘manufacture’ it has to be given a meaning as is understood in common parlance. It is to be understood as meaning to be the production of articles for use from raw or prepared materials by giving such materials new forms, qualities or combinations whether by hand labour or machines. If the change made in the article results in a new and different article then it would amount to manufacturing activity. Applying the test in the said case, the Apex Court held that process of manufacturing coffee beans from raw berries amounted to manufacturing activity as coffee beans produced from the raw berries had distinct identity. This process of manufacturing was explained in the following manner:

“The factual observation of the Tribunal as a result of the inspection found that the following nine processes are involved in curing of coffee:

- (1) Receipt of coffee from the estates;
- (2) Storage of coffee in covered godowns;
- (3) Drying of coffee to the required standards prescribed by the coffee board in drying yards;
- (4) Hulling/peeling/polising;

- (5) Grading of coffee mechanically;
- (6) Colour sorting;
- (7) Garbling and manual grading;
- (8) Out-turning of garbled coffee; and
- (9) Bulking

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

2. In the present case, the assessee is dealing with the manufacture and sale of marble stones. It has come on record that following activities are undertaken by the assessee:

- “(a) Purchase of block or slabs;
- (b) Cutting of blocks on gang saw machine of the approximate average size of 7’ x4’ (ft). We don’t have arrangements of cutting blocks for making slabs we get this work done through outside in our strict and direct supervision having constant check over quality control. Such slabs are brought to our factory. In case of purchase of slab itself the same comes to the factory of further manufacturing/processing activities;
- (c) The first process to make end product out of slabs is to put full size fibre on one side of the slab which is technically required to give support to the slab, otherwise it will get cracks or it gets broken;
- (d) In the slabs, there are invariably various holes and cracks. To make it marketable which is the main object of our business, this separate process is adopted. We have to mix up different types of chemicals marble powders or marble cutting for applying slabs to cover holes and cracks;
- (e) With mixing chemicals and powders etc., the chemical is applied on holes or cracks by which the same gets filled up.

After the holes and cracks are filled the slab is taken to the polishing machines;

(f) There are 5-7 stages of polishing the slab by different machines. In the polishing section different types of abrasives being 0-5 size are used in continuity to give proper effect of polish;

(g) In the process of polishing alongwith the use of abrasives continuous water is used;

(h) For bringing the shining on the slab, different types of tin oxide is applied and thus the slab comes to a finished stage;

(i) The finished slab is thereafter cut to proper size and shape from which the marketable size of slabs, moulded pieces, edged pieces and tiles are made;

(j) In case of moulded pieces of marble, a delicate and critical process is applied through grinding machines of different types which are used by good technical persons to make a specific type of moulded marble as per different types of cuttings, shaping and edging;

(k) To comply with the requirement of the customer, we have to prepare and suggest different types of designs and drawings and after the selection of our specific drawings and designs, the marble pieces are moulded;

(l) Invariably, our product being very costly, the customers require edging of the marble pieces. For this with the help of specific technicians and works we edge the process with the help of specific papers alongwith small tools and thus after edging the sides of the pieces becomes extremely smooth and good looking;

(m) During the state of moulding or even edging again certain scratches, holes or cracks are found in the pieces. The items being very much decorative and costly, the special treatment of covering the holes, scratches or cracks, the same are filled by applying specific chemicals, marble powders with matching colours as per the colour of the marble pieces;

(n) The normal thickness of the marble slab happens to be around 18-20 mm whereas in general, the new fashion has developed to use thinner size of the marble for which we again

cut the slabs into the average size of around 8-10mm. For this again cutting machine with the specific care is applied and thus the marble thinner thickness is produced”

3. It is clear from the above that after purchasing of blocks of slabs and getting them cut by cutting machines from outside, the process which is undertaken by the assessee is to put full size fibre on one side of the slab which is technically required to give support to the slab; to fill holes and cracks in these slabs to make it marketable by applying chemicals on holes and cracks; mixing of chemicals and powder for the aforesaid purpose is done by the assessee; polishing the slab by different machines; for bringing shine on the slab applying different types of tix oxide and thereafter cutting the finished slabs to proper size and shapes from which the marketable size of slabs, moulded pieces, edged pieces and tiles are made.

