

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
' D' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
एवं एस जयरामन, लेखा सदस्य

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER & SHRI
S.JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.1446.CHNY/2017

निर्धारण वर्ष /Assessment year : 2006-07

M/s.India Agro Exports P. Ltd., Vs. The Income Tax officer,
15, Race Course Road, Guindy, Corporate Ward 2(4),
Chennai 600 032. Chennai 34.

[PAN AABCI 3254 L]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.S.Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Mrs.Vijayaprabha, JCIT, D.R

सुनवाई की तारीख/Date of Hearing : 26-06-2018
घोषणा की तारीख /Date of Pronouncement : 26-06-2018

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER

This is an appeal filed by the assessee against the order of the Commissioner of Income-tax (Appeals)-9,Chennai in I.T.A No.07/CIT(A)-9/2011-12 dated 28.02.2017 for the assessment year 2006-07.

2. In this appeal, the assessee has raised the following grounds:-

“1. The order of the Commissioner of Income tax (Appeals) is contrary to the law, facts and circumstances of the case in so far as he confirms the addition made u/s 143(3) by disallowance of deduction u/s.10B and disallowance of estimated percentage on purchases, which is an agricultural product.

2. The Commissioner of Income tax (Appeals) erred in concluding that the manufacturing activity has a bearing on the commencement date and ignored the Apex court judgement cited by the appellant.

3. The Commissioner of Income tax (Appeals) erred in holding that the Honourable Courts had considered the effect of substitution of Section 10B of the Act with effect from 2001, even though it had been held that for the purpose of Section 10A, 10AA and 10B, the definition of ‘manufacture’ as mentioned in Chapter IX of Export Import Policy 2002 to 2007, and as mentioned in Section 2(r) of Special Economic Zones Act, 2005 will be considered.

4. The Commissioner of Income tax (Appeals) erred in not giving due weightage to the disallowance made for purchases on estimated basis which is not relevant to the facts of the case and further erred in stating that this addition will not have effect if the assessing officer allows deduction u/s 10B of the Act. The Commissioner of income tax ought to have made a speaking order.

5. The CIT (A) should have held that the claim of the appellant is legitimate and cannot be denied on extraneous circumstances.

6. The Commissioner of Income tax (Appeals) erred in not giving due credence to the judgments of the Courts and the orders of the Tribunal/CBDT guidelines, 1CM guidelines relied on by the assessee to substantiate its case, where it has been held that the manufacturing activity is entitled for deduction u/s 10B of the Act.”

3. Mr.S.Sridhar represented on behalf of the Assessee, and Mrs.Vijayaprabha represented on behalf of the Revenue.

4. It was submitted by the Id.A.R that the assessee is in the business of manufacture and export of gherkin pickles. It was a submission that assessee was entitled to claim deduction u/s.10B of the Act. It was a submission that the Id. Assessing Officer had disallowed the assessee's claim on the ground that the assessee does not do any manufacture. It was a submission that Id. Assessing Officer had held that assessee only buys gherkins from farmers, sorts, grade them, puts in HDPE drums containing brine solution (salt water) & export them, and consequently, there was no manufacturing process involved. Therefore, Id. Assessing Officer was of the opinion that the assessee was not entitled to deduction u/s.10B of the Act. It was a submission that the assessee is a 100 percent Export Oriented Undertaking (EOU) approved by the appropriate authority. For this purpose, Id.A.R placed before us a copy of the license issued by office of the Development Commissioner, Cochin Special Economic Zone in respect of its unit at 47/1A & 48/1, Eddumudu Village, Horohalli Post, Kanakpura Main Road, Bangalore Rural-562 112. It was a submission that assessee had exported the articles and realized the proceeds within the statutory period for which evidences were produced. It was

