IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

T.C.A. Nos.230 of 2010, 279 of 2011 & 563 of 2014

The Commissioner of Income Tax,
Circle-XV, Chennai. ... Appellant
in all appeals

Vs.

M/s.Jannani Holdings,
No.500, Anna Salai,
Congress Buildings,
Chennai – 6. ... Respondent
in T.C.A.No.230 of 2010

M/s.Janani Holdings,
500, 32-38, Congress Buildings,
Anna Salai, Chennai. ... Respondent
in T.C.A.No.279 of 2011

M/s.Janani Holdings,
500, 32-38, Congress Buildings,
Anna Salai, Teynampet,
Chennai – 600 006. ... Respondent
in T.C.A.No.563 of 2014

Prayer in T.C.A.No.230 of 2010 : Tax Case Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "B" Bench, dated 13.08.2009 in I.T.A.No.632/Mds/2009, Assessment Year 2005-06.

Prayer in T.C.A.No.279 of 2011 : Tax Case Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 25.02.2011 in I.T.A.No.1094/Mds/2010, Assessment Year 2007-08.

Prayer in T.C.A.No.563 of 2014 : Tax Case Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 30.12.2013 in I.T.A.No.1442/Mds/2013, Assessment Year 2008-09.

For Appellant : Mrs.R.Hemalatha
Senior Standing Counsel
in all appeals

For Respondent : Ms.Sri Niranjani Srinivasan
in all appeals

C O M M O N J U D G M E N T

(Judgment was delivered by **T.S. SIVAGNANAM, J.**)

These Tax Case Appeals filed by the Revenue under Section 260-A of the Income Tax Act, 1961 ("the Act" for brevity) are directed against the orders in I.T.A.Nos.632/Mds/2009, 1094/Mds/2010 and 1442/Mds/2013, passed by the Income Tax Appellate Tribunal, Chennai, "B", "A" and "A" Benches, respectively.

2.The appeals were entertained to decide the following substantial questions of law :

"T.C.A.No.230 of 2010 *:*

1.Whether on the facts and circumstances of the case, the Tribunal is right in deciding that the Assessee is entitled to the benefit of deduction under Section 10-B of the Act?

2.Whether on the facts and circumstances of the case, the Tribunal is right in not considering the amendment of Sec.10B by omitting cl(iii) of explanation to sub section 7 of the Act?

3.Whether on the facts and circumstances of the case, the order of the Tribunal passed contrary to the case law 251 ITR 323 (SC) is valid?"

T.C.A.No.279 of 2011 :

Whether on the facts and circumstances of the case, the Tribunal was right in dismissing the appeal without considering provisions of sec.10B and the eligibility of the assessee to claim exemption?

T.C.A.No.563 of 2014 :

Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that assessee had dimensionally cut and polished the block of granites and same were exported and the assessee is entitled for exemption u/s.10B when the sale invoices clearly mentioned that the assessee had exported 'processed dimensional rough or crude granite' to mean that the granite has been processed into rough/crude blocks merely making them fit for transportation?"

3.We have elaborately heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant/Revenue and Ms.Sri Niranjani Srinivasan, learned counsel appearing for the respondent/assessee.

4.There are three appeals arising out of three Assessment Years and we will take T.C.A.No.230 of 2010 as the lead case.

5.The assessee is engaged in the granite business and for the Assessment Year under consideration, AY 2005-06, they filed their return claiming 100% deduction under Section 10-B of the Act. The return was selected for scrutiny and the case was discussed with the assessee. The claim of the assessee was that they are in the business of manufacture of granites and they are a 100% export oriented unit and they are entitled to claim deduction under Section 10-B of the Act. The relevant records were also placed before the Assessing Officer to justify the said claim. The Assessing Officer proceeded to consider the matter by observing that, what is required to be decided is whether the assessee is engaged in the manufacture or

production of an article or thing. After taking note of various factors, the Assessing Officer held that the assessee is not engaged in manufacture of any article or thing, within the meaning of Section 10-B of the Act, as is applicable in respect of the Assessment Year under consideration. Accordingly, the claim for deduction was rejected.

