



\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ ITA No.604/2009  
% Date of Decision:03.09.2009

Commissioner of Income-Tax-V .....Appellant  
Through: Mr.Sanjeev Sabharwal

Versus

Ramsons Organics Limited .....Respondent  
Through Dr. Rakesh Gupta with  
Ms.Aarti Saini

CORAM :-  
THE HON'BLE MR.JUSTICE A.K.SIKRI  
THE HON'BLE MR. JUSTICE VALMIKI J. MEHTA

- 1.Whether 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?

A.K. SIKRI, J.

1. The assessee is engaged in running 100% Exports oriented unit at Dhoka, Gurgaon and dealing in the business of processing of stone, marble, granite etc. and exporting the same around the world. The assessee filed its return of income on 1.11.2004 declaring Nil income for the assessment year in question and same was assessed under the provisions of Section 143(3) of the Act. The assessee had claimed deduction under Section 10B of the



Income-Tax Act, which claim was turned down by the A.O. in his order while framing the assessment order dated 1.12.2006 holding that the assessee was neither engaged in the business of export of "computer software" nor engaged in the "manufacture or produce of article or thing", which was necessary ingredient to qualify for deduction under Section 10B of the Act. The ITAT, however, set aside the order of the A.O. holding that the activity of the assessee amounted to manufacture or produce of article or thing and thus, satisfy the requirement of Section 10B of the Act. The ITAT has affirmed this order thereby dismissing the appeal preferred by the Revenue against the order of the ITAT. This is how the Revenue is before us in the present appeal filed under Section 260A of the Act. Precisely the same business activity with which the assessee is dealing here, namely, processing of stone, marble, granite etc. came up for consideration before this Court in ITA No.519/2009 entitled *Commissioner of Income Tax v. Sophisticated Marbles & Granite Industries*. Vide orders dated 11.8.2009 dismissing the appeal of the Revenue it was held that such an activity amounted to manufacturing process. Following portion of the said



judgment, which equally applies to the present case as well, is reproduced:-

103

“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 tin 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."

2. When Mr. Sabharwal was confronted with the aforesaid judgment, his submission was that the matter needs consideration in view of Explanation 4 to Section 10B of the Income Tax Act, 1961. This explanation reads as under :-

"For the purpose of this section, 'manufacture or produce' shall include the cutting and polishing of precious and semi-precious stones."



3. This explanation was added by the Finance Act, 2003 with effect from 1.4.2004. He also referred to the Memorandum Explaining Provision in the Finance Bill, 2003 and in respect of this particular explanation, following justification is given in the said Memorandum for its inclusion :-

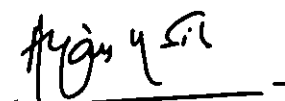
“With the view to give fiscal support to the export of precious and semi-precious stones, it is proposed to insert a new *Explanation 4* at the end so as to provide that for purposes of this section, the expression, “manufacture or produce” shall include the cutting and polishing of precious and semi-precious stones.”

4. Submission of Mr. Sabharwal, based on the aforesaid explanation, was that it is only cutting and polishing of precious and semi-precious stones which is covered by the expression '*manufacture or produce*' and, therefore, the benefit sought to be extended was only when the activity involves cutting and polishing of precious and semi-precious stones.
5. We are afraid, we cannot not accept this submission of learned counsel for the Revenue. In the first place, it is to be noted that there is no amendment in the provisions of Section 10B, it is only by way of explanation that the aforesaid provision is added. Secondly, the explanation clearly uses the expression that for the



purpose of this section '*manufacture or produce*' shall include the cutting and polishing of precious and semi-precious stones. It is, thus, an inclusive explanation added and, therefore, by no stretch of imagination it can be limited to the aforesaid activity alone.

6. With regard to the other activities, the authorities have applied general principles, as laid down by the courts in deciding as to whether a particular activity would amount to manufacturing activity or not. As discussed in detail in the aforesaid judgment, the process involved in the present case would clearly meet the requirement of manufacturing activity.
7. We are, therefore, of the opinion that no question of law arises and, thus, dismiss the appeal.

  
(A.K. SIKRI)  
JUDGE

September 03, 2009  
hp.

  
(VALMIKI J. MEHTA)  
JUDGE