IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH; AMRITSAR (SMC).

BEFORE SH. A.D. JAIN, JUDICIAL MEMBER

I.T.A. No.282(Asr)/2014
Assessment year:2007-08
PAN :AAAFI6307E

Income Tax Officer, Ward V(2), Amritsar. (Appellant)	vs.	M/s. Indus Textiles, Bhatia House, 26, The Mall, Amritsar. (Respondent)

Appellant by:Sh.Tarsem Lal, DR
Respondent by: None

Date of hearing:15/09/2015
Date of pronouncement: 01/10/2015

ORDER

This is Department's appeal for the assessment year 2007-08 against the order dated 06.02.2014 passed by the ld. CIT(A), Amritsar, quashing the order passed by the AO u/s 154 of the Act by holding that disallowance of depreciation in this case was not a prima facie mistake.

2. The facts of the case, as per the record, are that in this case the assessment was completed u/s 143(3) of the Income Tax Act, 1961 (In short, the 'Act') vide order dated 16.11.2009. The assessee is engaged in the

business of embroidery work of cloth. During F.Y. 2006-07, relevant to A.Y. 2007-08, the assessee firm purchased and installed new machinery in the month of August, 2006 and started the business of embroidery work of cloth. During the year under consideration, the assessee firm claimed additional depreciation of Rs.18,25,184/- u/s 32(1)(iia) of the Act. Subsequently, it was noticed form the assessment record of the assessee, that additional depreciation claimed to the tune of Rs.18,25,184/-, had wrongly been allowed, as the assessee was engaged in the job work of embroidery of cloth and not in the business of manufacture or production of any article or thing to enable the assessee to claim the depreciation u/s 32(1)(iia) of the Act. Accordingly, notice u/s 154 of the Act was given to the assessee to rectify the above mistake.

3. The AO rejected the assessee's explanation by holding as follows:

> "*As per provision of section 32(1)(iia) the additional depreciation is admissible in respect of the machinery or plant (other than ships and aircraft) which is acquired and installed after the 31st day of March, 2005 by an assessee engaged in the business of manufacture or production of any article or thing a further sum equal to twenty percent of the actual cost of such Machinery or Plant shall be allowed as deduction under clause (ii).*
>
> *In this case the assessee is using the machinery for embroidery work on grey cloth and not manufacturing or producing any article or thing new. Beside above, to clarify the meaning of word "manufacture" a definition has been inserted u/s 2(29BA) by the Finance (No.2) Act, 2009, w.e.f. 1.4.2009 which is reproduced hereunder:*

2(29BA) "manufacture: with its grammatical variations, means a change in a non-living physical object or article or thing:-

a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and user, or

b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.

It is clear from the above that the assessee has not using the Machinery for the purposes which may entitle the assessee for additional depreciation. The case Laws quoted by the assessee do not help him as the facts of the cases reported by the assessee are therefore distinguishable to the facts of the case of the assessee under reference. The claim of the assessee of additional depreciation on machinery is not in accordance with the provisions of section 32(1)(ii) of the Income Tax Act, 1961. Since the assessee has failed to fulfill the conditions laid down in section 32(i)(ii) of the Income Tax Act, 1961, the claim of additional depreciation of assessee is, therefore, rejected and an addition of Rs.18,25,184/- is made on account of disallowance of additional depreciation."

4. The Ld. CIT(A) quashed the AO's order.

5. Aggrieved, the Department is in appeal.

6. The Ld. DR has contended that the ld. CIT(A) went wrong in quashing the order passed by the AO u/s 154 of the Act without taking into consideration the AO's observations that as per provisions of section 32(1)(iia) of the Act, additional depreciation is admissible in respect of machinery or plant which is acquired and installed after 31.03.2005 by an assessee engaged in the business of manufacture or production of any article

or thing, allowing a further sum equal to twenty percent of the actual cost of plant and machinery as deduction under clause (ii) of section 32(1); that in the present case, the assessee was using the machinery for embroidery work on grey cloth and was not manufacturing or producing any article or new thing; that section 2(29BA) of the Act provides a definition of "manufacture"; and according to this definition, "manufacture" means a change in a non-living physical object or article or thing, resulting in transformation of the object or article or thing into a new distinct object or article or thing having a different name, character and user, or bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure; that herein, the assessee was not using the machinery for the purposes which may entitle the assessee for additional depreciation; and that the assessee's claim of additional depreciation on machinery was not in accordance with the provisions of section 32(1)(ii) of the Act.

7. Despite due service of notice, none has appeared before me on behalf of the assessee, nor has any application for adjournment been filed. However, finding that the matter can be proceeded with in the absence of the assessee, I am doing so.

8. I have considered the ld. DR's contentions in the light of the material on record. The issue to be considered is as to whether the ld. CIT(A) has rightly quashed the order passed by the AO u/s 154 of the Act.

