

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.8.2012

Coram

The Honourable Mrs.Justice CHITRA VENKATARAMAN

and

The Honourable Mr.Justice K.RAVICHANDRABAABU

TC(A). Nos. 451 of 2006 and

TC.(A).Nos. 218 & 219 of 2007

The Commissioner of Income Tax

Coimbatore

... Appellant in

all the appeals

-vs-

M/s.Elgi Ultra Industries Limited

Elgi House, Trichy Road

Coimbatore

... Respondent in

all the appeals

T.C.No. 451 of 2006 :-Tax Case Appeals against the order of the Income Tax Appellate Tribunal, D Bench, Chennai, dated 26.10.2005 passed in I.T.A.No.1631/Mds/ 2003 for assessment year 1996-97.

T.C.Nos. 218 and 219 of 2007 :-Tax Case Appeals against the order of the Income Tax Appellate Tribunal, D Bench, Chennai, dated 17.02.2006 passed in I.T.A.Nos.1539 and 3413/Mds/ 2004 for assessment year 2000-01 and 2001-02 respectively.

For Appellant : Mr.N.V.Balaji

For Respondent : Mr.C.Manisankar

COMMON JUDGMENT

(Judgment of the Court was made by CHITRA VENKATARAMAN,J)

The Revenue has filed the above appeals as against the order of the Income Tax Appellate Tribunal for the assessment years 1996-97, 2000-01 and 2001-02. The T.C.(A).No. 451 of 2006 was admitted on the following substantial question of law:-

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the assessee is eligible for deduction under Section 80IA of the Act, even though the assessee is not engaged as such in any industrial activity of its own except assembling on job work basis?"

2. The T.C.(A).Nos. 218 and 219 of 2007 were admitted on the following substantial question of law:-

"Whether the assessee is entitled for claim of exemption under Section 80IA when it did not carry out any manufacturing activity?"

3. The assessee herein is a company which claimed deduction under Section 80IA of the Act in respect of its new division called as Ultra Division which is engaged in the manufacture and sale of grinders. The assessee submitted that the process of assembling was got done through two job workers. However, the manufacturing activity starting from planning, procuring of the raw materials, inspection and testing, quality control, supply to the contractors were primary duties of the assessee. The finished products were also subject to strict quality control norms. Thus, apart from the assembling done through job workers, the requirement of finance, planning, development of model, advertisement, inspection as well as services were all undertaken by the assessee. Consequently, the assessee contended that it was entitled for deduction under Section 80IA of the Act. The Assessing Officer, however, rejected the contention of the assessee and held that it was not an industrial undertaking manufacturing the grinders. Since assembling was done through labour contractors, there being no manufacturing activity, claim under Section 80IA could not be considered. Referring to the decision reported in 216 ITR 566 C.I.T v. V.O.RAMALINGAM, the Assessing Officer held that the stipulation that the assessee engaged in the manufacture not being satisfied, the claim could not be granted. Aggrieved by this, the assessee went on appeal before the Commissioner of Income Tax (Appeals). Placing reliance on the decision reported in 234 ITR 363 C.I.T. v. A.M.NATARAJAN, which considered the decision reported in 216 ITR 566 C.I.T v. V.O.RAMALINGAM, the assessee contended that when the assessee was owner of the tools, dyes and raw materials and the job workers were not independent to act on their own but were under the direct control and supervision of the assessee, they were entitled to the benefit of deduction. Accepting the case of the assessee, the Commissioner of Income Tax (Appeals) allowed the assessee's appeal, thereby, granted deduction under Section 80IA. The Commissioner of Income Tax (Appeals) pointed out that the assessee's case answered the test prescribed by the Bombay High Court reported in 196 ITR 813 C.I.T. v. M/S.PENTWALT INDIA LIMITED. The Appellate Authority pointed out that apart from procurement of components and raw materials, the dyes and moulds were supplied by the assessee and quality control and strict supervision was ensured at all levels. Even though assembly was done through labour contractors, supervision was done by the assessee on the articles manufactured by observing strict quality control norms. In the circumstances, the assessee was entitled to claim deduction under Section 80IA. Aggrieved by this, the Revenue went on appeal before the Income Tax Appellate Tribunal. Agreeing with the contention of the assessee, following the earlier order passed by it in the assessee's own case in ITA.No.1631/Mds/2003 for the assessment year 1996-97, the Tribunal confirmed the relief to the assessee and dismissed the Revenue's appeal. A perusal of the extracted portion of the order of the Tribunal shows that it confirmed the Commissioner of Income Tax (Appeals)'s order by following the decision of the Bombay High Court reported in 196 ITR 813 C.I.T. v. M/S.PENTWALT INDIA LIMITED. Aggrieved by the order of the Tribunal, the Revenue has filed the above appeals before this Court.

4. Learned standing counsel for the Revenue reiterated the contention taken before the Tribunal and submitted that the assessee had not directly engaged itself in the manufacturing of goods, hence, it was not entitled to claim deduction under Section 80IA. He further pointed out that the assessee had not denied the fact that it had given the assembling work to job workers. That being the case, the assessee company could not be held to be an industrial undertaking manufacturing grinders to qualify for relief under Section 80IA. He also placed reliance on the decision reported in 225 ITR 814 CHILLIES EXPORTS HOUSE LIMITED v. COMMISSIONER OF INCOME TAX as well as 216 ITR 566 COMMISSIONER OF WEALTH TAX v. RAMALINGAM and submitted that on the admitted facts, the Tribunal ought not to have granted the relief to the assessee by holding that the assessee is engaged in the manufacturing activity.

