(2012) 05 AHC CK 0212

In the Allahabad High Court

Case No : IT Appeal No''s. 9 and 11 of 2003

CIT and Another — APPELLANT

Vs

R.L. Sharma — RESPONDENT

Date of Decision : 23-05-2012

Acts Referred:
Income Tax Act, 1961 — Section 2(29BA), 260A, 80HH, 80HH(2), 80I

Citation : (2012) 05 AHC CK 0212

Hon'ble Judges : Prakash Krishna, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : A.N. Mahqjan, Ashok Kumar, B.J. Agrawal, D. Awasthi, G. Krishna, R.K. Upadhyay and Shambhu Chopra, for the Appellant; R.R. Agarwal and Suyash Agarwal, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Shri Shambhu Chopra, learned counsel for the appellants, Shri R.R. Agarwal and Shri Suyash Agarwal for the respondent. It is sufficient to refer to the pleadings of IT Appeal No. 9 of 2003 for deciding both the appeals. This appeal under s. 260A of the IT Act, 1961 (hereinafter called the "Act, 1961") has been filed against the judgment and order dated 25-1-2002, passed by the Tribunal, Delhi in ITA Nos. 6810 and 8864/Del/1981 for the assessment years 1987-88 and 1988-89. The AO by the assessment order dated 31-3-1987 rejected the claim of the assessee u/s 80HH and 80-I of the Act, 1961. The assessee filed an appeal before the CIT(A) which was decided by order of the CIT(A) dated 29-8-1991 allowing the appeal partly. Insofar as deductions u/s 80HH and 80-I of the Act are concerned, the said ground was not allowed by the appellate authority. Feeling aggrieved by the said order, an appeal was filed before the Tribunal which has been allowed by the judgment and order dated 25-1-2002 by the Tribunal against which the appellant has come up in the appeal. The appeal was admitted on the following two questions of law:

(i) Whether on the facts and in the circumstances of the case, extracting stones and then cutting them into the required size and weight, is the Tribunal justified in law in holding that the assessee is engaged in a manufacturing activity as contemplated u/s 80HH and 80-I of the Act?

(2) Whether on the facts and in the circumstances of the case, the Tribunal is justified in holding that the assessee is entitled to deductions u/s 80HH and 80-I of the IT Act ?

2. The Tribunal while considering the ground No. 3, which was against the rejection of the claim of deduction of Rs. 1,04,492 u/s 80HH and 80-I of the IT Act, noted that the assessee is engaged in the business of excavating stone boulders of specific size and weight and supplying the same to M/s. Hindustan Construction Co. Ltd. for their project at Chandil Bar. As per the note of the assessee this activity involved certain processes and it employed considerable labour, machinery and capital. For the manufacture of boulders from quarries located nearby the dam site, first of all overburden (rough earth and soft stone) is removed to develop the face of the quarry. With the help of rock drill machines, the holes are made in the rock and blasting material is filled in the holes and after the blasting, big boulders are excavated from the quarry. These big boulders are broken into small ones of specific weight and size which are supplied. The Tribunal while accepting the ground urged by the appellant that they are entitled for deduction u/s 80HH and 80-I of the Act, held as under;

In the instant case the facts are similar as in the case of Best Chem & Lime Stone Industries (P) Ltd. and accordingly we hold that extracting stone and then cutting into the required size and weight is a manufacturing activity. Therefore, the assessee qualifies for deduction u/s 80HH and 80-I of the IT Act. Accordingly the AO is directed to allow the deduction u/s 80HH and 80-I to the assessee after quantifying the amount of deduction on the basis of work done by the assessee in regard to cutting of stone into pieces etc. We order accordingly.

3. The submission which has been pressed by the learned counsel for the Department is that the appellant is not engaged in manufacturing process and is not producing any article and conditions which were mentioned in sub-section (2) of section 80HH of the Act are not present. No production activities are being carried out and the condition precedent being not fulfilled, the benefit to the assessee u/s 80HH of the Act has been erroneously granted.

