IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

T.C.A.Nos.167, 168, 172, 176, 180 & 185 of 2019

M/s.Philips Foods India Pvt., Ltd.,
Plot No:C-75/76, SIPCOT INDUSTRIAL
COMPLEX,
Madathoor Post,
Tuticorin – 8. .. Appellant in all T.C.As

Versus

The Assistant Commissioner of Income Tax,
Circle – I,
Tuticorin. .. Respondent in all T.C.As

Common Prayer:- Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai made in I.T.A.Nos.498 to 503/Mds/2016 dated 24.08.2016 relating to the Assessment Years 2005-06, 2006-07, 2008-09, 2009-10, 2010-11 and 2011-12 respectively.

For Appellant : Mr.D.V.Anand
For M/s.Pass Associates
[in all T.C.As]

For Respondent : Mr.M.Swaminathan
Senior Standing counsel
[in all T.C.As]

COMMON JUDGMENT

[Order of the Court was made by T.S.SIVAGNANAM, J.]

These appeals have been filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), challenging the common order dated 24.08.2016 passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai ('the Tribunal' for brevity) made in

Tax Case Appeal Nos.	***I.T.A.Nos.***	***Assessment Years***
T.C.A.No.167 of 2019	I.T.A.No.500/Mds/2016	2008-09
T.C.A.No.168 of 2019	I.T.A.No.501/Mds/2016	2009-10
T.C.A.No.172 of 2019	I.T.A.No.502/Mds/2016	2010-11
T.C.A.No.176 of 2019	I.T.A.No.499/Mds/2016	2006-07
T.C.A.No.180 of 2019	I.T.A.No.503/Mds/2016	2011-12
T.C.A.No.185 of 2019	I.T.A.No.498/Mds/2016	2005-06

2. These appeals were admitted on 13.03.2019 on the following Substantial Question of Law:

> *"1.Whether the Assessee, engaged in the activity of Manufacturing and Processing of Crabs, a Sea Product, is entitled to deduction under Section 10B of the Act as 100% Export Oriented Unit (EOU) or not?"*

3. We have heard Mr.D.V.Anand for M/s.Pass Associates, learned counsel for the appellant/assessee and Mr.M.Swaminathan, learned Senior Standing counsel for the respondent/Revenue.

4. The assessee is in the business of Manufacturing, processing and export of Sea foods and it is a 100% Export Oriented Unit (EOU), exporting frozen marine products and product in question in these appeals are Crab Meat.

5. The appellant / assessee would state that the Marine product dealt by them is specifically known as "Pasteurized Crab Meat". The manufacturing activity has been explained by Mr.D.V.Anand, learned

counsel appearing for the appellant / assessee and also a Power point presentation has been furnished to the Court to enable us to acquaint ourselves as to what is the nature of activity done by the assessee. The appellant / assessee claim deduction under Section 10B of the Act. Initially, the claim was for the Assessment Year 2003-04. Though the return of income for the Assessment Years 2003-04, 2004-05, 2005-06 and 2006-07 were accepted, the return for the Assessment Year 2007-08 was subjected to scrutiny and the assessment was completed under Section 143(3) of the Act vide order dated 31.12.2009, allowing the claim of deduction under Section 10B of the Act. So far as for the Assessment Year 2008-09, in the scrutiny assessment, the Assessing Officer by order dated 24.12.2011, declined to grant relief to the assessee under Section 10B of the Act, on the ground that the assessee failed to satisfy the conditions in Section 10B(2)(i) & 10B(2)(iii) of the Act.

6. Aggrieved by such order, the appellant / assessee filed appeal before the Commissioner of Income Tax (Appeals)-1, Madurai [‘CIT(A)’ for brevity], which was dismissed, following the decision in the assessee’s own

case for the Assessment Year 2006-07 dated 16.12.2015. Aggrieved by such order, the assessee preferred appeal to the Tribunal, which was dismissed by the impugned order. Thus, the assessee is before us, challenging the order of the Tribunal for all the aforementioned Assessment Years.

7. We have elaborately heard Mr.D.V.Anand, learned counsel appearing for the appellant / assessee and Mr.Swaminathan, learned Senior Standing counsel for the respondent / Revenue.

8. The assessee's case on merits is that the "Pasteurized and Canned meat" is distinct from raw meat as manufacturing activities are undertaken with various machinery and with skilled labour. That apart, the assessee's operation has been recognized as a manufacturing activity and it has been granted the status of 100% Export Oriented Unit (EOU).

9. It is submitted that the word 'Manufacture' has not been defined under Section 10B of the Act and the Explanation 4 to Section 10A was added by Finance Act 2003. Therefore, the Tribunal ought to have

applied the law as it existed relevant to the Assessment Year alone and consequently, in the absence of any definition of the word 'Manufacture', the word has to be given a meaning as given in common parlance. Further, it is submitted that the Assessing Officer, CIT(A) as well as the Tribunal grossly erred in not noting the nature of activity done by the assessee, which was explained in detail before the authorities as well as before the Tribunal. It is submitted that what was purchased by the assessee as raw material and what was exported are totally different items, commercially known as different product and therefore, the Tribunal erred in not granting relief to the assessee under Section 10B of the Act. Further, it is submitted that the assessee being a 100% Export Oriented Unit (EOU), the definition of the word 'Manufacture' as contained in Section 2(r) of the Special Economic Act ['SEZ Act' for brevity] would apply and conversion of live crab into edible canned product would be entitled for deduction under Section 10B of the Act. Further, it is submitted that the definition of the term 'Manufacture' was inserted in the Act with effect from 01.04.2009 and it is only for undertakings which begins business after 01.04.2009 i.e., with effect from 01.04.2010. The statute has clearly distinguished that the processing,

