आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES"B", JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 789 &790/JP/2017 & 245/JP/2018
निर्धारण वर्ष/Assessment Year : 1997-98, 1998-99 &1996-97

Shri S.K. Golcha (HUF) Golcha Square, Sardar patel Marg, C-scheme, Jaipur.	बनाम Vs.	The ACIT, Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABHS 7245 E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri A.B. Dangayach (C.A.)
राजस्व की ओर से/ Revenue by : Smt. Neena Jeph (JCIT)

सुनवाई की तारीख/ Date of Hearing : 02/05/2019
उदघोषणा की तारीख/Date of Pronouncement: 13/05/2019

आदेश/ ORDER

PER: VIJAY PAL RAO, J.M.

These three appeals are directed against three separate orders of CIT(A), dated 02.08.2017 for the assessment years 1997-98 & 1998-99 and dated 29.11.2017 for the assessment year 1996-97 respectively. The assessee has raised common grounds in these appeals and the grounds raised for the assessment year 1997-98 are as under:-

1. On the facts and in circumstances of the case the learned CIT(A) was not justified in sustaining the disallowance of deduction of Rs. 8,98,004/- U/s 80-I &80-IA of the I.T. Act in respect of industrial unit No. 1 & 2 of appellant HUF.
2. The disallowance sustained u/s 80I/80IA is bad in law deserved to be quashed.
3. The appellant craves leave to add, alter, amend or withdraw any ground or grounds of appeal at or before the hearing."

2. The assessee HUF is the proprietor of M/s S. Zoraster & Co which runs two grinding units for soap stone. The assessee claimed deduction U/s 80I & IA which was allowed by the AO while completing assessment U/s 143(3) of the Act. Subsequently the assessment was reopened on the ground that the Hon'ble Bombay High Court in case of CIT vs. Premier Construction Co. 242 ITR 654 has held that grinding of soap stone is not manufacture so as to entitle the assessee for deduction U/s 80J. In the reassessment proceeding, the AO denied the claim of deduction U/s 80I and 80IA of the Act to the assessee by holding that the process of crushing boulders to obtain stones of smaller size termed as "gitti" cannot be regarded as a process manufacturing or production.

3. Before us, the ld. AR of the assessee has submitted that in this connection it is stated that the mixed soapstone lumps were purchased by assessee in the form of big builders. Thereafter segregation of soapstone lumps and unwanted material like dolomite, stone etc. is

done and whole of ore is sorted and re-handled. The manually sorted soap stone lumps are cleaned by brushes & checals etc. to remove the surface impurities and big boulders of soapstone lumps reduced in smaller size of around 12 to 8 inches pieces with the help of hammers. Then the clean and sorted soapstone lumps are washed and lumps is crushed into chips of 1 to 2 inches small pieces. Thereafter the different grades of cleaned sorted chips are blended in different proportions to get appropriate quality of required whiteness to be supplied to different industrial users as per their specifications/orders, which can be used by them, in talcum industries, paints, paper industries etc. Thus after pulverization soap stone lumps the product is known as tale. From the facts and circumstances of the case it is clear that original commodity has to undergo through various processes before it is converted into talc of required specification & sold to the industries user as per their order/specifications and it tantamount to production and eligible for deduction u/s 80I/80-IA of the Income Tax Act. He has relied upon the decision of Hon'ble Supreme Court in case of CIT vs. Arihant Tile and Marbles Pvt. Ltd. 320 ITR 79 as well as decision of Hon'ble High Court in case of CIT vs. Arihant Tiles & Marbles (P) Ltd. 352 ITR 20.

4. On the other hand, ld. DR has submitted that the assessee is not making any change in the composition of the goods even no chemical change is made by the assessee in this process of braking stone and grinding powder. Therefore, there is no new product is arrival than the input. He has relied upon the orders of the authorities below and submitted that the AO as well as ld. CIT(A) has allowed the decision of Hon'ble Supreme Court as well as Hon'ble High Court.

