

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**'C' BENCH, CHENNAI**

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**ITA Nos.1307 to 1309/Mds/2016**

**Assessment Year : 2002-03, 2003-04 & 2004-05**

M/s. M.P.Peeyes Power Pvt. Ltd.,  
198, Linghi Chetty Street,  
Chennai – 600 001.

v. The Assistant Commissioner of  
Income Tax,  
Corporate Circle -4(1),  
Chennai – 600 034.

PAN : AACCM6096R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by :

Shri Saroj Kumar Parida, Advocate

प्रत्यर्थीकीओरसे/Respondent by :

Shri A.V.Sreekanth, JCIT

सुनवाईकीतारीख/Date of Hearing : 24.10.2016

घोषणाकीतारीख/Date of Pronouncement : 25.11.2016

**आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

All the three appeals of the assessee are directed against the common order passed by the CIT –8, Chennai dated 29.01.2016 and pertains to Assessment Year 2002-03 to 2004-05.

2. Shri Saroj Kumar Parida, the learned counsel for the assessee submitted that the assessing officer disallowed the claim of deduction under Section 80IA on the ground that the assessee has not employed more than 10 employees. The assessing officer found that one Shri. Sowrirajan was employed as Chowkidar. Therefore he could not have participated in the manufacturing process. The learned counsel for the assessee submitted that the Shri. Sowrirajan was in fact used in the manufacturing process and he used to stay in the premises of the industry. Therefore, he was also shown as Chowkidar. On a query from the bench, how the very same Shri. Sowrirajan was able to work for 24 hours, i.e. day time in the factory and night time as chowkidar, the learned representative for the assessee submitted that, that is the style of working of Shri. Sowrirajan. On a further query from the bench how the assessee could employ an individual for 24 hours without giving any leave or break as required under the labour legislation, the learned counsel for the assessee could not clarify anything. Referring to the judgment of the Allahabad High Court in CIT Vs. Sultan and Sons Rice Mill reported in 2005 (272) ITR 181, the learned representative submitted that when the manufacturing process was automatic, a person can also be employed in the manufacturing process as well as Chowkidar. On a query from the bench, the learned counsel for the

assessee clarified that the manufacturing process of diesel generator is not automatic and it has to be manually assemble by the technicians.

3. We have heard Shri A.V.Sreekanth, the learned department representative also. Admittedly, the assessee is engaged in the business of manufacturing of diesel generator. Diesel generator has to be assembled manually by technician. The assessee is a regular manufacturer of diesel generator. The attendance register of the respective employees and the extract of the pay role is not available on record. The assessing officer found that two casual workers was employed in the month of October and November, 2002. In the month of January and February, 2003, the assessee has employed only one casual worker. Therefore, the CIT(A) found that the assessee has not employed either ten or more than 10 employees in the manufacturing process. Referring to the consultant, the learned department representative submitted that the consultant was never shown as employee of the assessee. The consultant was to advice the assessee occasionally. Therefore, he cannot be construed as worker contributing his labour in the manufacturing process. Therefore, the CIT(A) has rightly confirmed the order of the assessing officer.

4. We have considered the rival submissions on either side and perused the relevant material available on record. This is a second round of litigation before this Tribunal. In the first round of litigation, the Tribunal remitted back the matter to the file of the assessing officer for re-

consideration. The assessing officer found that the assessee has employed less than 10 employees in the manufacturing process. Therefore, the assessee is not eligible for deduction under Section 80IA. Admittedly, the assessee engaged in the business of assembling the diesel generators. The question arises for consideration is how many employees are employed by the assessee in the process of manufacturing diesel generator. If the consultant and chowkidar was excluded, admittedly, the workers are less than 10. By placing reliance on the Allahabad High Court in Sultan and Sons Rice Mill (supra), the assessee claims that even casual labourers also have to be considered as employees . The casual labourers have to be considered as employees in the manufacturing process is not in dispute. In the case before the Allahabad High Court, the employees worked in the automatic rice mills where paddy was stored at one point of machine and when the machine was started the paddy was sucked by the machine automatically. The machinery installed by the assessee before the Allahabad High Court performs continuous functions of hauling, etc. and the end product is received at a particular area without any human intervention. In the case before us, admittedly, the process of manufacture is not automatic. It has to be assembled manually at each and every stage. Chowkidar, who has no technical knowledge about the generator cannot be construed as a employee in the process of

manufacturing. Moreover, the material evidence available on record shows that Shri. Sowrirajan was working in the factory in the day time and since he is staying in the premises of the assessee, he was also shown as chowkidar. This Tribunal is of the considered opinion that an individual cannot be forced to work for more than eight hours in a day and if the assessee compels Shri. Sowrirajan to work in the day time in the factory and as a chowkidar in the night, it would be contrary to the provisions of labour welfare legislation. Therefore, the explanation of the assessee is contrary to the existing statutory provisions. Therefore, the Tribunal is of the considered opinion that Shri. Sowrirajan stay in the factory premises in the night cannot be considered as employment in the manufacturing process.

5. Now coming to the consultant so long as the consultant is not shown as an employee of the assessee in its pay role, he cannot be considered as an employee participating in the manufacturing process. The assessee may consult several consultants for several purposes including legal and technical aspect. It is not known, what are the functions the consultant performed in the manufacturing process of the assessee. Unless and until, it is established that the consultant has performed a role in the manufacturing of diesel generator, this Tribunal

is of the considered opinion that such a consultant cannot be considered as an employee participating in the manufacturing process of the assessee. In those circumstances, this Tribunal do not find any reason to interfere with the order of the lower authority, accordingly, the same is confirmed.

6. In the result, all the three appeals of the assessee are dismissed.

Order pronounced on 25<sup>th</sup> November, 2016 at Chennai.

Sd/-

(डि.एस. सुन्दर सिंह)

**(D.S. Sunder Singh)**

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

**(N.R.S. Ganesan)**

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 25<sup>th</sup> November, 2016.

sp.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT,
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.