5. Per contra, learned counsel for the assessee placed reliance on the orders of the Tribunal, the decision of the Bombay High Court reported in 196 ITR 813 C.I.T. v. M/S.PENTWALT INDIA LIMITED as well the decision of this Court reported in 225 ITR 814 CHILLIES EXPORTS HOUSE LIMITED v. COMMISSIONER OF INCOME TAX and the decision of the Supreme Court reported in 216 ITR 566 COMMISSIONER OF WEALTH TAX v. RAMALINGAM, and contended that when the dyes and tools and the raw materials in fact belonged to the assessee and only labour was extracted from the job worker, who are under the strict control and supervision of the assessee, the Revenue is not justified in holding that the assessee is not engaged in the manufacturing activity.

6. Heard learned Standing Counsel for the Revenue as well as learned counsel for the assessee and perused the materials available on record.

7. As far as the contention of the Revenue that the assessee is not involved in the manufacturing of grinders is concerned, we do not find any justifiable ground to accept the plea of the Revenue in the light of the law declared in the decisions cited above.

8. A perusal of the orders of the assessment as well as the order of the Appellate Authority show that the assessee procured raw materials and components. The dyes of the assessee were handed over to the job contractors to make use of the same in the manufacture of grinder parts. The order of the authorities below show that the assessee exercised supervision and control in the manufacturing of the parts done by the job workers on the materials supplied by the assessee in according to the specification in the dyes supplied by the assessee. They were subjected to quality control too. Thus even though the assessee had not employed its own employees, yet, the fact is that at every stage the assessee had extracted control over the job work as though they were employees of the assessee. Given the fact that the dyes and the materials were given by the assessee to the job workers, who had merely bestowed their labours, we have no hesitation in accepting the case of the assessee that it qualify for relief under Section 80IA.

9. In the decision reported in 216 ITR 566 C.I.T v. V.O.RAMALINGAM, this Court considered the meaning of manufacture or processing of goods under the Wealth Tax Act. This Court pointed out that,

"..... There should be no misapprehension that "engaged in manufacturing" postulates the assessee's direct involvement in the manufacture and that it may not be necessary that the assessee himself should be personally engaged, but it is enough that he employs his own labourers. It is suggested that the processing leading to the manufacture should be in some sort of permanent establishment with a number of employees engaged in regular work".

10. This Court further pointed out to the decision reported in 59 ITR 699 CIT v. MANMOHAN DAS as well as [1957] SCR 157 DHARANGADHARA CHEMICAL WORKS LTD v. STATE OF SAURASHTRA and held that,

"We thus have no manner of doubt that in deciding whether the assessee had engaged himself through his employees in the manufacture or processing of goods, it will be necessary to see whether labourers engaged were under the control of an independent contractor or were controlled by an agent, whose agency distinguished him from that of a servant or employee, and how far the assessee exercised control by engaging such labourers for work, paying wages or remuneration and determining their conditions of service. "

11. Thus this Court held that the question as to whether the assessee is engaged in the manufacturing process or not, has to be seen in the context of the control exercised by the assessee. Going by the facts therein, indicating the supervision and control, this Court held that bleaching of grey yarn and colouring done through job worker is covered by Section 5(1)(xxxii) of the Wealth Tax Act.

12. As far as the decision of the Apex Court reported in 225 ITR 814 CHILLIES EXPORTS HOUSE LIMITED v. COMMISSIONER OF INCOME TAX is concerned, the Apex Court considered the issue as to whether the assessee was an industrial company as defined under the Finance Act and hence, to be taxed at 55%. There the assessee got the chillies fumigated by a third party by paying charges therefor under a contract. The Apex Court pointed out that the question as to whether the assessee was carrying on business of processing of goods would depend upon the consideration of all relevant materials available in the case. The question that fumigation was done by another party is immaterial or irrelevant for the purpose of considering whether the assessee is engaged in the manufacturing activity. The question is whether the activity including the one relating to fumigation given to another party to make the goods to be exported as a marketable commodity, amounted to processing of goods, has to be considered on the basis of the facts available. Thus, the Apex Court pointed out that question as to whether the assessee was carrying on process of goods has to be looked at by taking into consideration the different activities carried on by the assessee, which resulted in making the goods fit for export and how far the cumulative effect of those activities will amount to the processing of goods. Thus, the Apex Court set aside the order and remitted the matters to the High Court for de novo consideration.

13. A reading of the said judgment shows that the reasoning is similar to what is considered in the decision reported in 216 ITR 566 COMMISSIONER OF WEALTH TAX v. RAMALINGAM. Thus, the sum and substance of the law declared by this Court is that the fact that the assessee himself is not personally engaged in the manufacture, would not disentitle the

assessee from claiming the relief as one engaged in manufacturing activity, for, so long as the assessee exercises control in the work entrusted to job workers, the assessee would be entitled to the relief under Section 80IA of the Act. Being a deduction provision, taking note of the present day outsourcing of various activities, we need to give a meaningful expression to "assessee engaged in the manufacturing process", to hold that so long as the effective involvement of the assessee is there in the form of quality control or supply of material and dyes for the manufacture of parts of the grinders or machinery, even in the case of assembling done through job work, the assessee would be entitled to have the benefit under Section 80IA of the Act.

14. In the circumstances, guided by the decision reported in 216 ITR 566 COMMISSIONER OF WEALTH TAX v. RAMALINGAM, we hereby rejecting the Revenue's appeal, thereby, confirming the order of the Tribunal. The above Tax Case (Appeals) are dismissed. No costs.

(C.V.,J) (K.R.C.B.,J)
10.08.2012

Index : Yes/No
Internet : Yes/No
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To

1. The Commissioner of Income Tax, Coimbatore
2. The Income Tax Appellate Tribunal, D Bench, Chennai

CHITRA VENKATARAMAN,J
and
K.RAVICHANDRABAABU,J

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