5. We have considered the rival submissions as well as the relevant material on record. The matter was carried to this Tribunal and this Tribunal vide order dated 29.08.2008 set aside the same to the record of the ld. CIT(A) for the assessment year 1996-97. Similarly the Tribunal vide order dated 30.06.2008 set aside the matter for the assessment year 1997-98 & 1998-99 to the record of the ld. CIT(A) for examination of the facts and to find out whether the process to which the original commodity is made to pass and as to how after applying those processes a product is distinct in identity from the commodity used which could be stated to be production or manufacture to make the assessee entitled for claim of deduction U/s 80-I and 80IA of the Act. In the set aside the proceeding the ld. CIT(A) has discussed this

issue in detail for the assessment year 1997-98 in para 3 (iii) to (viii) as under:-

"(iii) I have duly considered the assessment order, submission of the appellant and the material placed on record. It may be mentioned that during the year under consideration, the appellant was doing the business in the name of M/s S. Soraster & Co. and it had claimed to have two grinding units i.e. Unit No. 1 and Unit No. 2. It has claimed deduction u/s 80I and 80IA of the Act in respect of unit no. 1 and unit no. 2 for the year under consideration at Rs. 1,46,730/- being 20% of Rs. 7,33,650/- and Rs. 7,51,274/- being 25% of Rs. 30,05,095/- respectively. During the appellate proceedings, the appellant has stated the various processes in the manufacturing of talc ore soap stone power as under:-

- *Purchase of Talc ore.*
- *Segregation of Talc and unwanted material lime dolomite, stone etc. manually.*
- *Sorted talc lumps cleaned by brushes & checals etc. to remove the surface impurities.*
- *Big boulders to talc are reduced in smaller size or around 1 feet with the help of hammers.*
- *Clean and sorted talc lumps are washed and ore is crushed into chips of 1 to 2 inches.*
- *Different grades of cleaned sorted chips are blended in different proportions to get appropriate quality of required whiteness.*

(iv) It appears that the appellant has missed about the grinding of the chips to form soap stone powder as nothing has been stated about this activity. Thus, the soap stone powder or tale processing plant involves facilities for crushing, washing, sorting, analysis, milling (grinding, pulverizing) and packing etc. and for this purposes, the crushers, conveyor belts, pulverizers etc. are the minimum plant and machinery required. During the appellate

proceedings, the AR was required to file certificate in Form No. 1 OCCB from the Chartered Accountant in respect of both the Units, but certificate was filed in respect of Unit No. 2 only and that too was incomplete as the AR has not filed the portion of the certificate relating to the computation of amount of deductions u/s 80IA of the Act. It is pertinent to mention that in respect of Unit No. 1, no certificate in Form 10CCB from the Chartered Accountant was even furnished. In this background, the financial statements filed by the appellant in respect of Unit No. 1 and Unit No. 2 were analyzed as under:

Unit no. 1

(v) It is noted from the profit and loss account that there was opening stock of Rs. 25,526/- as on 01.04.1996 which was not tallying with the closing stock at Rs. 64,158/- as on 31.03.1996, which raises serious doubts about the correctness of the trading results and the books of accounts of the appellant. It has shown purchase of crude at Rs. 1,80,250/- and sale of powder at Rs. 4,75,720/- only and the major receipts were shown to the on account of job work charges at Rs. 31,78,091/- and the Net Profit was declared at Rs. 7,28,332/-.

Unit No. 2

(vi)(a) It is noted from the profit and loss account for the FY 1996-97 relevant to the assessment year under consideration that it has shown sale of Rs. 65,45,392/-, receipts on account of job work at Rs. Nil and the Net Profit at Rs. 30,05,095/-. It is interesting to mention that it has shown purchase of crude and powder at Rs. 7,71,238/- i.e. it was purchasing powder also, on the manufacturing or production of which, it was claiming deduction u/s 80lA of the Act. It is noted that it has claimed 'Dre ssing and Sorting Charges' at Rs. nil. It is interesting to note that as per depreciation chart of Unit No. 2 submitted by the

appellant there was only a pulveriser having opening WDV of Rs. 2,59,534/- as on 01.04.1996 and no other plant and machinery for crushing, conveying, washing etc., was available as is evident from the details of fixed assets as on 31.03.1997 furnished by the appellant during the appellate proceedings, which is being reproduced as under:

