IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 862 of 2007

With
R/TAX APPEAL NO. 863 of 2007

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and
HONOURABLE MR.JUSTICE B.N. KARIA
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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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M/S. J.B. ENTERPRISE
Versus
ASSTT. COMMISSIONER OF INCOME TAX.
==
Appearance:
MR BANDISH SOPARKAR FOR MRS SWATI SOPARKAR(870) for the PETITIONER(s) No. 1
MR NIKUNT RAVAL FOR MRS KALPANAK RAVAL(1046) for the RESPONDENT(s) No. 1
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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE B.N. KARIA

Date : 09/04/2018

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. These appeals involve similar questions in similar background involving the same assessee. We may notice facts from Tax Appeal No.862/2007.

2. The assessee has challenged the judgment of the Income Tax Appellate Tribunal. Following questions were framed while admitting the appeal :

   "(1) Whether on the facts and circumstances of the case, the ITAT was right in holding that the appellant was not entitled to deduction under Section 10B of the Act?

   (2) Whether in the facts and circumstances of the case, the ITAT was right in holding that since there is no word as "for the removal of doubt" in Explanation 4 to Section 10B the said has to be held as prospective and not retrospective as claimed by the assessee?"

3. The appellant assessee is a registered partnership firm and is engaged in the business of import of rough diamonds and export of finished diamonds after cutting and polishing them. For the assessment year 2001-2002, the assessee had filed the return of income declaring total income of Rs.18.28 lacs (rounded off). The assessee had claimed deduction of Rs.68.74 lacs (rounded off) under section 10B of the Income Tax Act, 1961. The Assessing Officer framed scrutiny assessment under section 143(3) of the Act on 28.2.2003. In such order, he noted that the assessee firm has its manufacturing unit at Surat, Ahmedabad and Visnagar. It had also started a separate manufacturing

unit at Surat which was a hundred percent export oriented unit. Income from such activity was claimed exempt under section 10B of the Act and that present one was a second year of such EOU. After completing such assessment, the Assessing Officer reopened the assessment by issuing notice under section 148 of the Act on the ground that section 10B was amended by which explanation 4 was inserted by the Finance Act, 2003, providing that for the purposes of the said section "manufacture or produce" would include cutting and polishing of precious stones and semi-precious stones. The Assessing Officer was therefore, of the opinion that such activity of cutting and polishing of diamonds would qualify for deduction under section 10B of the Act only after such amendment and not for the period prior thereto. The assessee appeared and opposed the additions. He mainly contended that the explanation inserted in section 10B was merely clarificatory in nature. Heavy reliance was placed on the budget speech of the Finance Minister. An alternative argument was raised that being an export oriented unit, deduction would be available under section 80HHC in any case.

4. The Assessing Officer passed order under section 143(3) read with section 147 of the Act on 27.10.2004. He confirmed his belief that deduction under section 10B of the Act to a diamond polishing or cutting unit would be available only with effect from 1.4.2004 i.e. from the assessment year 2004-2005 and not earlier. However, he accepted the assessee's alternative contention and held that the assessee would be eligible for deduction under section 80HHC of the Act.

5. The assessee carried the matter in appeal and reiterated the same contentions. CIT(Appeals) under his order dated 23.2.2005 was unable to accept the assessee's stand that the amendment in section 10B was merely clarificatory in nature. Reference was made to the budget speech of the Finance Minister. It was held that the explanation has prospective effect only. The assessee carried the matter in further appeal before the Tribunal. The Tribunal placed heavy reliance on the decision of Supreme Court in case of **Commissioner of Income-tax v. Gem India Mfg. Co.** reported in (2001) 249 ITR 307 to come to the conclusion that the activity of cutting and polishing diamonds does not amount to manufacture or production of article or thing. In the view of the Tribunal therefore, in absence of explanation 4 to section 10B, deduction would not be available.

6. Learned counsel Shri Soparkar for the appellant assessee raised the following contentions :

(1) Explanation 4 inserted in section 10B of the Act was merely clarificatory in nature and would apply to all pending cases.

(2) Even in absence of such explanation, what the section requires is that the assessee should have manufactured or produced article or thing. Cutting and polishing diamonds is a manufacturing activity. From the rough diamonds, the processed and polished diamond is brought into existence through a complex and sophisticated process. The original

product i.e. rough diamond and the end product i.e. cut and polished diamonds are two entirely different commodities having different uses, different markets and different values. Uncut and unpolished diamond is put only to industrial uses. Polished diamond is principally used for gems and jewellery.