4. Applying the test formulated by the Supreme Court, this activity would clearly fall within the definition of ‘manufacturing process’. It is clear from the above that the raw form blocks are purchased and then those slabs undergo various processes before they become marketable and the final product is clearly much different from the product initially purchased by the assessee. Had it been a case of purchasing of blocks and slabs, cutting the same in that very form and thereafter selling those tiles, there could have

been an arguable case as to whether this amounts to manufacturing process or not. However, in the present case the activities are not confined to cutting of the blocks or slabs after the purchase but it has to undergo various processes with the help of machines and labour and after applying various kinds of chemicals. In these circumstances, we are of the opinion that the Tribunal rightly relied upon the judgment of the Rajasthan High Court in the case of *Arihant Tiles and Marbles Pvt. Ltd. Vs. Income Tax Officer 295 ITR 148(Raj.)*. In this case, Rajasthan High Court, after taking into account the various judgment of the Supreme Court and other High Courts observed as under:

“6. The language used in Section 10B is “manufacture or production”. This language is similar to the language used in Section 80-IB. The Supreme Court in CIT Vs. Sesa Goa Ltd. MANU/SC/1123/2004 had an occasion to consider the expression “production”. The Rajasthan High Court in Arihant Tiles & Marbles (P) Ltd. Vs. ITO (Supra) for the purpose of Section 80-IB was pleased to hold that the activity namely sawing of marble blocks and subsequent activities of cutting and polishing, will fall within the meaning of the expression “production” and therefore, assessee was entitled to benefit under Section 80-IB.

The expression “manufacture” or “production” are different expressions and the word “production” has a wider meaning as explained by the apex Court in Sesa Goa Ltd. (supra). In our opinion, the word “production” under Section 10B considering similar expression in Section 80IB will have to be given this wider meaning. Considering that the expressions are not

defined in the Act but the expressions are used in the same Act. The only difference between Section 80-IB and Section 10B is that Section 10B is applicable to a 100 per cent EOU, whereas Section 80-IB can be in respect of any unit. In our opinion, therefore, the expression “production” will have the same meaning as in Sesa Goa Ltd. (supra) and consequently, the question framed is devoid of merits.”

5. We may also note that Bombay High Court in the case of *CIT Vs. Fateh Granite (P) Ltd.* 314 ITR 32, was concerned with the identical issue, namely, manufacture of granite tiles and held the same to be a manufacturing process as is clear from the following discussion contained thereunder:

“The language used in Section 10B is “manufacture or production”. This language is similar to the language used in Section 80-IB. The Supreme Court in CIT Vs. Sesa Goa Ltd. MANU/SC/1123/2004 had an occasion to consider the expression “production”. The Rajasthan High Court in Arihant Tiles & Marbles (P) Ltd. Vs. ITO (Supra) for the purpose of Section 80-IB was pleased to hold that the activity namely sawing of marble blocks and subsequent activities of cutting and polishing, will fall within the meaning of the expression “production” and therefore, assessee was entitled to benefit under Section 80-IB.”

6. Ms. Prem Lata Bansal, learned counsel for the revenue has placed emphasis on the judgment of the Madras High Court in *C.I.T. Vs. Vijay Granite Pvt Ltd.* 267 ITR 606 (Mad.). In that case, the process was confined to cutting and polishing of granite slabs and on that basis the Madras High Court opined that it would not amount to production and manufacture of

articles. We have our reservation about the view taken in the aforesaid case as we are of the prima facie view that even polishing of granite slabs may amount to manufacturing process. However, it is not necessary for us to express our view finally in respect of that judgment as much as in the case in hand, apart from the polishing of the tiles, particularly various other processes as indicated above are also done including the filling up holes and cracks with chemical after mixing chemicals and powders at the premises of the assessee and putting full size fibre on one side of the slab which is technically required to give support to the slab. Therefore, in any case, that judgment has no application.

7. In view thereof, no substantial question of law arises in the present case.

8. Dismissed.

A.K.SIKRI, J

VALMIKI J.MEHTA, J

August 11, 2009
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