S.No.	Assets	Amount (in Rs.)
1.	Wxhaust & Cooler	5,443/-
2.	Fan	1,077/-
3.	Pulveriser	1,94,650/-
4.	Weighing Scale	25,397/-
	Total	2,26,567/-

(vi)(b) These facts itself prove that the appellant at least in Unit No. 2, was not having the required plant and machinery for converting the soap stone crude into soap stone powder. It was the contention of the appellant that it was mixing the different types of soap stone chips to produce the desired quality of soap stone powder. However, no evidence was furnished by the appellant to support such contention. It is noted from the profit and loss relating, to Unit No. 2 that it has claimed only a sum of Rs. 1,080/- on account of testing and analyzing expenses on total sales of Rs. 65,45,392/-, which is quite low. It is to be noted that in Unit No. 1, in the schedule of fixed assets, the opening WDV as on 01.04.1996 of 'Analysing Testing' was shown at Rs. 13,674/- whereas the same is conspicuous by its absence in Unit No. 2. Thus, all these facts clearly establish that in Unit No. 2, the appellant was not having the facilities required for carrying out various processes as claimed by it in its written submissions, as reproduced in the earlier part of this order.

(vii) It may be mentioned that at the relevant point of time, neither the 'production' nor 'manufacture' was defined in the Act. There is no dispute that the word 'production' has a wider connotation than the word 'manufacture' while every 'manufacture' can be characterized as 'production' every production need not amount to 'manufacture'. The word 'production' or 'produce' when used in juxtaposition with the word 'manufacture' takes in bringing into existence new goods by process which may or may not amount to 'manufacture'. Reliance is placed on the decision of Honble Apex Court in the case of CIT Vs N C Buddhiraja 204 ITR 413 (SC). In the instant case under consideration, no new product came into existence by the process of grinding the soap stone lumps into powder i.e. both remains soap stone and thus there was no `production'. It may be mentioned that in the case of Bheraghat Mineral Industries vs. Divisional Deputy Commissioner 1990 79 STC 156 MP, it was held by the Hon'ble High Court of Madhya Pradesh that "As the dolomite lumps, chips and powder are the same commodities, there is no manufacture by crushing lumps into chips and powder" which was upheld by the Hon'ble Apex Court wherein it was held that:

"We have read the judgment and order of the High Court under (see[1990] 79 STC 156 (MP) (Apex) appeal and we have heard learned counsel. We are satisfied that the crushing of dolomite lumps into chips and powder is not a process of manufacture that brings about a new commercial commodity. The view taken by the High Court must, therefore, be upheld. The appeal is dismissed."

(viii) Therefore, in view of the totality of facts and circumstances of the case, as discussed above, and in the absence of complete certificate from a chartered accountant in Form 10CCB, it is held that the appellant was not eligible for deduction u/s 80I and 80IA of the Act."

For the other two years, the ld. CIT(A) passed the identical orders. Thus, the ld. CIT(A) has denied the claim of unit No. 1 on the ground that primarily the certificate in Form No. 10CCB was incomplete to the extent of computing of amount of deduction was not mentioned in the said certificate and secondly unit no. 2 was not having the necessary infrastructure to carry out the activity has been claimed by the assessee. It is pertinent to note that as regards objecting of incomplete certificate in Form No. 10CCB it is only a minor mistake/error on the part of the Auditor for not giving the amount of deduction U/s 80I & IA of the Act, however neither the AO nor the ld. CIT(A) has disputed the correctness of computation of deduction as claimed by the assessee in the return of income. Further once, the books of accounts of the assessee are audited then the computation of deduction cannot be questioned without find out any apparent mistake. Therefore, this technical objection of the ld. CIT(A) in the certificate in Form No. 10CCB cannot be a reason for denial of deduction U/s 80I & IA of the Act in the reassessment and set aside proceedings when the AO has already allowed the claim of the assessee while passing the assessment U/s 143(3) of the Act. The AO has reopened the assessment to deny the claim only on the ground that in view of the decision of Hon'ble Bombay

