
(2013) 11 SHI CK 0036
In the High Court Of Himachal Pradesh
Case No : Income Tax A. 2 of 2009

Commissioner of Income Tax

APPELLANT

Vs

M/s. Doon Valley Rubber Industries

RESPONDENT

Date of Decision : 06-11-2013

Acts Referred:

Citation : (2014) 268 CTR 102 : (2014) 221 TAXMAN 40

Hon'ble Judges : A.M. Khanwilkar, C.J.;Kuldip Singh, J

Bench : Division Bench

Advocate : Vinay Kuthiala, with Ms. Vandana Kuthiala, for the Appellant; Vishal Mohan and Sushant Keprate, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, C.J.—Heard counsel for the parties. This appeal has been admitted on the substantial question of law as to whether cutting, grinding and sieving of old rubber tyres and rubber scrap and converting the same into rubber crumbs is "manufacture" and hence entitled to the deduction u/s 80IB of that Act?

2. The Income Tax Officer, Nahan (HP) during the assessment of the respondent-firm for assessment year 2004-2005, disallowed the deduction u/s 80IB claimed by the respondent. The assessee took the matter in appeal before the Commissioner of Income Tax (Appeals), Shimla which in turn affirmed the finding recorded by the first authority. The Income Tax Appellate Tribunal, however, in the appeal filed by the assessee, reversed the finding recorded by the two Authorities below and concluded that the assessee was entitled to deduction u/s 80IB. For doing so, the Appellate Tribunal took into account the manufacturing process of rubber crumbs. The same is as under:-

MANUFACTURING PROCESS OF RUBBER CRUMB

3. After considering the factual aspects of the matter, the Appellate Tribunal, which is the final fact finding Authority, held that the assessee was engaged in

purchasing old and used tyres/rubber scrap etc., which were cut into small pieces and thereafter grinded with the help of machines and then the end product was rubber crumb, which was sold to the tyre manufacturing company. The Appellate Tribunal thus found, as of fact, that the end product of the assessee was different from its raw material and secondly it was commercially known to be different in the market. As regards this finding of fact reached by the Appellate Tribunal, we are in agreement with the same as in our opinion, the process not only involves re-cycling of the old tyres but also rubber scrap to be converted and transformed into rubber crumb-which incidentally can be re-used for manufacture of new tyres. There is nothing to indicate that the old rubber tyres and rubber scrap could be straightway reused for manufacture of new tyres without resorting to processing, as is being done by the assessee.

4. The question as to what amounts to manufacture is no more *res integra*. The three Judges Bench of the Apex Court in the case of *ASPINWALL and CO. LTD. Vs. Commissioner of Income Tax*, , has expounded thus:

.....The word "manufacture" has not been defined in the Act. In the absence of a definition of the word "manufacture" it 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 a manufacturing activity.

5. In the latest decision of the Apex court in the case of *Income Tax Officer, Udaipur Vs. Arihant Tiles and Marbles (P) Ltd.*, , after analyzing its earlier decisions and including in the case of *Aman Marble Industries Pvt. Ltd. Vs. Collector of C. Ex.*, it has been noted that the expression used in Section 80IA - which is analogous to the expression used in Section 80IB, which uses words manufactures or produces, as applicable to the present case-mandates the Court to consider not only word "manufacture" but also the connotation of word "production". Having noted this position, the Court went on to observe that the said expressions have wider meaning as compared to the word "manufacture". Further, the word "production", means manufacture plus something in addition thereto. The Court also noticed the exposition in *Commissioner of Income Tax Vs. Sesa Goa Ltd.*, wherein it has been held that while every manufacture can constitute production, every production did not amount to manufacture. Further, the test for determining whether manufacture can be said to have taken place is whether the commodity, which is subjected to a process, can no longer be regarded as original commodity, but is recognized in trade as a new and distinct commodity. Further, the word "production", when used in juxtaposition with the word "manufacture" takes in bringing into existence new goods by a process which may or may not amount to manufacture. The word "production" takes in all the by-products, intermediate products and residual products, which emerge in the course of manufacture of goods.

6. Keeping in mind the exposition in these decisions, we have no hesitation in holding that the Appellate Tribunal was justified in concluding that the product (Rubber crumb) produced by the assessee was commercially different from its raw material and further, it is commercially known to be different in the market. In other words, the assessee was engaged in manufacturing of the said product. Therefore, the assessee was entitled to deduction claimed u/s 80IB of the Act. We find no reason to disagree with the said opinion of the Tribunal. As a result, this appeal should fail, the same is dismissed. In fairness to counsel appearing for both the parties, we may place on record that they cited several other reported and unreported decisions. That indeed, indicates their industry. However, we are of the considered opinion that the question to be answered in this appeal can be conveniently answered only with reference to the exposition in the decisions of the Apex Court, referred to above, for which reason, we are not burdening this judgment with the other citations pressed into service by the respective counsel, across the Bar, during the hearing.