ito Vs. Punchline Forms

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : May-03-2005

Reported in : (2005)278ITR165(Mum.)

Judge : P Kumar, S Kapoor

Appellant : ito

Respondent : Punchline Forms

Judgement :

1. The appeal is filed by the Revenue related to the A.Y. 1998-99 and it is directed against the order of the CIT (A)-XII at Mumbai dated 15.01.2002. The proceedings arise out of the assessment made Under Section 143(3) of the Income-tax Act.

2. The Revenue has raised four grounds of appeal but effectively solitary grievance of the Revenue is that the CIT (A) has erred in law and in facts in allowing deduction Under Section 80IA of Rs. 38,47,731/- to the assessee.

3. The brief facts as stated and as borne from the order of lower authorities are that the assessee is a partnership firm engaged in the business of manufacturing of continuous stationery for computer printing. It has set up an industrial undertaking in the backward Union territory of Daman and the main raw material required for manufacturing are paper roll of different sizes, gum, carbon paper and ink etc. These rolls are loaded on the unwind section of the machine and passed through tension controller. Thereafter, when it comes to the printing tower, the

matter is printed in one or more colours on the front or even backside also. Then the paper goes to the process section where it is first, side perforated or trimmed and then it is subjected to the sprocket punching where the holes are made so that it may run on dot matrix printer with the support of holes. Thereafter, the paper is cross perforated and fan folded. The stationery then goes to the collating machine where the carbon is crimped and locked on the sides so that the carbon remains still at the time of printing on computer printer. Further, the main raw material for computer labels is known as self adhesive label stock which is pre gummed and laminated with silicon coated release appear. This is in roll form of different sizes which is mounted in the unwind section of the machine and from there it goes on the sprocket punch unit for punching of holes and then to the punching or dye cutting unit where the labels is half cut as per the punch mounted according to requirement. After dye cutting, it goes to the waste removing unit and then it is fan folded, sheeted, or rerolled. The labels may be plain or printed and may be used in packing slip, mailing label etc.

4. The assessee had claimed deduction Under Section 80IA and the same was refused by the Assessing Officer on the ground that the assessee was not engaged in the manufacturing activity as envisaged under the said section. The Assessing Officer after discussing various case-laws came to the conclusion that the business activity of the assessee-firm does not amount to a manufacturing activity. The Assessing Officer held that the computer stationery is the same thing as paper, from which it is made and it is akin to the paper in homologue, a product modified but unaltered in its essential character.

5. The Assessing Officer relied on the decisions of CST v. Paper Process Works (1986, 62 STC 317 Bom) in which it was held that cutting of high larger reels of paper into smaller reels does not amount to manufacture. He also relied on the decision of Hon'ble Supreme Court in the case of Collector of Central Excise v. Bakelite Hylam Ltd. , 361, 362, wherein it was held that cutting industrial laminated sheets and glaze epoxy laminated sheets into requisite size and punching holes for making them capable of being fitted as insulators does not amount to manufacturing activity.Collector of Central Excise v.Kutty Flush Doors and Fur Company Pvt. Ltd. (1988) 70 STC 344 (SC), wherein it was held that sawing of

timber loge into sizes does not amount to manufacture. He also referred to the decision of Hon'ble Supreme Court in the case of Union of India v. Delhi Cloth and General Mills "It may be worthwhile to note that 'manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more was necessary and there must be transformation; a new and different article must emerge having a distinct name character and use." 7. The ld. CIT (A) accepted the plea of the assessee and held that assessee company carried on a process whereby the object becomes a new commercial product having a distinct name, character and use for which alone it can be used and allowed the appeal of the assessee.

8. The learned DR Shri Shantam Bose stated that the input of the assessee's product is stationery and output also remains the stationery. He further stated that end-product is not different from the original product used by the assessee and it is only that the two papers are pressed together with a carbon in between. As such the business activity of the assessee does not amount to manufacturing. He relied on the case of CIT v. Fashion Prints Ltd., 217 ITR 456 (Bom.).