(3) Counsel pointed out that Bombay High Court in case of **Commissioner of Income-tax v. Fateh Granite (P) Ltd** reported in (2009) 222 CTR 638 (Bombay), held that cutting and polishing of granites amount to manufacture or production of article or thing. It was observed that the expression "produce" is wider than "manufacture". It was noticed that Section 10B of the Act uses expression "manufacture or produce".

(4) Counsel pointed out that the decision in case of **Gem India Mfg. Co.**(supra), was considered in the later judgment by the Supreme Court in case of **Heaven Diamonds (P) Ltd.** (judgment dated 18.11.2011) explaining its earlier judgment and remitted the matter back to the Tribunal to reconsider whether the process undertaken by the said assessee in polishing and cutting diamonds amounted to manufacture or production of article or thing.

(5) Reliance was placed on detailed discussion held by the Tribunal in case of **Flawless Diamond (India) Ltd v. Additional Commissioner of Income-tax, Range-5(1),** Mumbai reported in (20140 45 taxmann.com 67 (Mumbai-Trib.) which was passed pursuant to the remand order of the Supreme Court in case of **Heaven Diamonds (P) Ltd.**

in which the entire process of cutting and polishing of diamonds is noted.

(6) Counsel also submitted that in number of similar activities, different Courts have held that same amounts to manufacture or production of article or thing, such as :

(1) Madras High Court in case of **Commissioner of Income-tax, Chennai v. Pallava Granite Industries (I) (P) Ltd** reported in (2014) 42 taxmann.com 102 (Madras) held that cutting and polishing of granite blocks amount to manufacture or production of article or thing.

(2) Delhi High Court in case of **Commissioner of Income-tax-V v. Ramsons Organics Ltd.** reported in (2010) 189 Taxman 393 (Delhi) held that processing of stones, marbles, granites etc. amounts to manufacturing process for the purpose of section 10B of the Act.

(3) Supreme Court in case of **Income-tax Officer v. Arihant Tiles and Marbles P. Ltd.** reported in (2010) 320 ITR 79 (SC) held that sawing marble blocks into slabs and and tiles and polishing, amount to manufacture or production of article or thing.

(4) Supreme Court in case of **Commissioner of Income-tax v. Sesa Goa Ltd** reported in (2004) 271 ITR 331 held that extraction of iron ore amounts to manufacture or production of article or thing.

7. On the other hand, learned counsel Shri Nikunt Raval for

the department opposed the appeal contending that the issue is squarely covered by the judgment of Supreme Court in case of **Gem India Mfg. Co.**(supra). The Tribunal correctly relied on the said provision. Upholding the contention of the assessee would render explanation 4 redundant. Such explanation is not clarificatory in nature and is only prospective. The assessee has not brought on record the process undertaken for cutting and polishing the diamonds to establish that same amounted to manufacture or production of article or thing.

8. We may first consider whether this issue is covered by the judgment of the Supreme Court in case of **Gem India Mfg. Co.**(supra). It was a case in which in the context of deduction under section 80-I of the Act, the question cropped up whether cutting and polishing diamonds amounted to manufacture or production of article or thing. The Tribunal and the High Court having accepted the assessee's stand, the Supreme Court reversed the same making the following observations :

> “6. There can be a little difficulty in holding that the raw and uncut diamond is subjected to a process of cutting and polishing which yields the polished diamond, but that is not to say that the polished diamond is a new article or thing which is the result of manufacture or production. There is no material on the record upon which such a conclusion can be reached.”

9. Two things thus emerge from this judgment. One that the Supreme Court readily accepted that the raw and uncut diamonds is subjected to a process of cutting and polishing which yields the polished diamond. However this would not

be synonyms to saying that polished diamond is a new article or thing which is the result of manufacture or production. In absence of any material on record, upon which, such a conclusion can be reached, the Supreme Court reversed the judgment of the High Court.

10. This position was explained by the Supreme Court in a later judgment in case of **Heaven Diamonds (P) Ltd** (supra), relevant portion of which has been reproduced by the Tribunal in judgment in case of **Flawless Diamond (India) Ltd**(supra) and reads as under :

“15.....

