

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2098/Mds/2015

निर्धारण वर्ष /Assessment year : 2010-2011

The Deputy Commissioner of
Income Tax,
Corporate Circle 1(2)
Chennai 600 034

Vs.

M/s.Cauvery Stone Impex Pvt. Ltd,
No.8, 2nd Street, Ganapathy Colony,
Gopalapuram,
Chennai 600 086.

(अपीलार्थी/Appellant)

**[PAN AACCC 3310J]
(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Shri. B. Lakshminarayanan, IRS, JCIT.

प्रत्यर्थी की ओर से /Respondent by

: Shri. Philip George, Advocate

सुनवाई की तारीख/Date of Hearing

: 11-01-2016

घोषणा की तारीख /Date of Pronouncement

: 31-03-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The Revenue has filed an appeal against order of the Commissioner of Income-tax (Appeals)-1, Chennai in ITA No.427/13-14/A-I, dated 14.08.2015 for the assessment year 2010-2011 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The sole substantive ground raised by the Revenue that Commissioner of Income Tax (Appeals) erred in directing the Assessing Officer to allow deduction u/s.10B without appreciating the explanations and also definitions of 'manufacture' defined u/s.2(29BA) of the Act and the Finance Act, 2009.

3. The Brief facts of the case, the assessee is a company engaged in production and exporting of granite monuments having 100% EOU undertaking manufacturing granite products. The Return of income was filed on 30.09.2010 with total income of ₹50,94,176/-. Subsequently, the return was processed and under scrutiny norms, the case was selected and Assessing Officer issued notice u/s.143(2) of the Act with detailed questionnaire. In compliance to notice, the Id. Authorised Representative of the assessee appeared from time to time and filed details as per questionnaire and furnished clarifications. The Id. Assessing Officer found that the assessee company has claimed deduction u/s.10B of the Act ₹4,03,69,875/-. The company submitted Report in form 56G mentioning the nature of business of undertaking as Manufacturers of processed dimensional granite dressed, cut and polished granite slabs/granite monuments, molded bronze etc., The Id. Assessing Officer under impression that the business is only cutting and polishing granites into required shapes of monuments and issued

show cause notice based on the definition of "Manufacturer" U/sec.2(29BA) of the Finance Act, 2009 w.e.f. 01.04.2009. In compliance to show cause notice the assessee submitted in detail, the process involved in conversion of granite blocks into granite monuments and the process of conversion comes within the definition of "Manufacturing" and judicial decisions. The Id. Authorised Representative substantiated the process of manufacturing of monuments before the Assessing Officer referred at page 2 and 3 of assessment order and relied on the decision of *CIT vs. N.C. Bootharaja & Co 204 ITR 412 (SC)*, *Tamil Nadu Minerals Ltd vs. CIT 210 Taxmann 257* and *ITO vs. Arihant Tiles & Marbles Pvt. Ltd 320 ITR 79 (SC)*. The Id. Assessing Officer considered the submissions and interpreted the definition introduced in Finance Act, 2009 in his order as under:-

'manufacture' with its grammatical variations, means a change in a non-living physical object or article or thing,

- (a) Resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; of*
- (b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.*

The Id. Assessing Officer is under a presumption that the granite block does not change into a distinct object and the character and use for

placing it as memorial stones for the departed persons and it is not distinctively different from a granite block and gave a finding that granite block can be used as monuments and the final outcome of granite block into a granite monument as per the specification of the customer is very subjective and not objective. The process of sculpturing, engraving and carving of granite block into a memorial stone does not lose its character and usage and value addition is achieved with polishing, cutting, chipping into a different and distinct object. The Id. Assessing Officer has depend on legislative intent and usage of product and expressed unilateral opinion, that granite block/monuments can be placed as memorial stones and depends only in the eyes of observer. Further alleged that deduction u/s.10B of the Act cannot be granted for exporting granite block with little value addition and conversion of granite block does not fit into definition of "Manufacture" and distinguished the judicial decision relied by the assessee and rejected the deduction u/s.10B of the Act. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative argued the grounds on the definition of manufacture and usage of conversion of granite block into monuments.

The Id. Commissioner of Income Tax (Appeals) on perusal of the grounds of appeal, submissions, findings of the Assessing Officer on Finance Act 2009 has dealt elaboratively in page Nos. 2 to 5 of his order, The Id. Authorised Representative also explained with chart, raw material and resultant products in the process of manufacturing. Further, the assessee company also complied the conditions for claiming deduction u/s.10B and relied on the Supreme Court and High Courts decisions as under:-

- (i) Arihant Tiles and Marbles P. Ltd (320 ITR 79) (SC)*
- (ii) Ambika Recycling (2014) (45 Taxmann.com 386) (Guj)*
- (iii) Budharaha and Co. (204 ITR 412) (SC)*
- (iv) SesaGoa Ltd. (271 ITR 331) (SC)*
- (v) Vijay Shipping Corporation (314 ITR 309) (SC)*
- (vi) Tamilnadu Minerals Ltd (210 Taxman 257)*
- (vii) Gem Granities (141 Taxman 528)*
- (vii) John Brown Technologies India P. Ltd (257CTR370) Kar"*

The Id. Commissioner of Income Tax (Appeals) considered the facts, observations of the Assessing Officer and relevant materials, is of the opinion that prime facie granite block does not have value and used for manufacture of monument from raw material stage to packing and gave a elaborate findings in his order and allowed the assessee's appeal and observed at para 4.6.1 & 4.6.2 as under:-