High Court in case of CIT vs. Premier Construction Co. (supra) the activity carried out by the assessee does not ambit production or article. Hence, the AO never disputed the nature of actually activity carried out by the assessee. Thus, question of genuineness of the activity in the set aside proceeding that too arising from reassessment proceeding after allowing the claim in the assessment frame U/s 143(3) of the Act is not permitted. Hence, in the facts and circumstances of the case, we do not concur with view of the ld. CIT(A) on this objection of incomplete certificate in Form No. 10CCB.

6. As regards the capacity of carrying out the process by unit no. 2 of the assessee it is again pertinent to note that the AO did not question the genuineness of the activity but only due to the decision of the Hon'ble Bombay High Court the AO has proposed the disallowance the claim of deduction U/s 80I & IA of the Act. Further, the nature of activity whether it falls in the ambit of production or manufacturing has to be considered in light of facts that the assessee is using the raw material as boulder of soap stone which are then broken in the smaller size by manually. This process further includes removing of impurities from the surface as well as by dressing through mechanical tools the lumbs are washed by water to remove siliceous and other surface

impurities. Then undergo the screening process to segregate as per desire size before the same are grinded in mills and to produce different grades of soap stone powers. The ld. AR has invited our addition to the invoices to show that soap stone powder of different grade in micron is supplied by the assessee as per the requirement of the buyer. On perusal of these invoices we find that the assessee sold soap stone of different micron ranging from GB-5 to GB-20 to different industrial requirement. It is pertinent to note that the soap stone powder as produced/manufactured by the assessee is being used by various industries including paper, insecticide, cosmetic, textile, rubber, ceramic, paints, fertilizer etc. Thus the requirement of each industry is different as far as the size of the powder grain is concerned. Even otherwise the process of converting the stone which are boulders into soap stone power of different grade involved a series of activities and after undergoing this process the output is entirely distinct from the input. It is also a different marketable product/ article and in the process the assessee has added the marketable value. Though the process has not changed any chemical property of the goods, however the outcome is altogether distinct from the input. The Hon'ble Supreme Court in case of Lucky Minmat vs CIT 245 ITR 830 has upheld the

decision of Hon'ble Jurisdiction High Court reported in 226 ITR 245. The Hon'ble Supreme Court in case of CIT vs. Arihant Tile and Marbles Pvt. Ltd. 320 ITR 79 (supra) while considering an identical issue held in para 11 to 20 as under:-

> *"**11.** The main judgment on which the Department has placed reliance is the judgment of this Court in Lucky Minmat (P) Ltd. vs. CIT (2000) 162 CTR (SC) 404 : (2001) 9 SCC 669. In that case, the following question came up for consideration before the Tribunal :*
>
> *"Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that business activity of the assessee was in the nature of manufacturing or production so as to be entitled for relief under s. 80HH of the IT Act, 1961."*
>
> *The assessee in that case had the business of mining of limestones and marble blocks which thereafter were cut and sized before being sold in the market. It was held by this Court that the assessee was essentially in the business of mining of limestone. It was held that the activity of excavation will not constitute manufacture or production. It was further held that even the activity of cutting and sizing of marble blocks after excavation would not come within the ambit of expression 'manufacture' or 'production'. In the circumstances, this Court held that the assessee was not entitled to the benefit of s. 80HH of the IT Act. However, this Court distinguished the judgment of the Rajasthan High Court in the case of CIT vs. Best Chem & Limestone Industries (P) Ltd. (1993) 113 CTR (Raj) 298 : (1994) 210 ITR 883 (Raj). In that case M/s Best Chemical was engaged in the business of extracting limestone and its sale thereafter after converting it into lime and limedust or concrete which was held to*

be an activity of manufacture or production. The activity of conversion into lime and limedust, according to this Court, in the case of Lucky Minmat (P) Ltd. (supra) certainly constituted a manufacturing process. It was clarified in the said case that mere mining of limestone and marble and cutting the same before it was sold will not constitute "manufacture" or "production" but conversion into lime and limedust could constitute the activity of manufacturing or production. This distinction has not been taken into account by the Department while rejecting the claim of the assessee(s) for deduction under s. 80-IA of the IT Act, 1961.