'We find from the impugned order of the Tribunal that there is no discussion on the process undertaken by the assessee, who claims benefit of section 80-IB of the Act. The assessee imports raw diamonds and applies thereon the process of sawing, turning, profiling, cutting, drilling, polishing, etc., by the use of sophisticated machineries resulting in production of a superior marketable commodity. Detailed procedure has been set out in the paper book. The Tribunal ought to have examined the process as to whether such process would constitute "manufacture" under section 80-IB. That exercise has not been undertaken. The reliance on the judgment of this Court in the case of CIT v/s Gem India Mfg. Co. [2001] 249 ITR 307 may not be correct for the simple reason that in that case, the Revenue succeeded as Gem lndia Mfg. Co. was not able to demonstrate the process undertaken by it to convert raw diamonds into a superior commodity. Moreover, the High Court has also not gone into that aspect. The High Court should have remitted the case to the Tribunal to consider whether the process undertaken by the assessee constituted "manufacture". Under the above circumstances, the impugned order of the High Court and the Tribunal are set aside and the matter is remitted to the Tribunal for de novo consideration in the light of what we have stated hereinabove.’ [Emphasis added]"

11. Thus judgment in case of **Gem India Mfg. Co.**(supra) was explained in case of **Heaven Diamonds (P) Ltd** (supra) observing that the Revenue succeeded in the said case since the assessee was not able to demonstrate the process undertaken by it to convert the raw diamond into superior commodity. Under the circumstances, the Supreme Court remitted the matter back before the Tribunal. Thus the Supreme Court in the later judgment in case of **Heaven Diamonds (P) Ltd** (supra) limited the findings and observations in case of **Gem India Mfg. Co.** (supra) to that particular case since the assessee was unable to demonstrate the process undertaken for conversion of diamond into a polished or cut diamond. We therefore, do not believe that by virtue of judgment in case of **Gem India Mfg. Co.**(supra), any further discussion or inquiry is impermissible.

12. We may now test the assessee's contention that explanation 4 to section 10B was either clarificatory or having retrospective effect. Section 10B of the Act, as is well-known, provides for deduction of profits and gains derived by a hundred per cent export-oriented undertaking from export of articles or things for a specified period from the time undertaking begins to manufacture or produce articles or things. Explanation 4 which was added to the said section with effect from 1.4.2004 provides that for the purposes of this section, "manufacture or produce' shall include the cutting and polishing of precious and semi-precious stones. In plain terms, this provision has been made applicable without any retrospectivity. The language

of the provision also does not make it clarificatory. The budget speech of the Finance Minister explaining introduction of the said provision would also not help the assessee. In such speech, while allying the fears of gem and jewellery industry about withdrawal of benefits under section 10A and 10B of the Income-tax Act, it was further stated that “ Keeping in view the substantial value addition that takes place in cutting and polishing of diamond and gems, it is also proposed to extend the benefits u/s.10A & 10B of the Income-tax Act to these activities. It is also proposed to insert explanation 4 at the end so as to provide that for the purpose of this section, “manufacture and produce” shall include the cutting and polishing of precious and semi-precious stones.” It was stated that these amendments will take place from 1.4.2004 and would accordingly apply in case of assessment year 2004-2005 and subsequent years. Like-wise, the memorandum explaining the provision of the Finance Bill, 2003, also provides that with a view to give fiscal support to the exporter of precious and semi-precious stones, it is proposed to insert a new explanation 4 at the end so as to provide that for purposes of this section, the expression “manufacture and produce” shall include the cutting and polishing of precious and semi-precious stones. There is nothing in the budget speech or memorandum explaining the relevant provisions of the Finance Bill to indicate that insertion of explanation 4 to section 10B was either an exercise of clarification or meant to be applied retrospectively. In fact, every indication is to the contrary. The Finance Minister made it clear that the provision is prospective and would apply to the period post 1.4.2004.

The assessee would therefore, not be correct in basing reliance on the said provision or the budget speech of the Finance Minister explaining the reason for introduction of the provision.

13. Even if explanation 4 to section 10B was meant to be prospective, in absence of any such provision, the assessee succeeds in establishing that activity of cutting and polishing diamonds amounted to manufacture or production of article or thing, it would automatically qualify for deduction under section 10B of the Act. In other words, we have to ascertain the eligibility of the assessee for deduction under section 10B of the Act for the period prior to insertion of explanation 4 without the aid of the said explanation and come to a conclusion whether the assessee satisfied the requirement of the said section. It is in this context, the question arises whether the activity of cutting and polishing diamonds amounts to manufacture or production of article or thing.

