IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case Appeal No.90 of 2011

The Commissioner of Income Tax,
Ward XIII(2), Chennai. ... Appellant

Vs.

M/s Deco De Trend
5th Floor, Nelson Towers,
117, Nelson Manickam Road,
Chennai - 29. ... Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "A" Bench, Chennai dated 08.09.2010 passed in I.T.A.No.1043/Mds/2010.

Against the Appellate order of the Commissioner of Income Tax (Appeals) XII, Chennai 600 034, dated 19/03/2010 and made in ITA. No. 227/09-10 for the Assessment Year 2007-08 and

Against the Assessment Order of the Income Tax Officer, Business Ward XIII (2), Chennai 600 034, dated 31.12.2009 and made in PAN/GIR No. AADFD 4304 P for the Assessment Year 2007-08.

For Appellant : M/s.V.Pushpa
Junior Standing Counsel

for M/s.M.Swaminathan
Senior Standing Counsel

For Respondent : Notice served
No appearance

JUDGMENT
(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

This Appeal has been filed by the Revenue against the order of the learned Income Tax Appellate Tribunal, Chennai dated 08.09.2010 for the Assessment Year 2007-08 whereby the learned Tribunal held that the Assessee is entitled to benefit under Section 10B of the Income Tax Act as the activity carried out by the Assessee of manufacturing and export of articles ready to decorate products such as bouquets, and also home and office decorations, garlands, potpourris etc.

2.The present Appeal was admitted by a Coordinate Bench of this Court on 08.03.2011 with the following Substantial Questions of Law.

> "(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in deciding that the assessee is entitled for deduction under Section 10B contrary to the mandatory provision stipulated under the Act?
>
> (ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in not deciding or giving any finding on the claim of the assessee for deduction of the assessment year 2007-08?"

3.The findings of the learned Tribunal in its order are quoted below for ready reference.

> "3.2 On going through the impugned assessment order for the assessment year 2007-08, it is seen that all the main issue raised by the appellant regarding the nature of activities carried on by the firm and the fact of non-violation of the provisions of Sec.10B(2)(ii) were dealt with the appellate order for the assessment year 2005-06, cited supra. The facts and circumstances being the same for the assessment year 2007-08 also, the same views hold good. As regards the other point regarding the purchases of raw materials as claimed by the appellant firm for the accounting period relevant to the impugned assessment year, it is seen from a careful reading of the assessment order that though the Assessing Officer had questioned the purchases as claimed by the appellant firm, no specific disallowances had been made. So long as the Assessing Officer had accepted the profits as shown by the appellant firm as correct, it is considered not necessary to deal with this issue separately."

4.The learned counsel for the Appellant/Revenue however fairly submitted that the issue has already been decided against the Revenue in the Appeals related to other assessment years of the same Assessee and copy of one such judgment rendered on 2 July, 2013 in Commissioner of Income Tax, Ward-XIII (2), Chennai Vs. Deco De Trend [2013] 37 taxmann.com 33 (Madras) is cited at the bar. A Coordinate Bench of this Court in the said judgment held as under:

"15. We agree with the contentions made by the learned senior counsel appearing for the assessee that the process which the assessee had undertaken satisfies the test of manufacture to qualify for relief under Section 10B of the Income Tax Act. As already narrated in the preceding paragraph, the emphasis of the Revenue is that in the absence of any definition under the Act as to what 'manufacture' is, the decision of the Apex Court reported in 292 ITR 444 (CIT V. Tara Agencies) would squarely apply. It is contended that every change is not 'manufacture' and every change in an article as the result of treatment, per se, would not result in 'manufacture'. There is no dispute on this broad principle. However, it is not denied by the Revenue that apart from cleaning and grading, the assessee had taken further processing; that what is purchased as raw material and what is exported as a product for export are totally different items. The process that the assessee had undertaken clearly points out the irreversible nature of the final end product from a raw material purchased and given the above said fact, which the Revenue does not deny, we have no hesitation in accepting the contention of the assessee that there was, in fact, 'manufacture'.

16. We accept the contention of the assessee in this regard drawing support from the decision of the Apex Court reported in 251 ITR 323 (Aspinwall & Co. Ltd. V. Commissioner of Income Tax (Appeals)) that the word 'manufacture' has to be understood in common parlance, there being no definition of the word 'manufacture' in the Act. Even if one looks at the definition of 'manufacture', as given under Explanation 3 to Section 10B, as it existed prior to its substitution in 2001, we find, the term was defined inclusively that any process or assembling or recording of programme or disc, tape, perforated media or other information storage device are brought under the definition of 'manufacture'. In any event, with the definition of 'manufacture' available as under Explanation 4 to Section 10B of the Income Tax Act, inserted by Finance Act, 2003, with effect from 1.4.2004, which defines 'manufacture or produce' to include the cutting and polishing of precious and semi-precious stones, as is relevant for the assessment years under consideration, the decision relied on by the Revenue is not of any assistance. Learned Standing counsel appearing for the Revenue brought to our attention

Section 2(29)BA, inserted under the Finance (No.2) Act 2009, with effect from 1.4.2009, which defines 'manufacture' to mean a change in a non-living physical object or article or thing 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 bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.