preservation and packaging of marine products would not amount to manufacture or production of article or thing with insertion of Section 80IB (11A) of the Income Tax Act. In support of this contentions, the learned counsel referred to a flow chart as well as photographs, showing different stages of the activity done by the assessee. The learned counsel placed reliance on the decision in the cases of ***94 DTR 0073 (Mad), T.C.A.No.90 of 2011 dated 13.02.2020, T.C.A.Nos.51 to 55 of 2009 dated 20.02.2019, 174 DTR 0203 (Madras), 2001 (170) CTR 0068 (SC), 1987 ITR 624, 2013 (80) DTR 99, 424 ITR 0387(Cal)***.

10. Mr.M.Swaminathan, learned Senior Standing counsel for the respondent / Revenue seeks to sustain the order passed by the Tribunal by contending that what was procured by the assessee as a raw material continues to retain its character upon the process being completed and the Tribunal rightly held that the activity carried on by the assessee is only processing and would not clarify as a manufacturing activity. In support of his contentions, the learned counsel placed reliance on the decision in the cases of ***250 ITR 440 (Madras), 241 ITR 195 (Kerala), 237 ITR 57 (SC),***

332 ITR 471 (Delhi), 363 ITR 394 (Allahabad), 401 ITR 401 (Kerala High Court).

11. After we have elaborately heard the learned counsel for the parties and carefully perused the impugned order passed by the Tribunal as well as the orders passed by the Assessing Officer and the CIT(A), we find that the Assessing Officer, CIT(A) and the Tribunal abdicated its responsibility as a fact finding authority. The fundamental mistake committed by both the authorities and the Tribunal is in not examining the nature of activity of the assessee before referring to the various decisions, which according to the Tribunal would result in the assessee's appeal being dismissed. The first and foremost job entrusted to a Central Excise Officer is to examine the nature of activity done by the assessee, when he claims that the activity is a manufacturing process. The Central Excise authorities invariably visit the facility established by the assessee to gain first hand knowledge about the claim made by the assessee that they are into manufacture. Had the Assessing officer in the present case taken a step in the direction as would normally be done by the Central Excise Officers,

probably, the finding might have been wholly different or slightly different or it could have been a well reasoned order. The Tribunal as a last fact finding authority, was bound to examine the full facts. At the first blush, we thought that the order of the Tribunal is a well reasoned order because it runs to 35 pages. On closure examination, we found that the first 24 pages had been devoted to the contentions raised by the assessee before the Tribunal. In fact, the contentions has been verbatimly extracted. The discussions on these issue is confined to Paragraphs 10, 10.1 and 10.2 only and the Tribunal holds that there is no change in substance used in live crab or used it as by extracting as it meat from the same live crab. The crab meat is crab meat only. The Tribunal concludes by saying that the input and output is the same, which is crab only. There is no dispute to the fact that what is canned is crab meat, but the assessee's case is that activity undertaken by them produces a distinct product, which is not the same as the raw material which is a live crab. The Tribunal has referred to the decision of the Special Bench, Pune in the case of ***B.G.Chitale v. DCIT, Solapur (115 ITD 97) (SB) Pune***, which dealt with Pasteurization of milk and the Special Bench held that pasteurization of milk is only processing of

milk and milk remains milk, even after such processing, it does not amount to manufacture. We find that the decision cannot be applied to the facts of the case on hand, more particularly, after we had gone through the Power point presentation given by the learned counsel for the appellant / assessee, explaining the various stages of their activity.

12. The Tribunal referred to a decision of the High Court of Karnataka in the case of ***ACE Multi Axes Systems Ltd., Vs. DCIT reported in [2014] 367 ITR 266 (Kar)***. We are not cleared as to the finding rendered by the Tribunal in Paragraph 10.2 as to how they distinguished the said decision. As pointed out earlier, the Assessing Officer, CIT(A) and the Tribunal did not examine the facts. There appears to be no visit to the facility of the assessee, which is stated to be in Tuticorin.

13. Therefore, we are of the considered view that the matter requires to be re-examined in a proper perspective, taking note of the observations made in the preceding paragraphs. For all the above reasons, the Tax Case Appeals are allowed and the order passed by the Tribunal,

CIT(A) and the Assessment orders are set aside and the matter is remanded to the Assessing Officer to take a fresh decision in the matter and we direct the Assessing Officer to issue notice to the assessee, fixing a date for inspection of the petitioner's unit and thereafter, afford an opportunity to the assessee to putforth their submissions and redo the assessments in accordance with law. Consequently, the Substantial Question of Law raised in these appeals is left open. No costs.

(T.S.S.,J) (R.P.A.,J)

27.11.2020

Kak
Index: Yes / No
Internet: Yes / No
Speaking Order/Non-Speaking Order

To
The Income Tax Appellate Tribunal,
'C' Bench, Chennai.

T.S.SIVAGNANAM, J.
AND
R.PONGIAPPAN, J.

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