

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****TAX APPEAL NO. 1852 of 2006****With****TAX APPEAL NO. 1261 of 2006****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE K.J.THAKER**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?
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COMMISSIONER OF INCOME TAX....Appellant(s)

Versus

M/S. COLOUR GRAPHICS....Opponent(s)

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Appearance:

MR SUDHIR M MEHTA, ADVOCATE for the Appellant(s) No. 1

MR MANISH J SHAH, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**  
and  
**HONOURABLE MR.JUSTICE K.J.THAKER**

**Date : 24/12/2014**  
**COMMON ORAL JUDGMENT**  
**(PER : HONOURABLE MR.JUSTICE KS JHAVERI)**

1. Both these appeals arise from the common judgment and order of the Income Tax Appellate Tribunal, Ahmedabad, therefore, they are being heard and decided together by this common judgment.

2. Tax Appeal No.1852 of 2006 is filed by the revenue, challenging the judgment and order dated 12.05.2006 passed by the Income Tax Appellate Tribunal, Ahmedabad [for short "**the Tribunal**"] in ITA No.262/Ahd/2006, whereby the appeal filed by the revenue was dismissed by the Tribunal.

3. Tax appeal No.1261 of 2006 is filed by the assessee, challenging the judgment and order dated 12.05.2006 passed by the Tribunal in ITA No.223/Ahd/2006, whereby the appeal filed by the assessee was dismissed by the Tribunal.

4. The facts, in brief, are that the assessee is engaged in the business of offset cutting and printing. The assessee had filed its return for the assessment Year 1997-98 and claimed for deduction under Section 80IA of the Income Tax Act. However, the same was disallowed

by the Assessing Officer on the ground that the printing work of various type is not a manufacturing activity, eligible for deduction under Section 80IA of the Income Tax Act and that the assessee employed lesser number of workers than required as per the provisions of Section 80IA(2)(v) of the Income Tax Act.

4.1. Against the said order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The CIT(A) partly allowed the said appeal. Against the order of the CIT(A), the revenue as well as the assessee filed appeals before the Tribunal. The Tribunal vide impugned order dated 12.05.2006 dismissed both the appeals. Hence, Tax Appeal No.1852 of 2006 is filed at the instance of revenue and Tax Appeal No.1261 of 2006 is filed at the instance of the assessee.

5. While admitting Tax appeal No.1852 of 2006, the Court had formulated the following substantial question of law :-

*"Whether on the facts and circumstances of the case and in law was the Appellate Tribunal right in holding that the business activity of the assessee was manufacturing within the meaning of*

*Section 80IA(2)(iii) of the I.T.Act ? "*

6. While admitting Tax appeal No.1261 of 2006, the Court had formulated the following substantial question of law :-

*"Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the assessee had not fulfilled the condition of 10 or more workers stated in Section 80IA(2)(v) when in fact, in January there were 10 workers and in February and March there were 12 workers, and the manufacturing had started on 15<sup>th</sup> September, 1996 ? "*

7. Mr. Mehta, learned advocate for the revenue has submitted that the question of law involved in Tax Appeal No.1852 of 2006 is already concluded by this Court in favour of the assessee and against the revenue in Tax Appeal No.1850 of 2006 and other allied matters.

8. Mr. Shah, learned advocate for the assessee has drawn our attention to the provisions of Section 80IA(2)(v) of the Income Tax Act and submitted that the Tribunal has committed error in passing the impugned order.

8.1. Learned advocate for the assessee has relied upon the decision of the Bombay High Court in the case of **Commissioner of Income Tax. Harit Synthetic Fabrics Pvt. Ltd.** reported **162 ITR, 640** and the decision of the Apex Court in the case of **Bajaj Tempo Ltd. v. Commissioner of Income Tax**, report in **[1992] 196 ITR 188** and contended that in view of the above decisions, Tax Appeal No.1261 of 2006 deserves to be allowed.