"4.6.1 It is the plea of the appellant that the process undergone amounts to "manufacture" as per the definition in the Finance Act, 2009 which means a change in non-living physical object or article or thing, resulting in transformation of the object or article into a new and distinct object or article or thing, having a

different name, character and use. It is further pleaded that a granite block is not the same as a monument and it takes many stages and processes to make one such monument. It has been pleaded that alternatively the process amounts to production as is understood in the context of s.32A and 80IA of the Act. The original block, therefore, does not remain the original block and the final product is distinctly different. The appellant has relied on the ratios in N.C. Budhiraja case 204 ITR 412 (SC), Grace Exports v. ITO 254 CTR 449, CIT v. Fateh Granite P Ltd 314 ITR 32, CIT v. Salgromkar & Bros P Ltd 47 taxmann.com 21, ITO v. Arihant Tiles and Marbles P Ltd 320 ITR 79 (SC), CIT v. Sesa Goa Ltd 271 ITR 331 (SC), Vijay Shipping Corporation v. CIT 314 ITR 309 (SC), Gem Granites v. CIT 141 Taxman 528 etc. A reference to the decisions relied upon by the appellant amply makes it clear that the ratios are in favour of the appellant. In the case of Arihant Tiles (supra), it was held that the original block does not remain a marble block, it becomes a slab or a tile and held that cutting and polishing of marble amount to production or manufacture of an article or thing. In Vijay Shipping Corporation (supra) it was held similarly that conversion of jumbo rolls of photographic films into small flats and rolls in desired sizes amounts to manufacture or production of an article or thing.

4.6.2 Taking the entire conspectus of the case before me into account as discussed in the foregoing, I have no hesitation in holding that the activity engaged in by the appellant constitutes manufacture or production of article or thing within the meaning of s.10B of the I.T. Act. The AO's order which has held to the contrary cannot be upheld. The AO is directed to allow the deduction u/s 10B of the I.T. Act. This ground of appeal is allowed”.

Aggrieved by the order of the Commissioner of Income Tax (Appeals),
the Revenue has assailed an appeal with Tribunal.

5. Before us, the Id. Departmental Representative argued that
the Commissioner of Income Tax (Appeals) erred in not appreciating

the findings of the Assessing Officer and granite block will not change its original character by converting into monuments and such activity does not fall in definition of "Manufacture" inserted by the Finance Act, 2009. The assessee claimed deduction u/s.10B of the Act on little value addition to the block and process does not give any right to the assessee to claim deduction u/s.10B of the Act and relied on the findings of the Assessing Officer and prayed for setting aside the order of Commissioner of Income Tax (Appeals) and allow the appeal.

6. Contra, Id. Authorised Representative of the assessee reiterated the submissions of the assessment and appellate proceedings. The conversion of raw material into manufacturing of final product involves process. The finished product is identified and eligible for deduction u/s.10B of the Act and also relied on the Commissioner of Income Tax (Appeals) order and prayed for dismissal of appeal.

7. We heard the rival submissions, perused the material on record and judicial decision cited. The Id. Departmental Representative argued that the Commissioner of Income Tax (Appeals) has misinterpreted the definition of manufacture without going into actual process system as there is only value addition to the product and no new distinct item is produced. We find the submission of the

Id. Departmental Representative are restricted to the exclusive definition of manufacture without considering the process of chipping, cutting, polishing and milling which are necessarily carried out for monuments and fixed in the memory of departed soul such distinct product has emerged from raw material having separate identity and sold independently. The deduction u/s.10B of the Act applies to any undertaking as under:-

“(i) it manufactures or produces any article or thing or computer software;

(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of any undertaking which is formed as a result of the re- establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose”.

The assessee company has complied the conditions for claiming 10B deduction as there is no dispute except the allegation that process is not “Manufacture”. On perusal of definition u/sec. 2(29BA) of the Act as under:-

“manufacture” with its grammatical variation, means a change in a non-living physical object or article or thing –

(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use or ,
(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure”.

Manufacture definition has come into effect from 01.04.2009, further on combined reading of both the conditions of Sec. 10B of Income Tax Act and definition of manufacture. The main requirement of product is activity should be in manufacturing items and should result in transformation of the object or article or thing into a new and distinct object with different character. The granite raw block is mounted and with the process of cutting, clipping and polishing into a monument has distinct character and usage. The Id. Authorised Representative supported and relied on decision of *ITO vs. Arihant Tiles & Marbles (P) Ltd 320 ITR 0079 (SC)* were the conversion of marble block into polished slabs and tiles constitutes “manufacture or production” as it results in emergence of a new and distinct commodity, therefore, assessee undertaking such activity is entitled to the benefit of Sec.80IA. So, considering the apparent facts, definitions, usage and the process of manufacturing, and assessee’s own case on the nature of business of manufacturing of monuments and the process of conversion of raw material into finished product is

identified and saleable and we rely on Apex Court decision of *Arihant Tiles & Marbles (P) Ltd (supra)* where the lordship has considered conversion of marble block into polished slabs and tiles constitutes manufacture and same analogy apply for process of granite block. Therefore, we are not inclined to interfere with the order of Commissioner of Income Tax (Appeals) who has dealt the issue in detail viz-a-viz the explanations of the assessee and we uphold the order of the Commissioner of Income Tax (Appeals) and dismiss the Revenue appeal.

8. In the result, the appeal of the Revenue in ITA No.2098/Mds/2015 is dismissed.

Order pronounced on Thursday, the 31st day of March, 2016, at Chennai.

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-
(जी. पवन कुमार)
(G. PAVAN KUMAR)
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:31.03.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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