17. Even though the definition of 'manufacture' under Section 2(29)BA, as amended under Finance Act 2 of 2009, with effect from 1.4.2009 and Explanation 3 to Section 10B, as it stood prior to the Finance Act, 2001 are not of any relevance to the case on hand relating to the assessment years 2004-05, 2005-06, 2006-07 and 2008-09, yet, with Explanation 4 to Section 10B of the Income Tax Act, inserted by Finance Act, 2003 with effect from 1.4.2004, defining 'manufacture' or produce' to include the cutting and polishing of precious and semi-precious stones and the idea of granting exemption/deduction under Section 10B being clear, the relief under Section 10B of the Income Tax Act cannot be denied.

18. In the decision reported in 251 ITR 323 (Aspinwall & Co. Ltd. V. Commissioner of Income Tax (Appeals)), the Apex Court observed "the word "manufacture" has not been defined in the Income Tax Act. In the absence of a definition, the word "manufacture" has to be given a meaning as is understood in common parlance. It is to be understood as meaning the production of articles for use from raw or prepared materials by giving such materials new forms, qualities or combinations whether by hand labour or machines. If the change made in the article results in a new and different article then it would amount to manufacturing activity." Thus the Apex Court pointed out that if the commodity can no longer be regarded as the original commodity but instead is recognized as a new and distinct article, then the activity of manufacture can be said to take place.

19. The decision relied on by the Revenue reported in 292 ITR 444 (CIT V. Tara Agencies), however, stands on a different footing. There, the assessee was engaged in purchase of different qualities of tea and blending the same for the purpose of export. On the question as to whether the assessee would be entitled to weighted deduction under Section 35B(1A) of the Income Tax act, the

Supreme Court pointed out on facts that the assessee's activity amounted to processing only and the activity did not amount to production or manufacture. Thus the case relied on by the Revenue is distinguishable on facts.

20. Given the admitted fact that what was purchased by the assessee as raw material and exported goods are totally different items and commercially known as a different product, going by the definition 'manufacture' in Explanation 4 to Section 10B of the Income Tax Act, we have no hesitation in agreeing with the contention of the assessee and thereby confirm the order of the Tribunal.

21. As regards the splitting up under Section 10B(2)(ii) of the Income Tax Act, it is not denied by the Revenue that the assessee firm is a different assessable entity from the company. It is not denied by the Revenue that the mere fact of both the entities carrying on the same business, per se, would not lead to a conclusion that there was a splitting up of a company to a new entity, namely, firm. The Commissioner of Income Tax (Appeals) as well as the Tribunal had looked into the facts of the case and ultimately came to the conclusion that the mere presence of three of the Directors as partners, by itself, would not make the firm as one, split up from the company and both the entities deal in different graded products and they were one and the same # while the company dealt with low end products, the assessee deals with high end products. The Tribunal, as a final fact finding authority, has also pointed out that the firm was constituted with the capital contribution by the partners from their personal funds. Thus, we do not find neither the presence of the partners not the products dealt with would be of any guidance to decide the issue raised by the assessee. So too the workmen working in the assessee's business and in the company. In the absence of any material to substantiate the contention of the Revenue that the firm was constituted by splitting up of the company, we have no hesitation in rejecting the plea of the Revenue. Consequently, we have no hesitation in confirming the order of the Tribunal.

22. For the reasons we have already given in the preceding paragraph, the above Tax Case (Appeals) are dismissed. No costs."

5.None appears for the Respondent/Assessee to controvert these submissions.

6.Accordingly, the aforesaid appeal is also disposed of in same terms and the questions of law are answered in favour of the Assessee and against the Revenue. The Appeal is accordingly disposed of. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.Income Tax Appellate Tribunal,
'A' Bench, Chennai.

2.The Commissioner of Income Tax,
Ward XIII (2), Chennai.

3.The Commissioner of Income Tax,
(Appeals) - XII, Chennai 600 034.

4.The Income Tax Officer,
Business Ward XIII (2),
Chennai 600 034.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No. 11763

T.C.A.No.90 of 2011

PA(CO)
GN(18/03/2020)