12. *There is one more judgment of which Shri Bhattacharya, learned Addl. Solicitor General, appearing on behalf of the Department, has placed reliance. That is the judgment of this Court in Rajasthan State Electricity Board vs. Associated Industries & Anr. AIR 2000 SC 2382. In that case, the only question that arose for consideration was whether pumping out water from the mines came within the meaning of the word manufacture, production, processing or repair of goods so as to claim exemption from duty under notifications issued under s. 3(3) of the Rajasthan Electricity Duty Act, 1962. In that case, the first respondent was a registered public limited company, engaged in excavating stones from collieries and thereafter cutting and polishing them into slabs. The Rajasthan State Government levied excise duty under the provisions of the Act. A notification dt. 23rd March, 1962 was issued by the State under s. 3(3) of the Act granting exemption from tax on the energy consumed by a consumer in any industry in the manufacture, production, processing or repair of goods and by or in respect of any mine as defined in the Indian Mines Act, 1923. This notification was later on superseded on 2nd March, 1963 by which electricity duty came to be remitted in certain cases. One more notification was issued on 1st Nov., 1965 once again superseding earlier notifications. By cl. (c) of the said notification, the State of Rajasthan reduced the duty on the energy consumed*

in industries, other than those mentioned in cl. (a) of the notification which are in the manufacture, production, processing or repair of goods.

13. *The basic controversy which arose for determination in the said case was whether the activity of pumping out water from the mines came within the meaning of the words "manufacture", "production", "processing or repair of goods". While disposing of the matter, this Court, vide paras 1 and 10, stated that the specific case of the company was that the electrical energy was consumed for pumping out water from mines to make mines ready for mining activity. This aspect is very important. It needs to be highlighted that the case of the company was that pumping out water from mines to make the mines ready for mining activity came within the ambit of the term "manufacture". This argument was rejected by this Court, after examining various judgments of this Court on the connotation of the word "manufacture". In our view, the judgment of this Court in Rajasthan State Electricity Board (supra) has no application to the facts of the present case. Even if one reads para 17 of the said judgment in the light of paras 1 and 10, it is very clear that the only activity which came up for consideration before this Court in the case of Rajasthan Electricity Board (supra) was the activity of pumping out water from a mine in order to make the mine functional. In the present case, we are not considered (sic-concerned) with such activity. Therefore, in our view the judgment of this Court in Rajasthan Electricity Board (supra) has no application to the facts of the present case.*

14. *In the case of Aman Marble Industries (P) Ltd. vs. CCE 2003 (157) ELT 393 (SC), the question that arose for consideration was whether cutting of marble blocks into marble slabs amounted to manufacture for the purposes of Central Excise Act. At the outset, we may point out that in the present case, we are not only concerned with the word "manufacture", but we are also*

concerned with the connotation of the word "production" in s. 80-IA of the IT Act, 1961, which, as stated hereinabove, has a wider meaning as compared to the word "manufacture". Further, when one refers to the word "production", it means manufacture plus something in addition thereto. The word "production" was not under consideration before this Court in the case of Aman Marble Industries (P) Ltd. (supra). Be that as it may, in that case, it was held that "cutting" of marble blocks into slabs per se did not amount to "manufacture". This conclusion was based on the observations made by this Court in the case of Rajasthan State Electricity Board (supra). In our view, the judgment of this Court in Aman Marble Industries (P) Ltd. (supra) also has no application to the facts of the present case. One of the most important reasons for saying so is that in all such cases, particularly under the excise law, the Court has to go by the facts of each case. In each case one has to examine the nature of the activity undertaken by an assessee. Mere extraction of stones may not constitute manufacture. Similarly, after extraction, if marble blocks are cut into slabs per se will not amount to the activity of manufacture.

