IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

M/s. Arihant Tiles & Marbles Pvt. Ltd. Vs. Income Tax Officer Ward 2 (1), Udaipur.

D.B.INCOME TAX APPEAL NO.82/2006
(Assessment Year 2000-2001)

M/s. Arihant Tiles & Marbles Pvt. Ltd. Vs. Income Tax Officer Ward 2 (1), Udaipur.

D.B.INCOME TAX APPEAL NO.83/2006
(Assessment Year 2001-2002)

DATE OF JUDGMENT : 30th May , 2007

P R E S E N T

HON'BLE SHRI RAJESH BALIA, J.

HON'BLE SHRI GOPAL KRISHAN VYAS, J.

Mr. M.S.Singhvi,]
Mr.Anjay Kothari,] for the appellant

Mr.K.K.Bissa, for the respondent.

BY THE COURT: (PER HON'BLE RAJESH BALIA, J.)

These appeals are directed against the order dated 30/6/2006 of Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur in IT Appeal Nos.86/JU//2004 & 87/JU/2004.

The following questions were framed as substantial

questions of law while admitting the appeal on 10/8/2006:

> "1. Whether the expression "production" used under Sec.80IA/80IB of the Income Tax Act, 1961 in which both expressions "manufacture" and "production" have been used whether they have been used as synonymous with each other or the word "production" has a wider meaning than "manufacture" so as to include within its purview, an activity, which may not amount to manufacture but may still amount to production?
>
> 2. Whether if the question No.1 is to be decided in positive whether the cutting and polishing of marble stone into marble slabs and tiles which has been held by the Supreme Court not amounting to manufacture can still be considered production for the purpose of Sec.80IA/80IB?

The facts of the present cases are that assessee is engaged in activity of sawing of marble blocks into slabs and tiles and marketing them in indigenous as well as foreign market. He is not engaged in winning marble blocks as a mineral but purchases the blocks from the market.

In relation to profit derived from the export of marble slabs and tiles to foreign market, the assessee-appellant has claimed benefit of deduction under Section 80 HHC of the Income

Tax Act, 1961 and which was allowed by the Assessing Officer.

However, he also claimed deduction under Section 80IA, subsequently renumbered as 80IB of the Act of 1961, as an industrial undertaking which manufactures or produces articles or things not being any article or thing specified in the list in eleventh Schedule. The assessee claimed that sawing of marble blocks and bringing out marble slabs and tiles amounts to manufacture of marble slabs and tiles and fulfills condition of claiming deduction as an industrial undertaking, which manufactures or produces an article or thing not specified in the list in the eleventh Schedule to be eligible for such deduction.

The Assessing Officer and CIT (Appeals) have held that the assessee is not an industrial undertaking which is engaged in manufacture or production of any article or thing inasmuch as there is no qualitative change in the marble slabs or marble tiles to be distinguished or different or independent article, as no change is affected.

In appeal before the Tribunal, the learned Judicial

Member agreed with the contention of the assessee and allowed the claim of the assessee to deduction under Section 80IA. However, learned Accountant Member disagreed and held that activity of assessee in converting marble blocks into marble slabs or tiles does not amount to manufacture or production of any new article or thing for the purpose of claiming any deduction under Section 80IA.

On difference of opinion between the two members constituting the bench, the matter was referred to the Vice Chancellor of the Tribunal by framing following question:

> "Whether the activities undertaken by the assessee tantamount to manufacture /production which entitles it a relief u/s 80IA or not?"

Learned Vice Chairman agreed with the opinion of Accountant member and answered the question referred to it in negative. Thus, according to majority view the assessee's appeals were dismissed by the Tribunal. Hence these appeals.

The principal reason for decision of the Tribunal, which is under appeal, is the decision of Supreme Court in the case of M/s Lucky Minmat (Pvt.) Ltd. vs. CIT (**245 ITR 830**) affirming the judgment of this Court on the issue.

It is submitted by learned counsel for the Revenue that the aforesaid Supreme Court case related to the assessee's claim to deduction under Section 80HH of the Income Tax Act, 1961, which inter alia requires the condition in the matter of claiming deduction namely; assessee must be an industrial undertaking which has begun to manufacture or produce articles after 31/12/1970. It was contended by the learned counsel for the Revenue that the matter being concluded by the Supreme Court decision, the appeals deserve to be dismissed. Learned counsel also urged that in Aman Marble's case **(2003 (157) ELT 393)** cutting of marble blocks into slabs was held by the Supreme Court to be not an activity of manufacture for the purpose of levy of excise duty.