6.The assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-XII, Chennai ("CIT(A)" for brevity). The appeal was allowed by order dated 31.12.2008. Aggrieved by the same, the Revenue preferred an appeal before the Tribunal, which confirmed the order of the CIT(A) by the order, dated 13.08.2009, impugned before us.

7.The law on subject is no longer *res integra* and in this regard, we refer to the decision of the Hon'ble Supreme Court in ***Income-Tax Officer, Udaipur v. Arihant Tiles & Marbles (P) Ltd.*** reported in ***(2010) 320 ITR 79 (SC)*** and the decision of the Division Bench of this Court in the case of ***Commissioner of Income-Tax, Chennai v. Pallava Granite Industries (I) (P) Ltd.*** reported in ***(2014) 221 Taxman 107 (Madras)***. Both the above

mentioned decisions deal with granite and marble blocks.

8.The argument of Mrs.R.Hemalatha, learned Senior Standing Counsel, appearing for the appellant/Revenue, is by submitting that, during the Assessment Year under consideration, the content in Section 2(29BA) of the Act was not available, and similarly, the definition of "manufacture" under Section 10-B(7)(iii) was not there in the Statute book and therefore, the Assessing Officer was right in holding that there was no process of manufacture and at the best, it can be construed as an exercise of processing and not that of manufacture. In fact, this very argument was considered in the case of *Pallava Granite Industries (I) (P) Ltd. (supra)* and the decision was taken in favour of the assessee on the following terms :

> ***"8.****We are conscious of the fact that during the assessment years under consideration 2003-04, 2004-05. 2005-06, the definition of Section 2 (29BA) of the Income Tax Act, was not there. So too, sub-section (7) sub-clause (iii) of Section 10B of the Income Tax Act, defining 'manufacture' was not there. Nevertheless, we may note that in the case of Gem Granites v. CIT [2004] 271 ITR 322/141 Taxman 528 (SC), the Supreme Court considered the issue of polishing granites*

and held the same is different from rough granites and that rough granites under the process as amounting to manufacture. Thus, when the resultant article no longer retained its original character, but has a different name and character, we do not find any justifiable ground to accept the plea of the Revenue solely by the reason of the absence of definition of 'manufacture' under Section 10B of the Income Tax Act, during the relevant assessment years namely, 2003-04, 2004-05 and 2005-06, that the terms 'manufacture' has to be read in a restricted way that the processing could not be included within the meaning of 'manufacture'.

9.*Thus, going by the decision of the Supreme Court in the case of Gem Granites (supra), on the scope of the expression 'manufacture', in the absence of any specific definition, we have no hesitation in giving common man's understanding as to the scope of the expression that the expression 'manufacture' would include every process, which would ultimately result in the production of new article having a different character in view.***"*

9.The decision in the case of *Arihant Tiles & Marbles (P) Ltd. (supra)* would also aid the case of the assessee, wherein, the Court pointed out that it

was not concerned only with cutting of marble blocks into slabs, but also concerned with the activity of polishing and ultimate conversion of blocks into polished slabs and tiles and the processes/activities undertaken by the assessee in various stages through which the blocks had to go through before they become polished slabs and tiles, undoubtedly constitute the activity of manufacture or production.

10.Mrs.R.Hemalatha, learned Senior Standing Counsel, appearing for the appellant/Revenue, placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Commissioner of Income-Tax v. Gem India Manufacturing Co.*** reported in ***(2001) 249 ITR 307 SC***. On going through the said decision, we find that the question was whether cutting and polishing of diamond amounts to manufacture or production of goods. Taking into consideration the factual position, the Court held that, raw and uncut diamond is subjected to process of cutting and polishing which yields polished diamond and the polished diamond cannot be treated to be a new article, because in the said case, there was no material on record upon which such a conclusion can be arrived at and therefore, the case was decided in

favour of the Revenue. In the case on hand, the CIT(A) had elaborately examined the process through which the quarried rough stone goes through before it becomes a polished granite slab or tile or any other article. This aspect was rightly taken note of by the Tribunal in the impugned order, more particularly, in Para No.3 therein. Therefore, we find the decision in *Gem India Manufacturing Co.* is distinguishable.