15. *In the present case, we have extracted in detail the process undertaken by each of the respondents before us. In the present case, we are not concerned only with cutting of marble blocks into slabs. In the present case we are also concerned with the activity of polishing and ultimate conversion of blocks into polished slabs and tiles. What we find from the process indicated herein-above is that there are various stages through which the blocks have to go through before they become polished slabs and tiles. In the circumstances, we are of the view that on the facts of the cases in hand, there is certainly an activity which will come in the category of "manufacture" or "production" under s. 80-IA of the IT Act. As stated herein-above, the judgment of this Court in Aman Marble Industries (P) Ltd. (supra) was not required to construe the word "production" in addition to the word*

"manufacture". One has to examine the scheme of the Act also while deciding the question as to whether the activity constitutes manufacture or production. Therefore, looking to the nature of the activity stepwise, we are of the view that the subject activity certainly constitutes "manufacture or production" in terms of s. 80-IA. In this connection, our view is also fortified by the following judgments of this Court which have been fairly pointed out to us by learned counsel appearing for the Department.

16. *In the case of CIT vs. Sesa Goa Ltd. (2004) 192 CTR (SC) 577 : (2004) 271 ITR 331 (SC), the meaning of the word "production" came up for consideration. The question which came before this Court was whether the Tribunal was justified in holding that the assessee was entitled to deduction under s. 32A of the IT Act, 1961, in respect of machinery used in mining activity ignoring the fact that the assessee was engaged in extraction and processing of iron ore, not amounting to manufacture or production of any article or thing. The High Court in that case, while dismissing the appeal preferred by the Revenue, held that extraction and processing of iron ore did not amount to "manufacture". However, it came to the conclusion that extraction of iron ore and the various processes would involve "production" within the meaning of s. 32A(2)(b)(iii) of the IT Act, 1961 and consequently, the assessee was entitled to the benefit of investment allowance under s. 32A of the IT Act. In that matter, it was argued on behalf of the Revenue that extraction and processing of iron ore did not produce any new product whereas it was argued on behalf of the assessee that it did produce a distinct new product. The view expressed by the High Court that the activity in question constituted "production" has been affirmed by this Court in Sesa Goa's case (supra) saying that the High Court's opinion was unimpeachable. It was held by this Court that the word "production" is wider in ambit and it has a wider connotation than the word "manufacture". It was held*

that while every manufacture can constitute production, every production did not amount to manufacture.

17. *In our view, applying the tests laid down by this Court in Sesa Goa's case (supra) and applying it to the activities undertaken by the respondents herein (reproduced herein-above), it is clear that the said activities would come within the meaning of the word "production".*

18. *One more aspect needs to be highlighted. By the said judgment, this Court affirmed the decision of the Karnataka High Court in the case of CIT vs. Mysore Minerals Ltd. (2001) 166 CTR (Kar) 142 : (2001) 250 ITR 725 (Kar).*

19. *In the case of CIT vs. N.C. Budharaja & Co. & Anr. (1993) 114 CTR (SC) 420 : (1993) 204 ITR 412 (SC), the question which arose for determination before this Court was whether construction of a dam to store water (reservoir) can be characterised as amounting to manufacturing or producing an article. It was held that the word "manufacture" and the word "production" have received extensive judicial attention both under the income-tax as well as under the central excise and the sales-tax laws. The test for determining whether "manufacture" can be said to have taken place is whether the commodity, which is subjected to a process can no longer be regarded as the original commodity but is recognised in trade as a new and distinct commodity. The word "production", when used in juxtaposition with the word "manufacture", takes in bringing into existence new goods by a process which may or may not amount to manufacture. The word "production" takes in all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods.*

20. *Applying the above tests laid down by this Court in Budharaja's case (supra) to the facts of the present cases, we are of the view that blocks converted into polished slabs and tiles*