However, learned counsel for the assessee has urged that the Supreme Court in Lucky Minmat's case has distinguished

the other decision of the Rajasthan High Court in Commissioner of Income Tax vs. Best Chemical & Lime Stone Industries Pvt. Ltd. [**210 ITR 883**], which judgment still survives and instant case falls within the ratio laid down in Best Chemical's case. It was further urged that both the cases namely; Lucky Minmat's case & Aman Marble's case rested on the consideration of activity viz-a-viz manufacture of an article or thing but both are not the authorities for considering whether the activity amounts to producing an article or thing. It was urged that all manufacture necessary amounts to production or an article or thing, but all production need no necessarily fall within the purview of manufacture. It was urged that any term used in a statute must be interpreted in its own context and interpretation used in relation to one statute be not brought ipso facto while interpreting another statute. Where commodity produced in natural state is not usable and consumable in its natural form the activity which brings it to usable or marketable stage for end use amounts to an activity of manufacture.

Large number of authorities have been cited on both sides pointing out what activity has been held to be “Manufacture”

or “Production” under different enactments. We are here concerned with marble blocks, a mineral which is won through mining activity and then by applying the process is made usable and consumable. Marble block won from mines as such is not usable for any purpose unless it is brought to usable condition. As we shall presently notice, the issue stands concluded so far as activity of transforming granite blocks into slabs and sizes, which become capable of being used have been held to be manufacturing within the meaning of Section 32A and 80 I of the Income Tax Act, using same expression with which we are concerned, therefore, we need not go into details of cases arising under different enactments or having considered different activities, which have no direct bearing on the issue raised before us.

It is well settled that interpretation of any expression used in the context of any Statute is not automatically to be imported while interpreting the like expression of other Statutes. The expression used in any Statute has to be interpreted in light of its own context and object.

There is substance in the contention of learned counsel

for the respondents that expression “Production” has a wider connotation than the expression “Manufacture” and, therefore, the question whether any activity falls within the ambit of Section 80IA/80IB, the examination from the point of view of only manufacturer is not the final test. The essential distinction between expressions “Manufacture” and “Production” had received attention of the judicial pronouncement from time to time.

The distinction between manufacture and production was noticed and explained by the Supreme Court in CIT vs. N.C.Budharaja's case **(204 ITR 412)**. The Apex Court clearly opined that all activities falling within the ambit of manufacture results in production but converse is not true.

The principle was reiterated in Chogule & Co.'s case **[27 STC 124].**

In **2003 (157) ELT 393** – Aman Marble Industries Pvt. Ltd Vs. CCE, the Court considering the entries under the Central Excise & Tariff Act held that activity of cutting of marble blocks

into marble slabs does not amount to manufacture so as to bring it within the net of levy of excise Duty. In coming to this conclusion, the Court relied on RSEB VS. Associated Stone Industries & Ors. **[JT 2000 (6) SC 522]** in which the Apex court observed that excavation of stones from a mine and thereafter cutting them and polishing them into slabs did not amount to manufacture of goods. Whether excavation of stone from mines amounts to production was not the issue before Rajasthan High Court or Supreme Court.

Karnataka High Court in Commissioner of Income Tax vs. Mysore Minerals Ltd. **(250 ITR 725)** was considering whether the activity of cutting granite blocks into slabs and sizes and polishing them falls within the purview of Section 32A of Income Tax Act, 1961so as to allow the machinery used for such activity eligible for investment allowance and whether it also becomes eligible to deduction under Section 80-I which is available to `industrial undertaking engaged in manufacturing or production of goods.' The Karnataka High Court opined as under:-

> "Section 32A refers to investment allowance on plant and machinery. Plant and

Machinery should be used in manufacture ofr process of any article or thing and it should be of an industrial undertaking. There are a number of conditions mentioned in the section. In order to find out whether a particular activity is a manufacturing activity or not it has to be observed that there should be an action or process of making an article by application of physical or mechanical labour and the product must be commercially a new or different article. Manufacturing results in alteration or change in the nature of the goods which are subjected to process. Granite blocks are converted into slabs and cut into sizes and thereafter polished. It is not the same commodity, i.e., the block. This matter was examined in this case of the assessee in CIT v. Mysore Minerals Ltd. (1994) 205 ITR 461 (Kar.), and it was held that the assessee is an industrial undertaking entitled to investment allowance under section 32A. It is pointed out that the special leave has been granted against the said judgment (see (1993) 201 ITR (St.) 59).