9. On the other hand, ld. Counsel for the assessee Shri Farrokh Irani stated that the as per provisions of Section 80IA(2), the deduction is available not only to a manufacturer of specified articles or things but also who produces such articles or things. 'Manufacture' means making of articles, which are commercially different from the basic components by physical labour or mechanical process. He further stated that the continuous stationery is a commodity specifically manufactured for the computer printing only. The raw material in the shape of paper sheets, gum, ink etc. undergoes various processes and with every process the commodity experience change and at the end of the series of processes it is a commercially different product. The ld. AR filed sample of inputs i.e. paper, carbon etc. and also filed sample of output i.e. printed share certificate, labels etc. on the continuous stationery, as made by the assessee to show that the inputs and outputs do not belong to the same genesis and the two are commercially different range of product. He further stated that the assessee qualifies the tests of being a manufacturer as laid down by various judgments of Hon'ble Supreme Court. He mainly relied on the following judgments:-Kores India Ltd. v. Commissioner of

Central Excise, Chennai (174) E.L.T. 7 (S.C.).CIT v. Tiecicon P. Ltd. The ld. AR further stated without prejudice to his arguments that the assessee is engaged in the manufacturing activity. The assessee is engaged in producing articles as the word 'produce', means bringing into existence new goods by a process which may even not amount to 'manufacture'. He supported his plea by relying on the decision of Hon'ble Supreme Court in the case of CIT v. Sesa Goa Ltd. reported in (2004) 271 ITR 331 (SC). In the rejoinder the learned DR reiterated his earlier arguments.

10. We have heard both the parties in detail and have also perused the orders of the lower authorities and the judgments cited by both the parties. In our humble view the Hon'ble Supreme Court in the case of Kores India Ltd., supra, while explaining term 'manufacture' has broadly laid down the following tests:- i) When the change or series of changes takes the commodity to a point where commercially it can no longer be regarded as original commodity but instead it is recognised as new and distinct article; ii) When there is a transformation into a new commodity, commercially known as a distinct and having its own character, use and name; and iii) When something is brought into existence which is different from that originally existed and the purpose of change to make it marketable.

11. The Hon'ble Supreme Court has also explained the word 'manufacture' in the case of Aspinwall and Co. Ltd. v. CIT reported in (2001) 251 ITR 323 (SC) wherein it has been held as under:- "The word "manufacture" has not been defined in the Act. In the absence of a definition of the word "manufacture" it has to be given a meaning as is understood in common parlance. It is to be understood as meaning the production of articles for use from raw or prepared materials by giving such materials new forms, qualities or combinations whether by hand labour or machines. If the change made in the article results in a new and different article then it would amount to a manufacturing activity." In the light of the above discussions, we are of the considered view that to decide as to whether it is case of manufacture or not, in our humble understanding, one has to examine whether or not the inputs used in the making of the product and the end product are treated as commercially different products in the business parlance. Therefore, the guiding factor is not the purely scientific meaning but commercial usage and, to use the

phraseology employed by the Hon'ble Supreme Court in the case of Kores India Limited (supra), the commodity so made is, "a new commodity, commercially known as distinct commodity and having its own character, use and name." Applying the above principles to the case of the assessee we are of the view that the continuous computer stationery, the end product made by the assessee, is a commercially different commodity form the raw material i.e. paper rolls, gum, ink, carbon paper etc. The continuous paper stationery has a distinct character, use and name and the end product is not capable to be brought back to its original shape. The raw materials undergo various processes and what emerges is a new and different product as understood in the relevant commercial circles. The continuous Computer Stationery is made specifically for the purpose of use in the printer attached with the computer. Moreover, the assessee is also registered as a manufacturing concern with the State and Central Sales Tax Authorities.

12. The issue before Hon'ble Bombay High Court at the time of deciding the case of CIT v. Fashion Prints Ltd., cited supra, was whether the assessee engaged in the business of dying, printing and processing of textile can be held as manufacturer of textiles as specified in item No. 21 of IX th Schedule for the purpose of Section 32(1)(vi). The Hon'ble Bombay High Court held that the process of printing and dying of grey cloth which is admittedly manufactured by others, was not the business of the manufacture as production within the meaning of Section 32(1)(vi) of the Income-tax Act. In our humble view the said decision is not relevant for the issue before us.

13. We are of the view that the activity in which the assessee is engaged amounts to manufacturing as required under the provisions of Section 80IA and as such we uphold the finding of ld. CIT (A).