(2012) 08 RAJ CK 0162

Rajasthan High Court

Case No: IT Appeal No. 16 of 2010

Grace Exports		APPELLANT
	Vs	
Income Tax Officer		RESPONDENT

Date of Decision: Aug. 29, 2012

Acts Referred:

- Income Tax Act, 1961 - Section 10B, 260A, 32A(20)(b)(iii), 80HHC, 80I

Hon'ble Judges: Narendra Kumar Jain, J; Dinesh Maheshwari, J

Bench: Division Bench

Advocate: Anjay Kothari, for the Appellant; K.K. Bissa, for the Respondent

Final Decision: Partly Allowed

Judgement

1. This appeal under s. 260A of the IT Act. 1961 ("the Act") is directed against the judgment and order dt. 13th July, 2009 as passed by the Tribunal, Jodhpur Bench, Jodhpur in ITA No. 357/Ju/2008 for the asst. yr. 2004-05. This appeal has been admitted on the following substantial questions of law:

(1) Whether the Tribunal was justified in disallowing the benefit available to assessee under s. 10B of the IT Act and if so whether the view taken by the Tribunal is in conformity with the law laid down by their Lordships of the Supreme Court in Income Tax Officer, Udaipur Vs. Arihant Tiles and Marbles (P) Ltd.,

(2) Having granted the benefit to the assessee under s. 10B in the base year, whether it could be denied to the assessee for the subsequent 9 years ?

(3) Whether the Tribunal was justified on facts found by holding that the assessee is not entitled to claim the benefit under s. 80HHC on the goods in question ?

The factual aspects so far relevant for the purpose of determination of the questions aforesaid could be noticed in brief as follows : The appellant-assessee, said to be engaged in the business of manufacture and export of finished marble slabs and tiles, in

its return for the asst. yr. 2004-05 claimed exemption under s. 10B of the Act in respect of its Unit 2 as being 100 per cent export oriented undertaking with the essential submissions that it had been engaged in the activity of manufacturing, producing and processing of marble slabs and tiles from its own plants and machineries and whole of the manufactured material was sold outside the country. The claim of the assessee before the AO was that the definition as given in Exim Policy would be applicable in respect of "manufacturing" for the purpose of s. 10B of the Act but the same was not accepted by the AO with the observations that the conversion of marble blocks by sawing into slabs, tiles and polishing did not amount to manufacture of article or things while relying, inter alia, on the decision of the Hon"ble Supreme Court in Aman Marble Industries Pvt. Ltd. Vs. Collector of C. Ex., and that of this Court in Commissioner of Income Tax Vs. Lucky Mineral Pvt. Ltd., The AO also relied on a decision of Tribunal in ITA Nos. 86-87/Ju/2004 in the case of (2006) 104 TTJ 149

2. In appeal, the Commissioner of income tax (Appeals), Udaipur [the CIT(A)"] accepted the contention as urged on behalf of the assessee for allowing the claim under s. 10B of the Act with reference to the fact that such claim had been allowed in respect of the assessee in the appellate orders passed for the asst. yrs. 2001-02 and 2003-04. The Tribunal, however, proceeded to accept the appeal filed by the Revenue with the following observations and findings:

8. On careful analysis of the material made available before the Tribunal and in the light of the submissions made by learned Departmental Representative, it is found that undisputedly the assessee is carrying on the activity of processing of rough marble slabs by edge-cutting them and polishing them before exporting and it is an EOU not trading in domestic market. The assessee is contending that by activity of processing marble slabs by edge-cutting and polishing them amounts to manufacture in the light of the decision of the Hon"ble apex Court rendered in the case of Sesa Goa Ltd. (supra) wherein it was held that extraction and processing of mineral ore amounts to production within the meaning of the words in s. 32A(20)(b)(iii) of the IT Act. It was further held that excavating and processing of ore amount to production within the meaning of s. 80I of the Act and the learned CIT(A) while agreeing to the contentions of the assessee, gained further support from the definition of "produce" mentioned in sub-s. (1) of s. 10B which included from financial year 1st April, 2000 to 31st March, 2001, the word "manufacture" includes any process from the financial year 1st April, 2000 to 31st March, 2001 onwards this term "manufacture" has been replaced by the word "produce". The said word "produce" is not defined anywhere in the section. Therefore, taking into consideration in the normal sense of the word "produce" which is derived from the word "production" is taken by the learned CIT(A) as normal meaning of production which is involvement of manpower, skill and some degree of complexity. However, the Hon"ble apex Court in the case of Lucky Mineral (P) Ltd. (supra) has unambiguously held that mining of lime stones, marble blocks and cutting and sizing the same do not involve any manufacturing process. In the present case on hand, undisputedly the assessee is carrying on the activity of processing of

