

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Income Tax Appeal No. 33 of 2009

Commissioner of Income Tax,
Haldwani, Nainital.

... Appellant

Versus

M/s Mallikarjun Georesources Associates,
Dewalchaur, Rampur Road,
Haldwani, Nainital.

... Respondent

Mr. Arvind Vashistha, Standing Counsel, for the appellant.
Mr. Rajendra Dobhal, Sr. Advocate, assisted by Mr. A.K. Joshi,
Advocate, for the respondent.

Date of Judgment : 7.7.2011

JUDGMENT

**Coram: Hon'ble Barin Ghosh, C.J.
Hon'ble Servesh Kumar Gupta, J.**

BARIN GHOSH, C.J. (ORAL)

The case of the assessee, for the assessment year concerned, was concluded by an assessment order after issuing notices under Section 143(2)/142(1) of the Income Tax Act, 1961. The assessee is engaged in mining activity, in course whereof, it procures from riverbeds or by blasting, boulders from earmarked mining areas leased out to the assessee and thereupon crushes the same through stone crushing equipments for the purpose of converting such boulders into grits/stone chips/powder. There is no dispute that the assessee sells such grits/stone chips/powder. The Assessing Officer held that since boulder is converted into grit/stone chip/powder, no new product is produced, as the boulder, which is a stone, remains a stone after the same is converted into grits/stone chips/powder. It was held that the process of converting boulder into grits/stone chips/powder does

not tantamount to manufacturing activity. The Assessing Officer held that the words “manufactures” or “produces”, as used in Section 80-IA(2)(iii) of the Income Tax Act, denote manufacture and that every change is not manufacture. It was held that change of boulder into grits/stone chips/powder is not manufacture of grits/stone chips/powder. The Assessing Officer, therefore, refused to give benefit of Section 80-IB of the Act to the assessee.

2. The appellate authority did not accept the view of the Assessing Officer. It held that since the activities of the assessee involved excavation of boulders from mountains and river beds and crushing the same into grits/stone chips/powder, which are commercially marketable commodities, the ratio of the judgment rendered in the case of *A.B. Chemicals*, decided by the Tribunal, applies and, accordingly, held that the activities, as carried out by the assessee for converting boulders into grits/stone chips/powder, are manufacturing activities. The Department thereupon went before the Tribunal, who concluded the matter by relying upon, amongst others, the judgment of the High Court rendered in the case of *Arihant Tiles and Marbles (P) Ltd.* It held that the boulders cannot be used for the same purpose as the grits can be used and after boulders have been broken into grits, the end product, by putting it simultaneously, cannot be used as boulders.

3. Aggrieved by the decision of the Tribunal, the Revenue is before us in the appeal. In the appeal, the question is whether in the facts and circumstances of the case, the assessee was engaged in

manufacturing and processing of articles or things, so as to be entitled to deduction under Section 80IB of the Act?

4. The judgment of the High Court rendered in *Arihant Tiles and Marbles (P) Ltd* was questioned before the Hon'ble Supreme Court, when in the case of *Income Tax Officer, Udaipur v. Arihant Tiles and Marbles (P) Ltd*, **321 ITR 79**, Hon'ble Supreme Court rejected such challenge. While doing so, the Hon'ble Supreme Court pronounced, amongst others, that the word "production" is wider in its scope as compared to the word "manufacture". The Hon'ble Supreme Court also pronounced that when the legislature uses both the words, "production" and "manufacture", the matter cannot be concluded on the basis of the meaning of the word "manufacture". It further pronounced that decisions will vary from case to case, on the basis of variation of the facts of the cases, which includes use of the words applicable to those cases, namely, whether the applicable words are restricted only to manufacture, or extends also to production.

5. While rendering the said judgment, Hon'ble Supreme Court also took note of its earlier judgment, rendered in the case of *Commissioner of Income Tax v. N.C. Budharaja & Co.*, **204 ITR 412 (SC)**, where it was held that the word "production", when used in juxtaposition with the word "manufacture", takes in bringing into existence new goods by a process, which may or may not amount to manufacture. The word "production" takes in all the by-products, intermediate products and residual products, which emerge in the course of manufacture of goods. It, accordingly,

pronounced that even if the action of manufacturing may not produce new goods, but if the activity entails production of a by-product or intermediate produce or residual product, the same will be production. Applying the said test, the Hon'ble Supreme Court pronounced that excavation of marble blocks, squaring them up, sawing them for making slabs, filling up cracks, polishing the same and later on, for the purpose of getting a shine, buffing the same, would tantamount to production within the meaning of Section 80-IB of the Act.

6. In the instant case, boulder, which is a stone, would remain a stone even after it is crushed and converted into grits/stone chips/powder. The activity of converting boulder into grits/stone chips/powder may not be a manufacturing activity, but since such activity would be producing grits/stone chips/powder, the same would be production.

7. We, accordingly, answer the question, raised in the appeal, against the Revenue, and dismiss the appeal.

(Servesch Kumar Gupta, J.)
7.7.2011

(Barin Ghosh, C.J.)
7.7.2011