> *after undergoing the process indicated above certainly results in emergence of a new and distinct commodity. The original block does not remain the marble block, it becomes a slab or tile. In the circumstances, not only there is manufacture but also an activity which is something beyond manufacture and which brings a new product into existence and, therefore, on the facts of these cases, we are of the view that the High Court was right in coming to the conclusion that the activity undertaken by the respondents-assessees did constitute manufacture or production in terms of s. 80-IA of the IT Act, 1961."*

Thus the Hon'ble Supreme Court after considering the decision in case of Lucky Minmat Pvt. Ltd. vs. CIT (supra) has held that the activity undertaken by the assessee processing of marbles blocks, cutting into regular shape and dimensions slab tools polishing of the same constitute manufacturing and production. The Hon'ble Jurisdictional High Court in the case of CIT vs. Arihant Tiles & Marbles (P) Ltd. (supra) wherein again considered this issue and held in para 14 to 24 as under:-

> ***"14.*** *In the present case, the assessing authority has disallowed the Benefit of deduction under s. 80HHC of the Act by observing that the bills raised by the assessees used term "dressed marble blocks" and in reality, the blocks were neither cut in uniform dimensional size nor polished. The ultimate cutting and polishing is to be done by the end user, so there is no logic behind marble blocks cut and polished before export. Thus, a finding was given that the export of the marble blocks by the assessee is not eligible for the deduction under s. 80HHC of the Act and claim of the assessees under s. 80HHC of the Act was disallowed.*

15. *The CIT(A) allowed appeals of the assessees by observing that as the marble is a mineral, cut and polished marble blocks shall be covered by entry (x) in the 12th Schedule, the assessees have filed copies of invoices, certificates etc. in support of polishing and value addition and hence, deleted disallowance/addition made by the assessing authority on this point.*

16. *The Revenue thereafter took the matter further before learned Tribunal but the learned Tribunal dismissed appeals of the Revenue on those grounds and averments and on the finding of learned CIT(A) upheld claim of the assessee-respondents for allowing deduction under s. 80HHC of the Act.*

17. *Thus, two appellate authorities below have concurrently held in favour of assessee-respondents that there was no breach of any of the conditions of s. 80HHC of the Act for grant of said benefit to the assessees. The fact remains that the assessees exported marble blocks, which were cut and polished and thus, satisfied requisite conditions for grant of benefit of deduction under s. 80HHC of the Act during the relevant years.*

18. *In the backdrop of these findings of facts, it is clear that the marble clocks come under the purview of item (x) of the Twelfth Schedule and the assessees had produced vouchers, invoices, certificates for cutting and polishing of the exported marble blocks having fulfilled the conditions included in the Twelfth Schedule along with Circular No. 693. Under the Twelfth Schedule, what is required is that only cut and marble blocks should be exported for entitlement to deduction under s. 80HHC of the Act.*

19. *The Act does not prescribe the degree or extent of 'cutting and polishing' to be applied to the marble blocks. Any process applied to the rough mineral, which adds value to marketable commodity would create an eligibility for the benefit of deduction. When rough marble is cut into dimensional blocks of uniform*

colour and size and also certain amount of dressing and polishing, which would remove various natural flaws such as colour variations etc., it would certainly amount to 'processing' of the marble and adds value to its marketability The Act does not specifically mention that the marble should be given final cut and final polish before being exported. If such a view is taken, the purpose of allowing the benefit to 'cut and polished mineral rocks' towards deduction under s. 80HHC of the Act would get frustrated.

***20.** From the facts of these cases, it is also clear that after undergoing the process of cutting and polishing, export of marble blocks fetched profit at higher rate, which is clearly high value addition and hence, the benefit of deduction under s. 80HHC of the Act during the relevant assessment years claimed by the assessees cannot be denied in view of decision of Karnataka High Court in God Granites (supra), which has also been affirmed by Hon'ble Apex Court in God Granites (supra).*

***21.** Learned counsel for the assessee-respondents also submitted that the High Court cannot go into questions of facts of the case and the appellant-Revenue has not taken contention that the findings arrived by the learned Tribunal on facts were perverse. In support of their contention, learned counsel relied on decision of Hon'ble Apex Court in the case of Sudarshan Silks & Sarees (supra), in which it was held as follows :*