Section 80-I also refers to profits and gains in respect of an industrial undertaking. In view of the decision given in the case of the assessee, we are of the view that

> the Appellate Tribunal is right in law in coming to the conclusion that the original assessment which granted the relief under sections 32A and 80-I to the assessee was not erroneous and the inference of the Commissioner of Income Tax under section 263 was not proper. The Tribunal is also right in law in holding that extracting granite from quarry and cutting it to various sizes and polishing should be considered as manufacture or production of any article or thing and the assessee's business activity must be considered as an industrial undertaking for the purpose of granting reliefs under section 32A and 80-I of the Income Tax Act, 1961."

This judgment was under appeal before the Supreme Court in Commissioner of Income Tax vs. Sesa Goa Ltd. **(271 ITR 331)**. Referring to appeal arising from the above judgment of Karnataka High Court and by referring the principle enunciated in CIT vs. Sesa Goa Ltd. Case, the appeals were dismissed. The Court said that extraction and processing of iron ore amounts to "Production" within the meaning of the word in Section 32A(2)(b)(iii) of the Income Tax Act, 1961. On that premise the investment allowance was held deductible in terms of plant and machinery installed by the assessee for excavation and processing mineral ore

under Section 32A. It also held that it is not necessary that the mined ore must be a commercially new product for the purpose of Section 32A. Other provisions of the Act such as Section 33(1)(b)(B) show that mining of ore is stated to be production.

Thus the decision of Karnataka High Court affirmed by the Supreme Court deals with the same commodity and same expression in the same enactment with which we are concerned and clinches the issue in favour of the appellant.

We also find that even under the Income Tax Rules, 1962 assessee under Section 44AB read with Rule 6G is required to furnish report of audit of his accounts and also required to furnish statement of particulars in form No.3CD provided under the Rules which include furnishing information about the nature of business carried on by the assessee in Part B of the Annexure to be appended to the statement of particulars in which the `marble & granite' has been classified under the manufacturing industry sector. Thus, for the purpose of income tax, under the rules, marble & granite industry has been considered to be manufacturing industry.

Under the rules governing the compulsory audit in respect of various businesses also, marble and granite industry has been included in the sector of manufacturing industry. This goes to show that so far as the authorities under the Income Tax entrusted with the task of its implementation are concerned and the framers of the Rules have considered the cutting of marble and granite blocks into slabs and polishing them for bringing them to the stage of usability as an activity of industrial undertaking engaged in manufacture and production of articles or things. Rules framed under the Act are statutory and became part of Statute. Thus under the Scheme of Income Tax Act and Rules framed thereunder for the purpose of said Act cutting and polishing of marble and granite blocks have been held to be an industrial activity of manufacture. As a block, it is not of any use and has been held to be a manufacturing industry for the purpose of Income Tax Act.

It may be pertinent to notice that even as per its circular, the Central Board of Direct Taxes (vide Circular No.729 dt: 1st November, 1995) has considered granite as a mineral, and any process applied makes it valuable marketable commodity. Board has clarified that:

> "The Board is, therefore, of the view that while granite can alone be considered as mineral, any process applied to granite would deprive the quality of rough mineral from the dimensional blocks of granite, which is a value added marketable commodity."

The decision of Karnataka High Court as affirmed by the Supreme Court is in consonance with the aforesaid view emerging from rules and expressed by the Central Board of Direct Taxes. The authority entrusted for smooth implementation of the enactment had issued directions to the authorities discharging functions under the Act. The same binds the authorities under the Act.

The Tribunal has relied on the decision of Supreme Court in Lucky Minmat (P) Ltd. vs. CIT **[245 ITR 830]** and which has also been pressed into service by learned counsel for the Revenue. This judgment affirmed the decision of Rajasthan High Court, wherein the High Court has held that mining of lime stone and marble block and thereafter cutting and sizing the same before it is sold in the market was not a manufacturing activity by

distinguishing the earlier judgment in CIT Vs. Best Chemical & Lime Stone Industries Pvt. Ltd. in which the business of extracting lime stone and its sale either as converted into `lime rodi' or lime dust were held to be manufacturing activity. The only argument before the Supreme Court was that the High Court judgment in the case of Best Chemical had wrongly been distinguished. That contention has been rejected by the Supreme Court.

It is apparent that the aforesaid judgment is founded on the ground that the commodity in Best Chemical's case being different than what was in the case in hand, the judgment was rightly distinguished. The Supreme Court was not examining the issue about the fact whether the business of mining of lime stone and marble blocks, thereafter cutting and sizing the same before it is sold in market is a manufacturing or production, as the case may be. Apparently, the earlier decision of the Supreme Court in Chowgule & Co. Pvt. Ltd vs. Union of India & Ors. **[47 STC 124]** in which the activity of mining was held to result in production of goods, and the later judgment of Supreme Court in CIT Vs. Sesa Goa Ltd. **[271 ITR 331]** with the equal strength of judges constituting the Bench had taken different view by examining the

issue directly and in the process of affirming the aforementioned judgment of Karnataka High Court in Mysore Mineral's case, wherein, the activity of converting marble block, which is not usable as such, into slabs and polishing them and making it marketable commodity was held to be manufacturing activity.

Further reliance was placed on the Supreme Court decision in Aman Marble's case, wherein, under the tariff entries of the Central Excise and Tariff Act, cutting and polishing was not held to be manufacturing so as to invite levy of excise duty.

As we have already noticed that the interpretation given under Excise Act cannot ipso facto be brought here while interpreting the expression under the Income Tax Act. Apart from that, we find that even under the Central Excise Act, the Legislature quickly intervened and inserted in Chapter XXV Note 6 declaring that process of cutting, sawing, sizing or polishing or any other process of converting block into slabs and tiles shall amount to manufacture. Thus, the activity of cutting marble blocks into slabs under the Central Excise Act too now governed by Statutory provisions, and amounts to manufacturing.

Thus, legislative intent emanating from Income Tax Act and Rules framed thereunder and the judgment of the Karnataka High Court as affirmed by Supreme Court makes it clear that for the purpose of Section 80IA and 80IB, process of cutting and sawing or sizing or polishing of marble blocks into slabs and tiles which results in making raw marble usable amount to manufacture. Apart from that winning of marble block from mines itself amounts to production.

It will not be out of place to refer to a decision of Supreme Court in Kores India Ltd. vs. Commissioner of Central Excise, Chennai [2004 (174) ELT 7], wherein, the activity of cutting of Jumbo rolls into typewriter/telex rolls were held to be manufacturing because the Jumbo rolls as such could not have been used as ribbons in typewriter and vice versa and they are not inter-changeable. The Court observed that; “The ribbon in Jumbo rolls cannot be used in a typewriter and similarly a person who requires 30 pieces of spool ribbon would not be satisfied if he is offered Jumbo rolls of equal length”.

Apparently, the principle applied by the Supreme Court

was that if without applying the process a thing in its raw form cannot be usable and it is made usable for particular purpose, it amounts to manufacture.

The Court approved the principle enunciated in Saraswati Sugar Mills vs. Haryana State Board [(1992) 1 SCC 418] that essence of manufacture is a change of one object to an other for the purpose of making it marketable.

On this principle, the Court accepted the contention that by cutting Jumbo rolls into smaller sizes, a different commodity has come into existence and the commodity which was already in existence serves no purpose and no commercial use, after the process. A new name and character has come into existence. The original commodity after processing does not possess original identity. Obviously, so far as physical characteristic of Jumbo rolls and its shorter version in the form of typewriter and telex roll may have the same physical properties, nonetheless on the basis of their different use as a marketable commodity and after being cut, the same cannot be used for the purpose for which it could be used in original shape, the activity

was held to be manufacture.

The principle aptly applies to present case. Here also, the original commodity namely marble block could not be used for building purposes as such until it is cut into different sizes to be used as building material. It is only by the process of cutting the marble block into slabs and tiles that it is made marketable. The marble block cannot be used for the same purpose as the marble slab or tile can be used and after the marble bock has been cut into different sizes, the end product by putting it simultaneously cannot be used as a block. The principle in Kores India Ltd. case supports the contention of appellant.

Reference has also been made by learned counsel for the Revenue to the decision of this Court in D.D.Shah and Bros. vs. Union of India [**283 ITR 486]**. Indeed, it was a decision rendered by interpreting the legislative provision of Income Tax Act in relation to activity of blending of tea. On principle the court accepted two things, firstly; expression “production” has a wider meaning than word “manufacture”. Word “Production” includes activity of manufacturing by applying human endeavour on some existing raw

material. Production may include obtaining a new product from natural element, for example by milching the cow milkman produces milk though he has not applied any manufacturing process. The real question which arose before the Court for consideration was whether blending of different kind of teas amount to “manufacture” or “production”. The court noticed three processes through which tea reaches the end consumer. The expression “tea undertaking” engaged in production or manufacture, or both, of tea are two different connotations notwithstanding that the tea which comes in the market is in different form from the leaves which are plucked from the bush. Tea bushes are situated in a tea estate or garden or are grown by other persons and is a matter of cultivation, whereas, manufacturing is something different and **that is the making of natural tea leaves marketable and consumable because tea leaves in their natural form are neither consumable nor marketable as the same thing from which tea liquor could be procured.**

The court on the facts of that case has concluded that while growing tea bushes amounts to “Production”, making it

usable or consumable to make it marketable amounts to “Manufacture. After the tea has been brought to consumable and marketable stage and has been brought to the market in different grades, subsequent blending of different tea merely as an marketing strategy was held to be not a manufacturing activity or production.

Significantly, what emerges as ratio of the decision is where the natural produce when it is brought into existence out of surface is not usable or consumable then bringing it to marketable or consumable stage from where it can reach the end consumer was held to be an activity of manufacturing. This was reflected in the fact that tea being a natural vegetable product and income derived therefrom falls within the ambit of agricultural income and exempted from tax. If the producer of tea himself applies the process of bringing it to consumable stage to be marketed thereafter, it still carries the character of agricultural income because of provision under clause (1A) of Section 2 of Income Tax Act, 1961 and remains exempted from tax. If two activities are carried on by different persons, while the grower of tea remains exempted from tax as his income from growing tea leaves has

attributes of agricultural income, the person who applied the process thereafter to make it consumable or usable was considered as manufacturer of tea and liable to tax and his income is not exempted as agricultural income. It was observed that:

> "The question has to be viewed from different angles. If the entire process is done by grower of tea then the entire income being an agricultural income derived from applying process to the goods to make them fit to bring them to market as per section 2(1A) is not taxable under Section 10 (1) and consequently, eligibility under section 80-IB does not arise.
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> Further, if this process is applied by different persons, the question may arise who manufactured tea. The manufacturer may not be absolved from the charge of income tax as he is not a cultivator and for him it is not an agricultural income and in such case he is subject to tax. But, he may avail of the benefit of deduction under Section 80-IB as an industrial undertaking engaged in manufacturing of tea. If blending becomes in integral part of the manufacturing process, the activity may fall within the purview of section 80-IB.But, if a manufacturer of tea or a grower of tea after manufacturing tea brings sorted and graded tea to

> the market which is purchased by a trader, who after blending the teas of various varieties sells them in saleable packets for retail purpose or in loose form, such blending being a process for the purpose of marketing only may not amount to manufacture or production of tea."

On parity of reasoning, this principle can be extended to the facts of present case. Marble blocks as a mineral produced from earth by itself is not usable for any purpose, therefore, to make it usable, various processes which could be applied to bring it to that stage would amount to manufacturing. After it has been brought to that stage, further processing it merely for the purpose of making it marketability easy or smooth would not amount to manufacturing process.

As a result, we hold that the decision of Supreme Court affirming the decision of Karnataka High Court in Mysore Mineral's case, upholding cutting of granite/marble block into usable slabs or tiles is a manufacturing activity, governs the facts of present case, as directly arose and considered under the provisions of Income Tax Act, with which we are concerned, hence, appeals deserve to be allowed.

Accordingly, appeals are allowed and we hold that in the facts and circumstances of the case, conversion of marble blocks into slabs and tiles amounts to manufacture of thing or article within the meaning of Section 80-IA/80-IB of the Income Tax Act and appellant is entitled to claim deduction thereunder.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

Pankaj Baweja