4. Shri Shambhu Chopra, learned counsel for the appellant has placed reliance on judgment of the Apex Court in Lucky Minmat Pvt. Ltd. v. C.I.T., (2000) 245 ITR 830 (SC)

5. Shri Suyash Agarwal, appearing for the respondent refuting the submissions of the learned counsel for the appellant stated that since the boulders are produced in a different size and character for the purpose of setting up for different use i.e. for use in the dam and a new article is produced and the conditions mentioned in sub-section (2) of section 80HH of the Act are fulfilled, no error has been committed in allowing the deduction by the Tribunal. He has placed reliance on

the judgment of the apex Court in Income Tax Officer, Udaipur Vs. Arihant Tiles and Marbles (P) Ltd., .

6. We have considered the submissions of the learned counsel for the parties and have perused the record.

7. Section 80HH(2) of the Act, 1961 uses the word "manufacture" or "produce". "Manufacture" has been defined in section 2(29BA) of the Act, 1961 which is to the following effect:

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; or

(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.

8. From the nature of the activity of the assessee as noted by the Tribunal, it is clear that the assessee is engaged in the mining activity and is mining boulders from the quarries leased out to it. The boulders which are quarried by the assessee are cut into different sizes for the purposes of supplying them to the dam as per the case set up by the assessee. The boulders are broken into different sizes and weight. The character of the article which is transformed after changing the size and weight is still the boulder. What is actually being produced are the boulders of different sizes and weights. In the aforesaid activity, there is no transformation into any new object, article or thing nor any distinct object is produced after the activity. The boulder remains the same and only the size and weight is changed after the activity. The said activity clearly does not come within the definition of "manufacture" as provided in section 2(29BA) of the Act. The judgment which has been relied on by Shri Shambhu Chopra in the case of Lucky Minmat (P) Ltd. (supra) where it was laid down that mining of limestone and marble and cutting the same before it was sold could not be considered to be admissible deduction u/s 80HH of the Act. Following was laid down by the apex Court at p. 831:

The High Court noted that the facts found by the Tribunal in the instant case were the assessee had business of mining of limestones and marble blocks and thereafter cutting and sizing the same before being sold in the market. The High Court distinguished its earlier judgment in the case of Commissioner of Income Tax Vs. Best Chem and Limestone Industries Pvt. Ltd., , because there the assessee was engaged in the business of extracting limestone and its sale either as such or after converting it into lime and lime dust or concrete by stone crushers. Such, the High Court found, were not the facts in the case before it.

We have been shown the statements of case in the present matter as also in the matter of Best Chem & Limestone Industries (P) Ltd.s case (supra) and are satisfied that the Tribunal has found as aforestated. There was, therefore, clearly a distinction on the facts. The conversion into lime and lime dust or concrete by stone crushers could legitimately be considered to be a manufacturing process while the mere mining of limestone and marble and cutting the same before it was sold in the market could not be so considered.

The entire argument before us is based upon the High Courts judgment in the case of Best Chem & Limestone Industries (P) Ltd.s case (supra) and the fact that this Court declined to grant leave to appeal therefrom. However, the facts being different, that judgment cannot be followed here. No other argument is advanced.

The appeal is dismissed with costs.

9. The judgment which has been relied on by the assessee in the ITO v. Arihant Tiles & Marbles (P) Ltd. (supra) was a case where the assessee was engaged in the business of manufacture/production of polished slabs and tiles. The activity which was undertaken in the said case was noticed by the Apex Court which was to the following effect:

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 is there 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-assessee did constitute manufacture or production in terms of section 80-IA of the IT Act, 1961.

10. The said case is clearly distinguishable since in the said case there were various stages through which blocks have to go and they were converted into polished slabs and tiles. Present is a case where boulders are cut to different sizes and weights. The nature and character of the boulders remain the same and from the facts which are brought on the record as noticed by the Tribunal, it cannot be said that the assessee was engaged in any manufacturing activity so as to enable him to take the benefit of deduction u/s 80HH and 80-I of the Act, 1961. Thus, we answer both the questions in favour of the Revenue and against the assessee. Both the appeals are allowed. The judgment and order of the Tribunal dated 25-1-2002, is hereby set aside.