

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

***Income-tax Appeal No. 29 of 2008 alongwith
ITA No.30 of 2008 & 31 of 2008.***

Date of decision: 04.10.2012

Income-tax Appeal No. 29 of 2008:

Commissioner of Income-tax, Shimla.

...Appellant.

Versus

Smt. Supriya Gill, Prop. M/s Purcal Industries, Vill. Haripur Tohana, P.O. Shivpur,
Paonta Sahib.

...Respondent.

Income-tax Appeal No. 30 of 2008:

Commissioner of Income-tax, Shimla.

...Appellant.

Versus

Sh. Ajay Vir Singh Gill, M/s Bactal Industries, Village Haripur Tohana, P.O.
Shivpur, Paonta Sahib.

...Respondent.

Income-tax Appeal No.31 of 2008:

Commissioner of Income-tax, Shimla.

...Appellant.

Versus

M/s Alpine Industries, VPO Dadahu, Distt. Sirmour.

...Respondent.

Appeals u/s 260-A of the Income-tax Act, 1961

Coram

The Hon'ble Mr.Justice Deepak Gupta, J.

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting? No.

For the appellant:
(in all the appeals)

Mr. Vinay Kuthiala, Sr. Advocate with
Ms. Vandana Kuthiala, Advocate.

For the respondent:

Mr. Deepak Kaushal, Advocate in ITA No.29 of
2008
Mr. K.D.Sood, Sr. Advocate with Mr. Sanjeev
Sood, Advocate in ITA NO. 31 of 2008

Per Deepak Gupta, J.(Oral)

1. These appeals are being disposed of by this common judgment since the following identical questions of law are involved in these appeals:

- “i) Whether on the facts and in the circumstances of the case, the Hon’ble Tribunal was right in law in holding that converting limestone into limestone powder was a manufacturing activity and income derived from such activity was thus eligible for deduction u/s 80IA/80IB of the Income Tax Act, 1961?
- ii) Whether on the facts and in the circumstances of the case, the Hon’ble Tribunal was right in relying on the judgment of Hon’ble Supreme Court in the case of M/s.Lucky Minmat Pvt. Ltd. vs. CIT(2000) 245 ITR 830 wherein only an observation has been made by the Hon’ble Court to the effect that conversion into lime and lime dust or concrete by stone crushers could be considered to be a manufacturing process without considering the subsequent decision and not relying on the decision of the Hon’ble Supreme Court in the case of M/s. Sacs Eagle Chicory vs. CIT(2000) 255 ITR 178(SC) wherein it has been held that mere crushing of chicory roots into chicory powder cannot be a manufacturing process?
- iii) Whether on the facts and in the circumstances of the case the Hon’ble Tribunal misconstrued the material on records?”

2. The basic question which arises is whether the process of converting limestone into limestone powder is a manufacturing activity within the meaning of Section 80IA and 80IB of the Income Tax Act, 1961.

3. In **Black's Law Dictionary (5th Edition)**, the work "manufacture" has been defined as, "the process or operation of making goods or any material produced by hand, by machinery or by other agency; by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine".

4. In **M/s. Sterling Foods v. State of Karnataka and another, 1986 (3) SCC 469**, the question for determination before the Apex Court was whether shrimps, prawns and lobsters subjected to processing like cutting of heads and tails, peeling, deveining, cleaning and freezing cease to be the same commodity or become a different commodity. The Apex Court held as follows:-

"6. It is clear on an application of this test that processed or frozen shrimps, prawns and lobsters are commercially regarded the same commodity as raw shrimps, prawns and lobsters. When raw shrimps, prawns and lobsters are subjected to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing, they do not cease to be shrimps, prawns and lobsters and become another distinct commodity. They are in common parlance known as shrimps, prawns and lobsters. There is no essential difference between raw shrimps, prawns and lobsters and processed or frozen shrimps, prawns and lobsters. The

dealer and the consumer regard both as shrimps, prawns and lobsters. The only difference is that processed shrimps, prawns and lobsters are ready for the table while raw shrimps, prawns and lobsters are not, but still both are, in commercial parlance, shrimps, prawns and lobsters. It is undoubtedly true that processed shrimps, prawns and lobsters are the result of subjecting raw shrimps, prawns and lobsters to a certain degree of processing but even so they continue to possess their original character and identity as shrimps, prawns and lobsters, notwithstanding the removal of heads and tails, peeling, deveining and cleaning which are necessary for making them fit for the table. Equally it makes no difference in character or identity when shrimps, prawns and lobsters are frozen for the purpose of preservation and transfer to other places including far-off countries in the world. There can therefore be no doubt that processed or frozen shrimps, prawns and lobsters are not a new and distinct commodity but they retain the same character and identity as the original shrimps, prawns and lobsters.”

5. This judgment was followed by the Apex Court in **Commissioner of Income Tax v. Relish Foods, 1999(237), 59** wherein the same definition was applied to the provisions of the Income Tax Act.