9. The Ld. CIT(A), it is seen, while quashing the rectification order passed by the AO, has placed reliance on the Ahmedabad Bench decision of the Tribunal in the case of "M/s. Hari Fashion vs. ACIT", passed on 27.05.2011, in ITA No.3105/AHD/2010. In this case, the assessee, like the present assessee, was doing embroidery work on job work basis. The embroidery activity, according to the Tribunal, also results in production of a new article having a different market of its own and there are various stages involved in embroidery activity, as follows:

i) Creating a digitalized embroidery design file,

ii) Editing the design and/or combining it with other design (optional),
iii) Loading the final design file into the embroidery machine,
iv) Stabilizing the fabrics and place it in the machine
v) Starting and monitoring the embroidery machine.

The Tribunal observed that because of the above processes, which have to be carried out in a very careful manner, the embroidered fabric acquires entirely different looks and has different commercial value and that thus, because of the said operations, an entirely new commodity emerges. It was held that because of these operations, the look of the fabric changed

substantially and the new article is commercially known differently from the original fabric; that even otherwise, the word "produce" has a wider connotation than the work "manufacture"; that in "S.S.M. Brothers (P) Ltd. and others vs. CIT", 243 ITR 418 (SC), development rebate claimed u/s 33(1)(b)(B)(i) of the Act was allowed by holding that the plant and machinery were used in the production of processed textiles (embroidery) and, therefore, machinery was entitled to the development rebate claimed; that the decision in "S.S.M Brothers (P) Ltd. & others" (supra), was directly applicable to the facts of that case, because section 32(1)(iia), like section 33(1)(b)(B)(i), also provides for additional depreciation in respect of new machinery and plant purchased by an assessee engaged in the business of manufacture or production of article or thing; that since section 32(1)(iia) also uses the expression 'production of any article or thing', any product with embroidery work is an article or thing; that the provisions of section 31(1)(iia) are larger in scope than those of section 33(1)(B)(b)(i) in asmuch as section 32(1)(iia) provides for additional depreciation on plant and machinery, which is used in the production/manufacture of any article or thing, whereas section 33(1)(b)(B)(i) pertains to development rebate on plant and machinery which is used in the construction, manufacture or production of any article or thing, as listed in the Fifth Schedule; that even

from the angle of Excise Duty under the Central Excise Act, embroidery is subject to levy of duty and is considered as manufacture under Tariff item 5810.

10. The ld. CIT(A) also took into consideration the decision of the Hon'ble jurisdictional High Court of Punjab & Haryana in "CIT vs. Sovrin Knit Works", 199 ITR 679 (P&H)(FB), which was based on the decision of the Hon'ble Supreme Court in the case of "Empire Industries Ltd. vs. U.O.I", 162 ITR 846 (SC), which stood endorsed by the Hon'ble Supreme Court in the case of "Ujagar Prints vs. U.O.I", 179 ITR 317 (SC).

11. In " Empire Industries Ltd. vs. U.O.I." (supra), the Hon'ble Supreme Court has held "manufacture" under the Central Excise Act to include the processes of bleaching, dyeing and printing, holding that elymologically, bleaching, dyeing and printing meant manufacturing processes. It has not been shown that "manufacture" under the Income tax Act carriesany other meaning. Pertinently, "manufacture" is not defined in the Income-tax Act.

12. In "Ujagar Prints vs. U.O.I." (supra), the view expressed in "Empire Industries Ltd. vs. U.O.I (supra), was held to be correct. It was held that the processes like bleaching, dyeing, printing, sizing, shrink-proofing, water-proofing, rubberizing, etc., of fabric are not so alien or foreign to the concept of "manufacture" that they could not come within that concept.

"Empire Industries Ltd." (supra) was affirmed in "Sovrin Knit Works" (supra), following Empire Industries Ltd., (supra) and "Ujagar Prints" (supra), inter-alia, embroidery of grey cloth was held to constitute production and manufacture in terms of Item No.32 of the Fifth Schedule of the Income Tax Act, 1961. To reiterate, herein also, the activity under consideration is embroidery on grey cloth.

13. Then, "M/s. Hari Fashion" (supra) has also been relied on by the Amritsar Bench of the Tribunal in "S.S. Embroiders, Amritsar vs. Department of Income Tax", rendered on 23.04.2012 in ITA No.357(Asr)/2010, for the assessment year 2005-06 (copy placed at APB 121 to 125), holding depreciation to be allowed at the rate of fifty percent on machinery claimed to have been purchased under TUFS, such machinery being utilized in the textile industry. The Tribunal also took into consideration, inter-alia, "Sovrin Knit Works" (supra) and "S.S.M. Brothers (P) Ltd." (supra).

14. No decision contrary to the above case laws has been brought to my notice.

15. In view of the above discussion, finding no merit therein, the grievance sought to be raised by the Department is rejected and it is held that

the ld. CIT(A) was correct in quashing the rectification order passed by the Assessing Officer.

16. In the result, the appeal is dismissed.

Order pronounced in the open court on Ist October, 2012.

Sd/-
(A.D. JAIN)
JUDICIAL MEMBER

Dated: Ist October, 2015

Copy of the order forwarded to:

1. The Assessee:M/s. Indus Textiles, Amritsar.
2. The ITO Ward V(2), Amritsar.
3. The CIT(A), Amritsar.
4. The CIT, Amritsar.
5. The SR DR, ITAT, Amritsar.

True copy
By order

(Assistant Registrar)
Income Tax Appellate Tribunal,
Amritsar Bench: Amritsar.