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**IN THE HIGH COURT OF DELHI AT NEW DELHI****+ ITA No.250/2008****Date of Hearing: 11.08.2009**

Commissioner of Income-Tax

.....Appellant

Through: Mr.N.P. Sahni, Sr. Standing Counsel  
with Mr. P.C. Yadav, Jr. Standing Counsel

Versus

M/s. Jackson Engineers Limited

.....Respondent

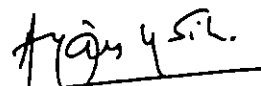
Through Mr. Y.K. Kapur

**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. (Oral)**

For orders, see file of ITR No.189/1989.

  
(A.K. SIKRI)  
JUDGEAugust 11, 2009  
hp.  
(VALMIKI J. MEHTA)  
JUDGE



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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+ ITR Nos.189/1989, 190/1989, 191/1989, ITA Nos.14/2001, 21/2001, 148/2001, 149/2001, 151/2001, 344/2002, 250/2008

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**A.K. SIKRI, J. (Oral)**

1. The issue involved in all these cases is common. In fact, it is in respect of the same assessee and reason for number of reference and appeals is the recurrence of the same issue in different assessment years. This is how all these cases were taken up together. For the sake of



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convenience we take note of the facts of ITR No.189/89, which relate to the assessment years 1984-85 and 1986-87 inasmuch as those are the earliest years in point of time giving rise to the issue involved, which is as under:-

“Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding that the assessee company is an industrial undertaking by ignoring the material fact that is mainly engaged in the business of assembling the goods and is neither manufacturing nor producing any article or things?”

2. The question which needs determination is as to whether the assessee is an industrial undertaking or not. Facts giving rise to this question are recapitulated below:-
3. The assessee assembles diesel engine, styled as Jakson for which different parts are purchased from different persons, which are number ten in all. The assessee on the one hand buys (i) engine; (ii) alternators; (iii) engine instrument panels; (iv) base plate; (v) fuel tank; (vi) control panels; (vii) batteries; (viii) measuring instruments and gauges; (ix) radiator/silencers; and other components and converts them into several types of engines of different horse powers. It is through manual labour that the said diesel engines are manufactured



or assembled. The assessee produced details of establishment expenses and details of salaries paid to staff.

4. On the basis of the aforesaid activity undertaken by the assessee, the claim of the assessee is that it is an industrial undertaking inasmuch as after purchasing the different components and assembling thereof with the help of its own workers/manual labour and altogether new article comes into existence thereby.
5. The contention of the Department, on the other hand, was that the assessee does not make any new engine except writing its own brand name, namely, 'Jakson Engineers' on the engines. According to the Revenue, it is only assembling of certain parts purchased from different parties and therefore, the assessee cannot be treated as an industrial undertaking. The Tribunal, while accepting the plea of the assessee, recorded the finding to the effect that from the perusal of the pictures given by the assessee in respect of diesel generating sets, assembled or manufactured by the assessee, it is clear that the same are named as "Jakson". The said engines are required by a large number of industrial houses for meeting their power requirements. Maybe that is a part of the completed machine, at a place it is written Jakson Engineers, but the logo which is placed mainly on the engine is "Jakson" and the same



are made in various kinds and ranges upto 1000 K.V.A. There is no controversy about the fact that there are as many as ten components of the said machine. After perusal of the chart regarding manufactured products of the assessee, the Tribunal found that it gives details of every class and kind of engines and alternators procured and purchased by the assessee in the manufacture of diesel generating sets and all these engines have different capacities. It also observed that the list of salaries and workers shows that the assessee is using different components which may not be, technically speaking, raw material but something between raw material and parts of engine which are assembled and put together to make a diesel generating set.

On this basis, the Tribunal observed:-

“.....There is no controversy about the fact that the assessee company purchases its alternators and engines separately from leading manufacturers, such as, Kirloskar, N.G.E.F., Cromoton Greaves, Jyoti Ltd. and Ashok Leyland etc. What the assessee assembles and manufactures through its assembling is not the same name which is assigned to the parts. The engine made by the assessee is known as diesel generating set with this process in view and there being a separate name in the market for what the assessee makes, the assessee cannot be treated as non-industrial undertaking.”



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For coming to this conclusion the Tribunal also relied upon various judgments.

6. Submissions before us remain the same. We are of the opinion that the case is directly covered by the judgment of the Apex Court in *Aspinwall & Co. Ltd. v. Commissioner of Income Tax, Ernakulam*, (2001) 7 SCC 525. In that case the assessee was engaged, *inter alia*, in curing of coffee for which it had installed coffee-curing plants. It had claimed investment allowance under Section 32-A of the Income-Tax Act which depended upon the issue as to whether the process of curing the coffee would amount to manufacturing or production activity. Answering the question in the affirmative, in favour of the assessee, the Court explained the expression "manufacture" as under:-

"13. The word "manufacture" has not been defined in the Act. In the absence of a 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 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 a manufacturing activity.

14. This Court while determining as to what would amount to a manufacturing activity, held in *CST v. Pio*



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*Food Packets*, 1980 Supp. SCC 174 that the test for determination whether manufacture can be said to have taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity, but is recognized in the trade as a new and distinct commodity. It was observed: (SCC p. 176, para 5).

“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.”

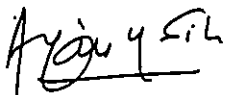
15. Adverting to facts of the present case, the assessee after plucking or receiving the raw coffee berries makes it undergo nine processes to give it the shape of coffee beans. The net product is absolutely different and separate from the input. The change made in the article results in a new and different article which is recognized in the trade as a new and distinct commodity. The coffee beans have an independent identity distinct from raw material from which it was manufactured. A distinct change comes about in the finished product.”

7. When we apply the aforesaid principle on the facts of the present case, the irrefutable conclusion would be that the respondent company is



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indulging in manufacturing activity. We, thus, answer the question formulated in favour of the assessee and uphold the view of the Tribunal on this aspect.

  
(A.K. SIKRI)  
JUDGE

August 11, 2009  
hp.

  
(VALMIKI J. MEHTA)  
JUDGE