11.The learned Standing Counsel placed reliance on the decision of the Division Bench of the High Court of Kerala in ***Nishanth Exports v. Assistant Commissioner of Income-Tax, Circle-1, Mattancherry*** reported in ***(2018) 401 ITR 401 (Kerala)***. The said decision also would not help the case of the Revenue, because, whether garbling to make pepper edible would amount to giving rise to a different commodity distinct from the raw pepper purchased, was the issue therein. Admittedly, in the said case, the pepper both in raw form or in edible form, continued to remain as pepper.

12.The learned counsel referred to the decision of the Hon'ble Supreme Court in ***Lucky Minmat Pvt. Ltd. v. Commissioner of Income-***

Tax, Jaipur, reported in ***(2000) 245 ITR 830 (SC)*** to support her submissions that, mining of limestones and marble blocks and thereafter cutting and sizing the same, would not amount to process of manufacture.

13.As pointed out by Ms.Sri Niranjani Srinivasan, learned counsel appearing for the respondent/assessee, the decision in the case of *Lucky Minmat Pvt. Ltd.* was considered by the Hon'ble Supreme Court in *Arihant Tiles & Marbles (P) Ltd. (supra)* and it was pointed out as to how the important distinction was not noted by the Department. The operative portion reads as follows :

> ***"11.****The main judgment on which the Department has placed reliance is the judgment of this Court in Lucky Minmat (P) Ltd. v. CIT [2000] 245 ITR 830. In that case, the following question came up for consideration before the Tribunal:*
>
> > *"Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that business activity of the assessee was in the nature of manufacturing or production so as to be entitled for relief under section 80HH of the Income-tax Act, 1961."*
>
> *The assessee in that case had the business of mining of limestones and marble blocks which thereafter were cut and sized before being sold in the market. It was held by this Court*

that the assessee was essentially in the business of mining of limestone. It was held that the activity of excavation will not constitute manufacture or production. It was further held that even the activity of cutting and sizing of marble blocks after excavation would not come within the ambit of expression 'manufacture' or 'production'. In the circumstances, this Court held that the assessee was not entitled to the benefit of section 80HH of the Income-tax Act. However, this Court distinguished the judgment of the Rajasthan High Court in the case of CIT v. Best Chemical & Lime Stone Industries (P.) Ltd. [1994] 210 ITR 883. In that case, Best Chemical & Lime Stone Industries (P.) Ltd. (supra) was engaged in the business of extracting limestone and its sale thereafter converting it into lime and limedust or concrete which was held to be an activity of manufacture or production. The activity of conversion into lime and limedust, according to this Court, in the case of Lucky Minmat (P.) Ltd (supra) certainly constituted a manufacturing process. It was clarified in the said case that mere mining of limestone and marble and cutting the same before it was sold will not constitute 'manufacture' or 'production' but conversion into lime and limedust could constitute the activity of manufacturing or production. This distinction has not been taken into account by the Department while rejecting the claim of the assessee(s) for deduction under

section 80-IA of the Income-tax Act, 1961."

14.In the light of the above, we are of the considered view that the Tribunal was right in confirming the order passed by the CIT(A). For all the above reasons, these Tax Case Appeals are dismissed and the substantial questions of law are answered against the Revenue. No costs.

(T.S.S., J.) (S.S.K., J.)
04.08.2021

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Internet : Yes
Index : Yes / No
Speaking order / Nonspeaking order

To

1.The Income Tax Appellate Tribunal,
Chennai, "A" Bench.

2.The Income Tax Appellate Tribunal,
Chennai, "B" Bench.

3.The Commissioner of Income Tax,
Circle-XV, Chennai.

T.S. SIVAGNANAM, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

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279 of 2011 & 563 of 2014

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