14. The question whether a particular process amounts to manufacture has occupied the attention of the Courts on numerous occasions. Such a question typically arises in the background of exciseability of the product. The Supreme Court has laid down certain principles and guidelines to ascertain whether a particular activity amounts to manufacture. In case of **India Cine Agencies v. Commissioner of Income-tax** reported in (2009) 308 ITR 98(SC), the Supreme Court considered the question whether conversion of jumbo rolls of photographic films into small flats and rolls of desired sizes amounted to

production. In this background, it was observed as under :

5. ‘Manufacture’ is a transformation of an article, which is commercially different from the one, which is converted. The essence of manufacture is the change of one object to another for the purpose of making it marketable. The essential point thus is that, in manufacture something is brought into existence, which is different from that, which originally existed in the sense that the thing produced is by itself a commercially different commodity whereas in the case of processing it is not necessary to produce a commercially different article. (See M/s. Saraswati Sugar Mills and others v. Haryana State Board and others (1992 (1) SCC 418).

6. The prevalent and generally accepted test to ascertain that there is ‘manufacture’ is whether the change or the series of changes brought about by the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognized as a distinct and new article that has emerged as a result of the process. There might be borderline cases where either conclusion with equal justification can be reached. Insistence on any sharp or intrinsic distinction between ‘processing and manufacture’, results in an oversimplification of both and tends to blur their interdependence. (See Ujagar Prints v. Union of India (1989 (3) SCC 488).

7. To put it differently, the test to determine whether a particular activity amounts to ‘manufacture’ or not is: Does a new and different good emerge having distinctive name, use and character. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes ‘manufacture’ takes place and liability to duty is attracted. Etymologically the word ‘manufacture’ properly construed would doubtless cover the transformation. It is the transformation of a matter into something else and that something else is a question of degree, whether that something else is a different commercial commodity having its distinct character, use and name and commercially

known as such from that point of view, is a question depending upon the facts and circumstances of the case. (See Empire Industries Ltd. v. Union of India (1985 (3) SCC 314).”

15. In case of **Grasim Industries Limited v. Union of India** reported in (2011) 10 Supreme Court Cases 653, it was observed that term 'manufacture' includes any process incidental or ancillary to completion of manufactured product. Same can be a process in manufacture or process in relation to manufacture of the end product, which involves bringing some kind of change to raw material at various stages by different operations. Process must have effect of bringing change or transformation in raw material and also lead to creation of any new and distinct and excisable product.

16. In case of **Servo-Med Industries Pvt. Ltd v. Commissioner of C. Ex. Mumbai** reported in 2015 (319) ELT 578 (SC) in a detailed analysis of the case law, it was held that sterilization of syringes and needles though involved process of removal of foreign matter from goods and unsterilized syringes and needles were of no commercial use without sterilization, the process of sterilization did not amount to manufacture.

17. It is undisputable that the rough diamonds are subjected to the process of cutting and polishing to bring into existence the polished diamonds. Such process has been noted by the Tribunal in the judgment in case of **Flawless Diamond (India) Ltd**(supra) as under :

“'16. As far as the issue whether cutting and polishing of diamonds would constitute manufacturing or not, before us ld. Counsel of the assessee had produced rough diamonds which are just like ordinary stones or more precisely coloured glass type with uneven surface and were of uneven shape. All the samples were of dark brownish / greenish/bluish colour measuring about 1 c.m. To 2½ c.m. ld. Counsel of the assessee produced cut and polished diamonds in the size of 10 cents to 1 carat, which were looking sparkling white. It was explained before us with reference to the procedure for cutting and polishing or processing of the diamonds as listed out by one Mr. Kantilal Chhotalal in the book titled as 'Diamonds From Mines To Markets'. In this book after stating that diamond cutting is a labour incentive industry and India was one of the main centres for the cutting. The process has been briefly discussed as under:

"The ultimate value of a diamond depends, among other factors, on its make, that is, the quality of the finished product. A "good make" refers to a stone that is of fine proportions, symmetrical, and well-polished. The purpose of cutting, faceting and polishing is to bring out the best in a diamond in terms of brilliance and purity, which results from the refraction and reflection of light. It is also necessary to preserve as much of the original weight as possible.

Diamond has some special properties which are not common to other transparent minerals. These are a high refractive index, a high degree of clarity, colour dispersion, reflectivity and lustre, and an extremely high degree of hardness. Lustre is the characteristic of reflecting light from the surface. In the diamond, this is unique.

Besides reflecting light from its surface, some of the light is partly absorbed before reflection. Most transparent minerals are not very reflective, but diamond is exceptional, its surface reflects 17 per cent of the light falling on it, in comparison to glass which reflects only 5 per cent.