"... Reversing the decision of the High Court, that the final fact-finding authority was the Tribunal and its decision on the facts could be gone into by the High Court only if a question had been referred on whether the finding of the Tribunal was perverse, in the sense that it was such as could not reasonably have been arrived at on the material placed before the Tribunal. In the absence of such a question, the High Court had to accept the finding of fact arrived at by the Tribunal and then proceed to decide the question of law referred

The Tribunal is the final Court of fact. The decision of the Tribunal on the facts can be gone into by the High Court in the reference jurisdiction only if a question has been referred to it whether the finding arrived at by the Tribunal on the facts was perverse in the sense that no reasonable person could have taken such a view."

22. *In the present case, finding of the learned Tribunal is in favour of assessee-respondents and it has been categorically held that the assessee-respondents are eligible for deduction under s. 80HHC of the Act for export of marble blocks, which were cut and polished. These findings are, indisputably, binding on this Court in view of law laid down by Hon'ble Supreme Court in the case of Sudarshan Silks & Sarees (supra). The appellant-Revenue has also not controverted that the findings arrived at by the learned Tribunal on facts are not correct or are perverse. Therefore, the findings of facts arrived at by the learned Tribunal need not be gone into by us.*

23. *Therefore, we are of considered opinion that the learned Tribunal was justified in allowing the deduction under s. 80HHC of the Act regarding export of cut and polished marble blocks during relevant years by the assessee-respondents. The appeals of the Revenue, therefore, are liable to be dismissed and the substantial question of law framed above is accordingly answered in favour of assessee-respondents and against the appellant- Revenue.*

24. *It is also pertinent to note that since the Circular No. 693, dt. 17th Nov., 1994 has already been referred to and discussed along with the substantial question of law framed in these appeals for the second substantial question of law framed in Appeal No. 29 of 2008 regarding legal effect of Circular No. 693, it is also held that said circular does not adversely affect claims of the assessee-respondents and the assessees are entitled to benefit of deduction under s. 80HHC of the Act. Thus, the second substantial question of law framed in Appeal No. 29 of 2008 is accordingly answered in favour of the assessee-respondent and against the appellant-Revenue."*

Thus having regard to the facts and circumstances of the case we find that the assessee is undertaking the process of broking the big boulders into small size of required dimension then removing the impurities from the surface of the lumbs through machinery boulders, the process is known as dressing process of lumbs then washed by water to remove siliceous and other impurities and therefore, these are crushed to reduce in the desired size and grade of soap stone powder. These different grades of soap powder is being used by different industries and the assessee is accordingly converting raw soap stone into powder as per requirement of industries. Therefore, the outcome being the soap stone powder of different grades is a different and distinct marketable article from the input which is raw boulder soap stone. Accordingly, the process which is undertaken by the assessee is production and manufactured eligible for deduction U/s 80I & IA of the Act. The ld. AR has also filed the balance sheet of these years to show the closing stock of the preceding year is reflected as opening stock of the subsequent year in the financial accounts of the assessee and therefore, the assessee has produced all the requisite details and material to show that the claim of deduction under the provisions of U/s

U/s 80I & IA of the Act is in order. Accordingly, we set aside the orders of the authorities below and allow the claim of the cassee.

7. Since, the identical issues are involved in all three appeals, therefore, in view of our findings, for the assessment year 1997-98, the claim of the assessee for assessment years 1996-97 and 1998-99 stands allo1wed.

In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 13/05/2019.

Sd/-	Sd/-
(विक्रम सिंह यादव)	(विजय पाल राव)
(Vikram Singh Yadav)	(Vijay Pal Rao)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

जयपुर/Jaipur
दिनांक/Dated:- 13/05/2019.
*Santosh.
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Shri S.K. Golcha (HUF), Jaipur.
2. प्रत्यर्थी/ The Respondent- ACIT, Circle-2, Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File {ITA No. 789 &790/JP/2017 & 245/JP/2018}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar