Cit Vs. Supreme Graphics Creations (P) Ltd. and anr.

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Court : Mumbai

Decided On : Dec-06-2004

Reported in : (2005)197CTR(Bom)668

Appeal No. : Tax Appeal No. 4 of 2002 6 December 2004

Appellant : Cit

Respondent : Supreme Graphics Creations (P) Ltd. and anr.

Advocate for Pet/Ap. : S.R. Rivonkar, *for the Revenue* M.S. Usgaonkar with Sudin Usgaonkar, *for Respondent No. 1*.

Judgement :

B.H. Marlapalle, J.

This appeal arises from the order dated 28-9-2001, passed by the Income Tax Appellate Tribunal, Panaji, by allowing an appeal against the order passed by the Assistant CIT as an AO. The question of law as raised in this appeal is : 'Whether the operations carried out by the assessee namely of lamination, punching and pasting with glue for the purpose of making cartons is a manufacturing process as contemplated under section 80-IB of the Income Tax Act, 1961?'

A search of the business premises of the assessee was carried out under section 132 of the Act on 16-10-1996, and the search proceedings were completed on 13-

12-1996. The notice under section 158BC of the Act was served on the assessee on 11-1-1997, for the block assessment period 1987-88 to 1997-98. The AO passed the assessment order under section 158BC(c) of the Act on 17-12-1997, and held that the total undisclosed income was Rs. 26,25,020 and, therefore, tax thereon was quantified at Rs. 15,75,012. This order was challenged before the ITAT, Panaji, in appeal under section 253 of the Act and the appeal filed by the assessee has been allowed in terms of the impugned order.

The AO noted that the following operations as part of the process of making cartons were carried out in the premises of the assessee : (a) The printed sheets are brought to the factory of the assessee-company and laminated to make the surface of the sheets smooth and attractive; (b) The laminated sheets are punched which makes the laminated paper converted into cartons; and (c) The punched paper is pasted with glue to convert into a carton.

However, the AO noted that the following two operations were not carried out in the premises of the assessee, namely, (a) raw material paper was purchased from M/s. ITC Bhadrachalam Paper Boards Ltd.; and (b) the said paper is printed at the factory of the sister concern of the assessee-company, M/s. Neographics India.

Under these circumstances, the AO held that the assessee was not engaged in any manufacturing operations so as to claim the deduction. His reasoning was summarised in the following words :

''Manufacture' implies a change but every change is not manufacture and yet every change of an article is a result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinct name, character or use. Thus the activities undertaken by the assessee-company with the use of machinery does produce some change in the paper used as a raw material but does not bring into existence a new substance which is required to call the process of lamination and punching as manufacture.'

In appeal the Tribunal did not agree with the reasoning given by the AO and while setting aside the said reasoning, the Tribunal by referring to the decisions of the

Supreme Court in the case of Empire Industries Ltd. v. UOI : [1986]162ITR846(SC) ; Laminated Packings (P) Ltd. v. Collector of Central Excise : 1990(49)ELT326(SC) and UOI v. Babubhai Nylchand Mehta : 1991ECR7(SC) , held that the assessee's manufacturing of printed, laminated and waxed cartons was very similar to the activities carried out and covered in the above decisions. It also noted that no concealed income was found during the search operations.

In para. 5 of the impugned order, the Tribunal noted thus :

'The raw material used for manufacture of printed laminated carton is a paperboard correlative sheets, which have different uses. The final product is printed product is printed paperboard container, plain and varnished laminated, foil embossed and waxed cartons, printed E-flute corrugated Board cartons and printed catch covers. The characteristics of the finished goods are totally changed after laminating, corrugating, printing, punching and pasting. The finished product cannot be called paperboard or paper carton by look or by characteristics. It is a commodity and article called as 'cartons'. The use of the finished product is specific. The raw material cannot be used in place of the finished product and the finished product cannot be used in place of the raw material.'

We have no doubt in our mind that the Tribunal has considered the nature of operations carried out by the assessee and by relying upon the three decisions of the Supreme Court, reached a conclusion that the assessee was carrying out a manufacturing process for making the laminated cartons. The reasoning given by the Tribunal cannot be faulted, as it does not suffer from any errors. The Tribunal has rightly discarded the view taken by the AO.

In the result, this appeal fails and the same is hereby dismissed.