6. A Division Bench of the Madras High Court in **Commissioner of Income Tax v. Sacs Eagles Chicory, 2000 (241) ITR 319** dealt with the issue as to what is 'manufacture'. In the case before the Madras High Court, chicory roots were being roasted and then changed it into powder form. The question was whether this amounted to manufacture within the

meaning of Income Tax Act. The Madras High Court held as follows:-

“The fact that the chicory powder is used for consumption in combination with coffee powder does not make the chicory powder any different in so far as its identity is concerned, as chicory. Chicory powder is chicory in powder form and nothing else. Mere change in the form of the same commodity does not necessarily involve change of identity. The pineapple fruit when plucked from the tree and even after it is cut into pineapple slices retains the same identity as pineapple. Chicory powder and chicory root have the common identity of being chicory. The change in the form to powder in the case of chicory and to slices in the case of pineapple does not result in a change of identity.”

7. It would be pertinent to mention here that this decision of the Madras High Court was upheld by the Apex Court in **Sacs Eagles Chicory v. Commissioner of Income Tax, 2002 (255) ITR 178.**

8. In **Indian Hotels Co.Ltd. and others v. Income Tax Officer and others, 2000 (245) ITR 538**, the Apex Court again dealt with the question as to what is the meaning to be given to the word ‘manufacture’. The Apex Court held that the processing of raw food items such as pulses, cereals, vegetables, meat etc. into edible items in the kitchen cannot be said to be process of manufacture.

9. In **Commissioner of Income Tax v. Gem India Manufacturing Co., 2001 (249) ITR 307**, the question

before the Apex Court was whether the process of cutting, polishing raw diamond amounts to manufacture and produces new articles or things. ◇

The Apex Court held as follows:-

“The question that the High Court and we are here concerned with is whether, in cutting and polishing diamonds, the assessee manufactures or produces articles or things.

There can be 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.”

10. A three Judge Bench of the Apex Court in

Aspinwall and Co. Ltd. v Commissioner of Income

Tax 2001 (251) ITR 323, considered the question

whether the process of manufacturing coffee beans from raw berries amounts to manufacture. The

Apex Court after making reference to the Encyclopedia Britannica held that coffee is a

beverage made from roasted seeds (beans) of the

coffee plant and found that the process of coffee into roasted coffee went through nine processes.

Firstly the coffee was dried in the sunlight. Then the

outer husk of the coffee bean was removed, if

necessary, by mechanical operation. The coffee

seeds were then extracted and polishing was done. Thereafter, gradation was done where the good coffee was separated by mechanical as well as manual grading. The Court held that net product is absolutely different and separate from the input.

The Apex Court held as follows:-

“Adverting to facts of the present case, the assessee after plucking or receiving the raw coffee berries makes it undergo nine processes to give it the shape of coffee beans. The net product is absolutely different and separate from the input. The change made in the article results in a new and different article which is recognized in the trade as a new and distinct commodity. The coffee beans have an independent identity distinct from raw material from which it was manufactured. A distinct change comes about in the finished product.

The submission of the learned counsel for the Revenue that the assessee was doing only the processing work and was not involved in the manufacture and producing of a new article cannot be accepted. The process is a manufacturing process when it brings out a complete transformation in the original article so as to produce a commercially different article or commodity. That process itself may consist of several processes. The different processes are integrally connected which result in the production of a commercially different article. If a commercially different article or commodity results after processing then it would be a manufacturing activity. The assessee after processing the raw berries converts them into coffee beans which is commercially different commodity. Conversion of the raw berry into coffee beans would be a manufacturing activity.”

11. Sh.K.D.Sood, learned senior counsel for the assessee has placed reliance on the judgment of the Apex Court in **Lucky Minmat Pvt. Ltd. Vs.**

Commissioner of Income Tax, 2000 (245) ITR 830

wherein the Apex Court has held as follows:-

"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."

12. According to Sh.Vinay Kuthiala, learned senior counsel for the revenue, this observation is only obiter dicta and is not the ratio of the decision and the question whether an activity amounts to manufacture or not is to be decided in the facts of each case.

13. As far as conversion of limestone into limestone powder is concerned, The Apex Court has clearly held that the conversion into lime and lime dust or concrete by stone crushers can legitimately be considered to be a manufacturing process while the mere mining of limestone and marble and cutting the same would not be so considered. The observation of the Supreme Court cannot be termed to be 'obiter dicta' since the Supreme Court has held that the process of conversion of limestone into lime and lime dust is a manufacturing process.

Therefore, there is no merit in the contention of the revenue. Accordingly, all the questions are answered in favour of the assessee and against the revenue. ◇

14. These appeals are disposed of in the aforesaid terms. No order as to costs.

(**Deepak Gupta**), J.

4th October, 2012
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(**Rajiv Sharma**), J.