a submission that assessee was an exporter registered as a 100% EOU and it was manufacturing and producing the products as specified. For this purpose, the Id.A.R placed before us a copy of the Green Card issued to the assessee in respect of the said unit wherein under the head "Products Manufactured" it is specified 'processed foods, pickles, fresh fruits and vegetables'. It was a submission that the issue was squarely covered by the decision of Co-ordinate Bench of this Tribunal in the case of Sterling Agro Products Processing (P) Ltd., Vs. ACIT reported in (2011) 48 SOT 0080(Chen Trib.), as also the decision of Co-ordinate Bench of Bangalore Tribunal in the case of Intergarden (India) P. Ltd Vs. ACIT reported in (2016) 46 CCH 0359 (Bang Trib) wherein it has been held that the assessee assessee being 100% EOU and as the assessee had undertaken process which had the significant effect on the raw nature, converting it into material capable of withstanding decay for considerable period of time, even though it was not "manufacture" as commonly understood, it cannot be denied that it resulted in a product which cannot be equated with raw gherkins and consequently, the assessee had been granted benefit of claim of deduction u/s.10B of the Act. The Id.A.R also placing reliance upon the decision of the Hon'ble Kerala High Court in the case of Tata Tea Ltd., Vs. ACIT, submitted that even though processing also qualified for exemption under the definition clause of 'manufacture' contained in

section 10B and the definition of "manufacture" having been deleted from the provisions of the section 10B of the Act with effect from assessment year 2001-02, would not restrict the benefit of exemption to 100% EOU to goods as produced by them, other than through processing. It was a submission that Hon'ble Kerala High Court held in favour of the assessee. It was a submission that consequently as the assessee is a 100% EOU, which has been licensed for manufacturing of the processed foods and the assessee is having only the processed foods manufactured at its entitled unit, the assessee was entitled to claim of deduction u/s.10B of the Act.

5. In reply, Id.D.R submitted that the assessee was only adding salt water to the gherkin in plastic containers and there was no manufacturing involved. It was a submission that "process" is excluded and what is required is "manufacture". It was a submission that the basic character of the raw materials remained intact. The Id.D.R vehemently relied upon the decisions cited by the Id.CIT(A) in page-6 of his order.

6. We have considered the rival submissions. A perusal of the various Tribunal decisions relied upon by the Id.A.R, more specific in the case of M/s. Intergarden (India) P. Ltd Vs. ACIT referred to supra and M/s. Sterling Agro Products Processing (P) Ltd., Vs. ACIT referred

to supra, show that in both the cases, the process involved in the manufacture of the product were available before the Tribunal. In the present case, the basic fact itself is missing. What is the process done by the assessee, whether there is actual manufacture or not, has not been shown before the Tribunal. In fact, perusal of the license issued to the assessee as a 100% EOU, shows that under the head "Products Manufactured" it is specified 'processed foods, pickles, fresh fruits and vegetables'. Admittedly, fresh fruits and vegetables are not manufactured items. What is the breakup of the processed foods, pickles, fresh fruits and vegetables which have been exported, have not been brought out before us. In fact, in the assessment order, the Id. Assessing Officer has made a blanket disallowance, the assessee has only given a general reply and claims the issue to be covered by various case laws. Neither the Id. Departmental Representative nor the assessee has been able to place the facts before this Tribunal. This being so, in the interest of justice the issue in this appeal is restored to the file of Id. Assessing Officer for re-adjudication after verification, if necessary physical verification, as to the activities undertaken by the assessee at its eligible unit in respect of which claim of deduction u/s.10B of the Act is being made. As to whether there is manufacture per se, or not, what is the breakup of the exports of the processed foods, pickles, fresh vegetables and fruits separately, and

after determining all the facts, the Id. Assessing Officer shall re-adjudicate the issue after granting assessee adequate opportunity to substantiate its case. In these circumstances, the issue raised in this appeal is restored to the file of Id. Assessing Officer for re-adjudication.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 26th June, 2018, at Chennai.

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखा सदस्य/Accountant Member

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 26th June, 2018.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |