

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SHRI GEORGE GEORGE, K, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

**ITA Nos.1436 & 1562(B)/2014
(Assessment years : 2010-11& 2011-12)**

The Deputy Commissioner of Income-tax,
Circle-1,
Udupi

Appellant

Vs

Shri Ashok Shetty,
Prop: M/s Ashok Impex,
Raj Towers, Opp: City Bus Stand,
Udupi-576 101
PAN No.ADBPM5671P

Respondent

**Revenue by : Dr. P.K.Srihari, Addl.CIT
Assessee by : Shri V. Srinivasan, CA**

**Date of hearing : 06-08-2015
Date of pronouncement : 14-08-2015**

ORDER

PER SHRI GEORGE GEORGE, K JM:

These two appeals instituted, at the instance of the Revenue, are directed against the consolidated order of the CIT (A), Mysore, dated 21.8.2014. The relevant **assessment years** are **2010-11** and **2011-12**.

2. The only grievance of the Revenue, for both the assessment years under dispute, is that ***“the CIT (A) was erred in allowing the assessee’s claim of deduction u/s 10B of the Act as the assessee’s***

business activity did not amount to manufacture or production of any article or thing as evidenced in s. 10A/10B of the Act.”

3. Briefly stated, the facts of the issue are as follows:

The assessee, an individual, was in the business of extracting granite blocks from the quarries and exporting the same to the prospective buyers. As could be seen from the relevant records, the assessee had, furnished his returns of income for both the assessment years under appeal, initially, claiming reduction u/s 10 A (5) of the Act and, subsequently, claimed deduction for the identical sums u/s 10B of the Act. In the meanwhile, the assessee's premise was subjected to a survey u/s 133A of the Act on 26.06.2012. During the course of survey and also at the time of the assessment proceedings, the AO was of the view that the assessee was not engaged in the activities of manufacture or production of an article or thing as envisaged either in s. 10A or 10B of the Act. It was, therefore, the stand of the AO that as the assessee was exporting granite blocks which were extracted from quarries and cut into dimensional blocks using wire-cutting machine and that the dimensional blocks so shaped were exported directly without being subjected to any further process like polishing or any value addition. In view of the above conclusion and also due process of proceedings u/s 143(3) r.w.s. 147 of the Act, as elaborately observed in the assessment order for the AY 2010-11, the AO had resorted to disallow the assessee's claim of deduction u/s 10B of the Act amounting to Rs.5,43,27,505/-, primarily on the ground that the assessee was neither engaged in manufacturing nor production of any article or thing and, thus,

the assessee had formed by splitting up or reconstruction of a business already in existence and it was formed by the transfer to a new business or machinery or plant previously used for any purpose. Likewise, for the AY 2011-12, the AO had disallowed, u/s 143(3) of the proceedings, a sum of Rs,3,67,26,269/- claimed u/s. 10B of the Act.

4. Aggrieved, the assessee took up the issues, among others, for both the AYs under consideration before the CIT (A). After due consideration of the assessee's elaborate submissions as incorporated in his proceedings, the CIT (A) had allowed the assessee's appeals on the issue for both the AYs under consideration, for the following reasons, the relevant portions of which are extracted, for ready reference, as under:

“4.14. Though these cases are prior to amendment to insertion of section 2(29BA) w. e. f. 1.4.2009 I am of the view that the process of extraction of rock and converting it into dimensional block is resulting block is resulting in transformation of the object or article or thing (here it is rock) into a new and distinct use and character. Hence, the provisions of s. 2(29BA) (a) read with the decision of the jurisdictional High Court and the Board's Circular No.729 dated 1.11.1995 cited above, clearly show that the process involved in the case of the appellant is 'manufacture' as defined u/s 2(29BA). The appellant also relied on Board's Circular No.5 dated 3.6.2010. Further, I find strength in the argument of the appellant that the process that the appellant had undertaken clearly points out the irreversible nature on the final end product from a raw material. When the rock is cut into blocks, it cannot be reversed to its original form. The appellant's reliance on the registration with Central Excise, the definition of manufacture in foreign trade policy, the fact that the place of manufacturing is bonded by the customs authorities as per the agreement, though or not conclusive, do add strength to the argument of the appellant. Prima facie, I am of the view that the activity of the appellant fits into the definition of s. 2 (29BA) as discussed above.

4.15. The second criteria pointed out by the AO is that the business of the appellant was established by splitting up or the construction of a business already in existence. One of the reasons cited by the AO is that same quarries were used by the appellant as was used by Ashok Exports. However, as seen from the discussion from this order, Mr. Ashok got license from Government of Karnataka for the quarries which were used for this business concerns. The quarries were not belonging to Ashok Exports. Under these circumstances, I am of the view that this does not amount to splitting up or the construction or reconstruction of a business already in existence. As explained by the appellant discussed in this order, the business of M/s. Ashok Exports is on a different model and the business of the appellant is as an EOU.

4.16. The third criteria for disallowance of deduction u/s 10B is that the appellant has not satisfied the third condition that it is not formed by transfer to a new business or machinery or plant previously used for any purpose. From the copies of the ledger accounts, balance sheets and fixed account schedules of Ashok Exports and Ashok Impex, it is clear that no machinery is transferred to the business of Ashok Impex either from M/s. Ashok Exports or from M/s. Varshu Impex. The machineries are all new purchase and not used earlier for any purpose. The suppliers are also unconnected. Under these circumstances, I find that the appellant has satisfied the third condition that it is not formed by the transfer to a new business of machinery or plant previously used for any purposes. Regarding the observation that the appellant has not paid Central Excise, it is explained by the appellant that since it is 100% EOU, registered as such, they are not liable for the same.

4.17. For the detailed discussions in this order, I am of the considered view that the appellant has satisfied the condition precedent for deduction u/s 10B and, hence, I direct the AO to allow the same for both the years.”

5. Aggrieved, the Revenue has come up before us with the present appeals. During the course of hearing, the learned DR submitted that the CIT (A) had failed to take cognizance of the fact that the assessee was only

extracting granite block from the parent rock without any further process like polishing or any value addition. It was, further, submitted that the CIT (A) also erred in appreciating the parameters of 'manufacture' laid down in s. 2 (29BA) as inserted by Finance (No.2) Act, 2009 w. e. f. 1.4.2009 as the assessee's business activity did not satisfy the parameters and, hence, it cannot be categorized as 'manufacture'. The learned DR also submitted that the CIT (A) erred in relying upon the decisions of the (i) Hon'ble Karnataka High Court in the case of M/s. Puttur Petro Products Pvt. Ltd [40 Taxman 430] and (ii) Hon'ble Apex Court in the case of CIT v. Sesa Goa [271 ITR 331 (SC)] as they were not applicable to the facts and the circumstances of the assessee's case. In conclusion, the Ld. DR prayed that the order of the CIT (A) deserves to be set aside on the above points and that of the orders of the AO be restored. On the other hand, the ld. AR reiterated more or less what has been represented before the First Appellate Authority. In furtherance, the ld. AR had placed strong reliance on the judgment of the Hon'ble Supreme Court in the case of CIT v. Sesa Goa (supra) which was, according to the ld. AR, directly applicable to the facts of the assessee's case under consideration.

6. We have carefully considered the rival submissions, perused the findings of the CIT (A) and also the case law on which the ld. AR placed reliance. The denial of exemption u/s 10B was resorted to by the AO on the premise that the process involved in the business of the assessee was removal of rock from parent rock by using wire cutting machine and thus, according to the AO, this did not amount to manufacture as defined u/s 2

(29BA) of the Act. Thus, the prime issue now for consideration before us is: Whether the process involved in preparing the dimensional blocks amounts to transformation of the object into a new and distinct object or article or thing having a different name, character and use? It was the claim of the assessee that he had extracted only a rock, but, what was exported was the dimensional squared dressed granite blocks and, thus, in between the rock underwent changes to form a distinct object with a different name – dimensional squared dressed granite block – which had different integral structure. He had, therefore, relied on the Hon'ble Apex Court's ruling in the case of Sesa Goa (supra). However, the AO took a contradictory view to that of the assessee on the ground that the facts in the assessee's case were different. After duly analyzing the views of rival parties, the CIT (A) took a stand that in the case of Sesa Goa (supra), *the process involved was that of extraction of iron ore, removal of mud etc., which was exported* and that in the case of the assessee also *there was extraction of blocks which were dressed into dimensional blocks*. He, had, accordingly, held that the ratio of the Hon'ble Supreme Court's ruling in the case of Sesa Goa (supra) was directly applicable to the facts of the assessee's case [reference: Para 4.12 of the CIT(A)'s order]. For ready reference, the relevant portion of the ruling of the Hon'ble Supreme court is extracted as under:

“We are, therefore, of the opinion that extraction and processing of iron ore amounts to ‘production’ within the meaning of the word in section 32A(2)(b)(iii) of the Act and, consequently, the assessee is entitled to the benefit of section 32A(1) of the Act....”

7. At this point of time, we refer to the findings of the earlier Bench of this Tribunal in the case of M/s Someshwara Stone Crushing Company v. ITO, W-1, Raichur [in ITA Nos. 848 to 851/Bang/2010 dated 20.9.2013 had an occasion to consider – Whether the assessee is eligible for claim of deduction u/s 80IA of the Act?. While analyzing the provisions of s. 80IA of the Act, the earlier Bench had averred that “14....*Though the word ‘manufacture’ has not been defined u/s 80IA of the Income-tax Act, we find that it has been defined under sub-sec. (29BA) of sec. 2 of the Income-tax.....*” After analyzing the said provisions and also taking cognizance of the decisions of (i) Honble Jurisdictional High Court in the case of Reliable Rock Builders and Suppliers v. State of Karnataka [49 STC 111 (Kar)]; and (ii) Hon’ble Apex Court in the case of Dy. Commissioner of Sales-tax (Law) v. Pio Food Packers (1980) 46 STC 63, the earlier Bench has recorded its findings as under:

“15. (on page 14).....According to us, more appropriate and relevant decision is the decision of the Hon’ble Supreme Court in the case of Lucky Minmat reported in 245 ITR 830 (SC), wherein the Hon’ble Supreme Court was considering the case of mining of lime stone and marble blocks and thereafter cutting the same to the size before being sold in the market and it was held that it is not manufacturing activity. In the said decision, the Hon’ble Court has held that the converting limestone into lime and lime dust or concrete by stone crushers could legitimately be considered to be a manufacturing process, while the mere mining of lime stone and marble and cutting the same before it was sold in the market could not be so considered.....”

8. After taking into account all the above facts into consideration and also the ruling of the Hon’ble Supreme Court and the earlier Bench of this Tribunal (supra), we are of the view that, as rightly observed by the CIT (A),

though the case [CIT v. Sesa Goa Ltd] was prior to amendment to insertion of s. 2 (29BA) of the Act w.e.f. 1.4.2009, the process of extraction of rock and converting it into dimensional block had resulted in transformation of the object or article or thing into a new and a distinct object or thing having a different name, character and use. Thus, the dimensional block was a different name with distinct use and character. Thus, the provisions of s. 2 (29BA) (a) of the Act [the ruling of the jurisdictional High court in the case of Puttur Petro Products P Ltd [40 Taxman 430 (Kar)] and also the Board's circular No.729 dated 1.11.1995] clearly show that the process involved in the case of the assessee was 'manufacture' as defined u/s 2 (29BA) of the Act. Therefore, the assessee was entitled for deduction u/s 10B of the Act as the assessee's business activity amounted to manufacture or production of an article or thing as envisaged in s. 10B of the Act for both the AYs under consideration. In substance, there is no infirmity in the findings of the CIT (A) which requires our intervention.

9. In the result, the revenue's appeals for the Assessment Years 2010-11 and 2011-12 are dismissed.

Pronounced in the open court on the 14th August, 2015.

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER
D a t e d : 14-08-2015
Place: Bangalore
am*

Sd/-
(GEORGE GEORGE,K)
JUDICIAL MEMBER

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A) Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order
AR, ITAT, Bangalore