A diamond is cut and polished to give maximum brilliance which in turn depends on the light reflected back to the viewer [life] and the flashes of colour [fire] when light is split into the colours of the spectrum. But maximum fire is not consistent with maximum life, and the diamond cutter’s job is to achieve a fine balance between the two. The diamond cutter is known in the trade as a diamond manufacturer, for he manufactures polished goods from rough diamonds.

Diamond cutting includes: Cleaving, splitting the stone along a place of cleavage: Sawing. dividing a crystal by a diamond saw; Bruting or Girdling, removing a portion of the crystal by rubbing or grinding it with another diamond, as for instance, the girdle of a brilliant; Grinding and polishing, making a flat surface or facet on a rotating wheel or lap coated with diamond powder; Polishing, preparing the finely ground or facet, by a method similar to grinding."

17. We also used Inter net to find out scientific information on the process involved in making out fine diamond. We could get Wikepedia encyclopedia on 'Net' in which various stages involved in making of a ’diamond‘ are described. The process of cutting and polishing of diamonds as described in the Wikepedia encyclopedia is as under:

Diamond cutting is the art, skill and, increasingly. science of changing a diamond from a rough stone into a faceted gem. Cutting diamond requires specialized knowledge, tools, equipment, and techniques because of its extreme hardness.

The first guild of diamond cutters and polishers (diamantaire) was formed in 1375 in Nuremberg, Germany, and led to the development of various types of 'Cut'. This has two meanings in relation to diamonds. The first is the shape: square, oval, and so on. The second relates to the specific quality of cut within the shape, and the quality and price will vary greatly based on the cut quality. Since diamonds are very hard to cut, special diamond-bladed edges are used to cut them. The first major development in diamond cutting came with the "Point Cut" during the latter half of the 14th century: the Point Cut follows the natural shape of an octahedral raw diamond crystal, eliminating some waste in the cutting process.

Further, various tests have been explained as under:

Planning Diamond manufacturers analyze diamond rough from an economic perspective, with two objectives steering decisions made about how a faceted diamond will be cut. The first objective is that of maximum return on investment for the piece of diamond rough. The second is how quickly the finished diamond can be sold. Scanning devices are used to get 3-dimensional computer model of the rough stone. Also, inclusions are photographed and placed on the 3D model, which is then used to find an optimal way to cut the stone.

Maximizing value

The process of maximizing the value of finished diamonds, from a rough diamond into a polished gemstone, is both an art and a science. The choice of cut is influenced by many factors. Market factors include the exponential increase in value of diamonds as weight increases, referred to as Weight retention, and the popularity of certain shapes amongst consumers. Physical factors include the original shape of the rough stone, and location of the inclusions and flaws to be eliminated.

Weight retention

The weight retention analysis studies the diamond rough to find the best combination of finished stones as it relates to per carat value. For instance, a 2.20 carat (440 mg) octahedron may produce

(i) either two half carat (l00 mg) diamonds whose combined value may be higher than that of (ii) a 0.80 carat (I60 mg) diamond + 0.30 carat (60 mg) diamond that could be cut from the same rough diamond.

The round brilliant cut and square brilliant cuts are preferred when the crystal is an octahedron as often two stones may be cut from one such crystal. Oddly shaped crystals, such as macles are more likely to Weight retention The weight retention analysis studies the diamond rough to find the best combination of finished stones as it relates to per carate value. For instance. a 2.20 carat (440 mg) octahedron may produce (i) either two half carat (100 mg) diamonds whose combined value may be higher than that of (ii) a 0.80 carat (160 mg) diamond + 0.30 carat (60 mg) diamond that could be cut from the same rough diamond.

The round brilliant cut and square brilliant cuts are preferred when the crystal is an octahedron, as often two stones may be cut from one such crystal. Oddly shaped crystals, such as macles are more likely to be cut in a fancy cut-that is, a cut other than the round brilliant-which the particular crystal shape lends itself to. Even with modern techniques, the cutting and polishing of a diamond crystal always results in a dramatic loss of weight, about 50%. Sometimes the cutters compromise and accept lesser proportions and symmetry in order to avoid inclusions or to preserve the weight. Since the percarat price of a diamond shifts around key milestones (such as 1.00 carat), many one-carat (200 mg) diamonds are the result of compromising Cut quality for Carat weight. Some jewelry experts advise consumers to buy a 0.99 carat (198 mg) diamond for its better price or buy a 1.10 carat (220 mg) diamond for its better cut, avoiding a 1.00 carat (200 mg) diamond, which is more likely to be a poorly cut stone.