9. We have heard learned advocate for both the parties and perused the material on record. Insofar as the question of law involved in Tax Appeal No.1852 of 2006 is concerned, the same is already concluded by this court in favour of the assessee and against the revenue in Tax Appeal No.1850 of 2006. In paragraph Nos. 5, 6 and 7, the Court has observed as under:-

"5. We have heard learned counsel for both the sides. After appreciating the records of the case, the Tribunal concluded that the business activity carried out by the assessee was a "manufacturing activity", by placing reliance upon the judgment rendered by this Court in the case of **commissioner of Income-Tax, Gujarat v. Ajay Printery P. Ltd. [1965] 58 ITR 811 (Guj.)**. It is an established law that 'manufacture' implies some activity, which converts the inputs into something different in name, character and use. What is required to be taken into consideration while ascertaining whether the activity

constitutes ' manufacture' is the nature of the raw materials and resultant products emerging at the ends of the process. No generalization can be made based only on the process carried out by an assessee. This is evident from the facts that if as a result of processing, a different and distinct commodity comes into existence, then even a process of cutting can be considered a process of 'manufacture'.

6. In the present case, the raw materials of the assessee are paper, printing inks, plates, etc. whose characteristics are very much different from the products such as labels, cartons, pamphlets, brochures, etc. The commercial identity of the commodity, besides name, character, function, end-use, etc., are transformed completely and the raw material loses its identity resulting into the emergence of a new product, having new and distinct commercial identity, characteristics, function and end-use. Considering the above aspects, the Tribunal was completely justified in holding that the business activity of the assessee was a "manufacturing activity". In our opinion, it does not matter whether the assessee is doing job-work of the printed material, which is not a finished work. The only test is whether the activity is one of manufacture or not.

7. In view of the above, the question of law as to whether the Tribunal was right in holding that the business activity of the assessee was "manufacturing" within the meaning of Section 80IA (2) (iii) of the I.T. Act is answered in the affirmative in favour

*of the assessee and against the Revenue. All the three appeals are, accordingly, dismissed."*

10. Since the issue raised in Tax Appeal No.1852 of 2006 is already concluded by this Court, no elaborate reasons are required to be assigned by us for disposing this appeal. In that view of the matter, we are of the considered opinion that the Tax Appeal No.1852 of 2006 deserves to be dismissed and the same are accordingly dismissed. The question of law raised in this appeal is answered in favour of the assessee and against the revenue. Accordingly, we hold that the Tribunal was right in law in holding that the business activity of the assessee was manufacturing within the meaning of Section 80IA(2)(iii) of the I.T.Act.

11. Insofar as the question of law involved in Tax appeal No.1261 of 2006 is concerned, it would be relevant to reproduce Section 80IA(2)(v) 79 of the Income Tax Act, which reads as under:-

*"80IA(2)(v) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.*

12. The Bombay High Court in the case of **Harit Synthetic Fabrics Pvt. Ltd.(supra)**, has observed as under:-

" In the instant case, ten workmen were employed by the assessee from August, 1969, and remained in its employment at least until December 31, 1969, when the relevant previous year ended. Its factory has commenced working in the earlier previous year with a smaller number of workmen. It would appear that as the manufacturing process gathered momentum, more workmen were employed. In the circumstances, it appears to us that substantial compliance with the provisions of Section 80J(4)(iv) of the Income Tax Act, 1961, had been achieved. The benefit of Section 80J cannot be withheld from the assessee (and has to be allowed) on that account."

13. The Apex Court in the case of **Bajaj Tempo Ltd. (supra)**, held that a provision in a taxing statute granting incentives for promoting growth and development should be construed liberally; and since a provision for promoting economic growth has to be interpreted liberally, the restriction on it too has to be construed so as to advance the objective of the provision and not to frustrate it.

14. We are of the opinion that the assessee had complied substantial compliance with the provisions of Section 80IA(2)(v) of the Income



Tax Act. Therefore, considering the aforesaid facts of the case and the principle laid down in the case of **Harit Synthetic Fabrics Pvt. Ltd. (supra)** and **Bajaj Tempo Ltd. (supra)**, we are of the opinion that the present appeal deserves to be allowed and the same is accordingly allowed. The question raised in this appeal is answered in favour of the assessee and against the revenue. Therefore, we hold that the Tribunal was not right in holding that that the assessee had not fulfilled the condition of 10 or more workers stated in Section 80IA(2)(v) of the Income Tax Act.

15. For the foregoing reasons, the Tax Appeal No.1852 of 2006 is **dismissed** and Tax Appeal No.1261 of 2006 is **allowed**.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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