

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 559 of 2015

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PR.COMMISSIONER OF INCOME TAX-1....Appellant(s)

Versus

M/S VIJAY PATAKA SYNTHETICS....Opponent(s)

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Appearance:

MR SUDHIR M MEHTA, ADVOCATE for the Appellant(s) No. 1

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 14/09/2015

ORAL ORDER

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. The appellant revenue in this appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") has challenged the order dated 20.2.2015 made by the Income Tax Appellate Tribunal 'A' Bench, Ahmedabad in ITA No.1886/Ahd/2011 by proposing the following question stated to be a substantial question of law:-

"Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in deleting the disallowance made on account of claim of additional depreciation u/s. 32(iia) on embroidery machine of Rs.74,92,303/- where the use of the input and the output remains the same even after doing the embroidery

work ?”

2. The assessment year is 2008-2009 and the relevant accounting period is 1.4.2007 to 31.3.2008. The assessee, a firm, filed its return of income for assessment year 2008-2009 declaring total loss of Rs.86,86,713/-. The Assessing Officer framed assessment under section 143(3) of the Act vide order dated 24.12.2010 whereby he disallowed claim of additional depreciation amounting to Rs.74,92,303/- and added the same to the total income. The assessee in the year under consideration was engaged in the business of embroidery work on synthetic fabrics on job work basis. The Assessing Officer while disallowing the claim of additional depreciation held that embroidery work does not constitute “manufacturing” or “production” so as to be eligible for additional depreciation. According to the Assessing Officer, the embroidery work done on synthetic fabrics was merely value addition work which adds to the value of synthetic fabrics and should not be regarded as “manufacturing” or “production.” According to the Assessing Officer, the essential condition to claim additional depreciation was that there must be complete transformation of the item and entirely new and different article must emerge having distinctive name, character and use. That in the case of the assessee even after the embroidery work on the synthetic fabrics, the basic feature of the item does not change.

3. The assessee carried the matter in appeal before the Commissioner (Appeals) who deleted the disallowance by placing reliance upon the decision of the Tribunal in the case of M/s. Haripriya Processor Private Limited. The revenue carried the matter in appeal before the Tribunal, which dismissed the

appeal by placing reliance upon its earlier decision in the case of **Haripriya Processors Private Limited** (ITAT No.1569/Ahd/2010 dated 8.9.2009) as well as the decision of the Supreme Court in the case of **S.S.M Brothers (P) Ltd. v. Commissioner of Income Tax (Central) Madras**, 243 ITR 418 (SC).

4. Mr. Sudhir Mehta, learned senior standing counsel for the appellant assailed the impugned order by submitting that the Tribunal has failed to appreciate that the assessee was doing job work of embroidering finished cloths supplied by its client. Embroidering is neither a manufacturing activity nor a processing activity and that the same amounted to a mere value addition of product already in existence without changing its composition and nature. It was submitted that it is only those assessees who are in the business of manufacture or production of any article of a thing, who are eligible for the benefit under section 32(1)(iia) of the Act and that since the activity performed by the assessee was in the nature of job work only, making value addition on the product already in existence, the Assessing Officer had rightly disallowed the depreciation. It was submitted that reliance placed upon the decision of the Supreme Court in the case of **S.S.M. Brothers (P) Ltd. v. Commissioner of Income-tax (Central) Madras** (supra) was misplaced, inasmuch as, the said case related to development rebate under section 33(1)(b) of the Act. It was, accordingly, urged that the appeal deserves to be admitted on the question as proposed or as may be formulated by this court.

5. This court has considered the submissions advanced by

the learned counsel for the assessee and has perused the impugned order passed by the Tribunal as well as the orders passed by the Commissioner (Appeals) and the Assessing Officer.

6. As noted hereinabove, the assessee was engaged in the business of embroidery work on synthetic fabrics on job work basis and claimed additional depreciation under section 32(1)(iia) of the Act to the tune of Rs.74,92,303/- on embroidery machines. According to the Assessing Officer, embroidery work does not constitute “manufacture” or “production” so as to be eligible for additional depreciation.