rough marble slabs by edge-cutting and polishing them before their export. So, in view of similarity of the facts in the present case on hand with that of the facts in the case of Lucky Mineral (P) Ltd. (supra), it is to be held that the activity of the assessee will not amount to manufacture, which word is used in s. 10B. Therefore, under these facts and circumstances of the case, we are of the considered view that the reasoning given by the learned CIT(A) is going contra to the dictum laid by the Hon''ble apex Court in the case of Lucky Mineral (P) Ltd. (supra) and relied on by the AO. Therefore, we are of the considered view that the learned CIT(A)''s finding on this issue is not sustainable for legal scrutiny and hence the same is hereby set aside by restoring that of the AO by allowing the ground raised by the Department.

3. Another issue involved in the matter had been in relation to the claim of benefit under s. 80HHC of the Act that had also been decided by the CIT(A) in favour of the assessee but the Tribunal proceeded to rule in favour of the Revenue. The amount involved on this score had been Rs. 33,426 and the learned counsel for the appellant has frankly not pressed on this ground for meagre financial implication and further for the fact that on the other part of issue, the Revenue has not filed any appeal. Thus, the claim for benefit under s. 80HHC would not require adjudication in the present matter.

4. So far the question of benefit under s. 10B of the Act is concerned, the learned counsel for the appellant-assessee has submitted that the view as taken by the Tribunal cannot be sustained for the authoritative pronouncement of the Hon''ble Supreme Court in the case of Income Tax Officer, Udaipur Vs. Arihant Tiles and Marbles (P) Ltd., holding, inter alia, that step-wise activity of cutting marble blocks and converting into the polished slabs and tiles constitute manufacture or production in terms of s. 80IA of the Act while distinguishing the decision in Aman Marble Industries Pvt. Ltd. Vs. Collector of C. Ex., and while observing, inter alia, held as under:

....What we find from the process indicated hereinabove 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. 80IA of the IT Act...

5. The learned counsel for the Revenue is not in a position to controvert the submissions so made on behalf of the assessee-appellant.

6. Having gone through the decision of the Hon''ble Supreme Court in Arihant Tiles & Marbles (P) Ltd. (supra), we are clearly of the opinion that the view as taken by the Tribunal cannot be sustained.

7. Accordingly, the answer to question No. 1 is that the Tribunal was not justified in disallowing the benefit available to the assessee under s. 10B of the IT Act; and the view as taken by the Tribunal does not stand in conformity with the law declared by the

Hon"ble Supreme Court in the case of ITO vs. Arihant Tiles & Marbles (P) Ltd. (supra). Accordingly, the appeal as filed by the Revenue before Tribunal (ITA No. 357/Ju/2008) for the asst. yr. 2004-05 shall stand dismissed as regards the claim under s. 10B of the Act.

8. In view of what has been found hereinabove in question No. 1, there appears no necessity of much dilatation on question No. 2. Suffice is to observe that if the benefits have been granted for the above year 2004-05 under s. 10B of the Act and the benefit is available for a block of 10 years, it cannot, ordinarily, be withdrawn when the nature of work and benefits remains the same. So far as the benefit under s. 80HHC is concerned, the learned counsel for the appellant has rightly not pressed on the same for the meagre financial implications and further for the fact that the Revenue has not filed any appeal in this particular matter on the other part of the issue. The order of the Tribunal in this regard is therefore, not disturbed.

Accordingly, and in view of the above, this appeal of the assessee is partly allowed to the extent and in the manner indicated above.