Colour retention

In coloured diamonds, cutting can influence the colour grade of the diamond, thereby raising its value. Certain cut shapes are used to intensify the colour of the diamond. The radiant cut is an example of this type of cut. Natural green colour diamonds most often have merely a surface colouration caused by natural irradiation, which does not extend through the stone. For this reason green diamonds are cut with significant portions of the original rough diamonds surface (naturals) left on the finished gem. It is these naturals that provide the colour to the diamond.

Turnaround minimization

The other consideration of diamond planning is how quickly a diamond will sell. This consideration is often unique to the type of manufacturer. While a certain cutting plan may yield a better value, a different plan may yield diamonds that will sell sooner, and thereby returning the investment sooner. Cleaving or sawing Cleaving is the separation of a piece of diamond rough into separate pieces, to be finished as separate gems. Sawing is the use of a diamond saw or laser to cut the diamond rough into separate pieces.

Bruting

Bruting is the process whereby two diamonds are set onto spinning axles turning in opposite directions, which are then set to grind against each other to shape each diamond into a round shape. This can also be known as girdling.

Polishing

Polishing is the name given to process whereby the facets are cut onto the diamond and final polishing is performed. The process takes the steps blocking, faceting, also called "brillianteering", and Polishing.

Final inspection

The final stage involves thoroughly cleaning the diamond in acids, and examining the diamond to see whether it meets the quality standards of the manufacturer.

Cutting process

It is possible only because the hardness of diamond varies widely according to the direction in which one is trying to cut or grind.

A simplified round brilliant cut process includes the following stages:

Sawing the rough stone.

Table setting where one facet is created. The table facet is then used to attach the stone into a dop (a lapidary tool holding gemstones for cutting or polishing).

Bruting the girdle.

Blocking four main pavilion facets.

Transferring to another dop in order to rotate the stone.

Blocking four main crown facets.

Cutting and polishing all pavilion facets.

Transferring to another dop.

Cutting and polishing all crown facets

This is just one, although a fairly common way of creating a round brilliant cut. The actual process also includes many more stages depending on the size and quality of the rough stone. For example, bigger stones are first scanned to get the three-dimensional shape, which is then used to find the Optimal usage. The scanning may be repeated after each stage and bruting may be done in several steps, each bringing the girdle closer to the final shape.

The various processes like cleaving and splitting, bruting and girdling of diamond and polishing and cutting have been discussed in further detail in the book, but we feel there is no need to highlight the technical aspects. Sufficient it to say that rough diamonds looks like a stones (or glass) of uneven shape which, as mentioned earlier, were looking highly coloured, particularly like brownish/greenish/bluish colours, whereas the final product of diamond is a much smaller piece and generally sparkling white in colour. It was explained to us that size of the final product i.e. 'polished diamond' depends on many factors and while buying rough diamonds only an expert can evaluate as to which size the final product would be and even such opinion is not final because while cutting, the rough diamond may get cut into smaller pieces and in that case it has to be finished as such. But a plain look at rough diamond and finished diamond would show that they are totally different products.'"

18. Counsel for the assessee also placed reliance on the Article by one Akiva Caspi titled as "Modern Diamond

Cutting And Polishing”. This Article gives detailed process undertaken for cutting and polishing of raw diamonds. Essentially this Article aims to explain the complexities involved in the process and the sophistication required to carry out such process in order to optimize the value and quantity of the polished diamonds that may emerge out of such process. Whether carried out manually or through sophisticated machines, it is impossible to deny that the process of cutting and polishing diamonds is a complex one requiring specialized knowledge and expertise at every step. Rough unpolished diamond on one hand and cut and polished diamond on the other differ completely in appearance, value and uses. Thus this process of cutting and polishing diamonds brings into existence a new product which has totally different marketable commodity. From such Article, we gather that cutting and polishing diamonds have sparkle and definite desired shapes. Through this process thus a completely new commodity having a different market is brought into existence.

19. In the result, question no.1 is answered in favour of the assessee. Though question no.2 is answered against the assessee, Tax Appeal is allowed in view of answer of the first question. Judgment of the Tribunal confirming the view of the revenue authorities is set aside. The assessee is held entitled to deduction under section 10B of the Act.

20. Tax Appeals are disposed of.

(AKIL KURESHI, J)

(B.N. KARIA, J)

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