7. The question that arises for consideration in the present case is as to, whether the embroidery work carried out by the assessee on synthetic fabrics would amount to “manufacture” or “production” within the meaning of such expression as envisaged under section 32(1)(iia) of the Act. Sub-section (1) of section 32 of the Act to the extent the same is relevant for the present purpose provides that in respect of depreciation of—
(i) buildings, machinery, plant or furniture, being tangible assets; owned, wholly or partly, by the assessee and used for the purpose of the business or profession, the deductions laid down therein shall be allowed. Clause (iia) of section 32(1) of the Act to the extent the same is relevant for the present purpose reads thus:

“(iia) in the case of any new machinery or plant (other than ships and aircraft), which have been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to twenty per cent of the

actual cost of such machinery or plant shall be allowed by way of deduction under clause (ii)."

Thus, section 32(1)(iia) of the Act provides for an additional depreciation of twenty per cent of the actual cost of machinery or plant acquired and installed after 31st March, 2005, provided the assessee is engaged in the manufacture of an article of thing. In the present case, undisputedly the assessee has purchased embroidery machines in the year under consideration and has used them for the purpose of his business. The dispute raised is that the embroidery work carried on by the assessee does not amount to "manufacture" or "production" of an article or a thing. The Tribunal has followed the decision of the Supreme Court in **S.S.M. Brothers (P) Ltd. v. Commissioner of Income-tax (Central) Madras** (supra) wherein it was held that higher rate of development rebate under section 33(1)(b)(B)(i) of the Act is available if the machinery or plant is installed for the production of textiles, including those "otherwise processed". If the machinery or plant is to be utilised in the production of such textiles, at whatever stage, the assessee is entitled to the benefit of development rebate. The court held that it makes no difference that in the particular case the assessee buys the cloth and then processes it, using the machinery, by embroidering it and, in some cases, by dyeing it. The assessee utilises the machinery in the production of processed textiles and is therefore, eligible for the development rebate. Under section 33(1)(b)(B)(i) an assessee was entitled to development rebate in respect of machinery or plant installed for the purpose of business of construction, manufacture or production of any one or more articles or things specified in the list in the Fifth Schedule. Therefore, for the purpose of availing

development rebate the assessee was required to be engaged in the business of manufacture of any one or more articles specified in the schedule. Similarly, under section 32(1)(iia) of the Act the assessee is entitled to additional rebate subject to fulfilling the conditions laid down thereunder, provided it is engaged in the business of manufacture or production of any article or thing. The Supreme Court in the case of **S.S.M. Brothers (P) Ltd. v. Commissioner of Income-tax (Central) Madras** (supra) has held that even if the assessee buys the cloth and then processes it, using the machinery, by embroidering it, and in some cases, by dyeing it, the assessee utilises the machinery in the production of processed textiles and therefore, the machinery is entitled to development rebate.

8. In the present case, the assessee carries on embroidery work on synthetic fabrics. When the assessee carries on embroidery work on the synthetic fabric, such synthetic fabric is converted into a new article, viz. embroidered synthetic fabric which is commercially known as another article. The nature of the article produced would depend upon the kind of embroidery carried out on the synthetic cloth. The ultimate article produced may be an embroidered saree or an embroidered dress material or some other article. Therefore, there would be a transformation in the basic synthetic fabric on which embroidery has been carried out resulting into a new article which is commercially known as another article. Under the circumstances, the work of embroidery carried on by the assessee would fall within the ambit of definition of "manufacture" as envisaged under section 2(29BA) of the Act. The Tribunal, therefore, did not commit any legal error in

holding that the activity carried on by the assessee falls within the ambit of manufacturing activity and thereby the assessee is entitled to avail of the additional depreciation under section 32(1)(iia) of the Act in relation to the machinery installed by it.

9. In the light of the above discussion, it cannot be said that the impugned order passed by the Tribunal gives rise to any question of law, much less, a substantial question of law so as to warrant interference. The appeal, therefore, fails and is, accordingly, dismissed.

(HARSHA DEVANI, J.)

(A.G.URAIZEE,J)

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