

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 1850 of 2006****With****TAX APPEAL NO. 1851 of 2006****With****TAX APPEAL NO. 1854 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

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. These three appeals involve common questions on law and arise out of the common impugned judgment and order of the Income Tax Appellate Tribunal and hence, they are decided by this common judgment.

2. Briefly stated, the facts are that the assessee is a partnership firm engaged in printing works. The assessee filed its Return of Income declaring total income at Rs.65,754/- after claiming deduction of Rs.11,62,483/- u/s.80IA of the Income Tax Act, 1961 for the A.Y. 2000-01. Assessment scrutiny was undertaken and thereafter, the Assessing Officer passed the order u/s.143(3) on 04.03.2005 holding that the assessee is not entitled to deduction u/s.80IA of the Act.

3. Aggrieved by the aforesaid order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal vide order dated

11.11.2005 holding that the assessee is engaged in manufacturing activity as per Section 80IA(2)(iii) of the Act. Against the order of CIT(A), appeals were filed before the Appellate Tribunal. Vide common impugned judgment and order dated 12.05.2006 passed in ITA No.262 to 265/AHD/2006 with C.O. No.85/AHD/2006 and ITA No.223/AHD/2006, the Tribunal dismissed all the six appeals but, allowed the cross objection filed by the assessee. Being aggrieved by the common impugned judgment and order, the present appeals have been preferred.

4. The appeals were admitted on 23.07.2007 in terms of 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?"

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 end of the process. No generalization can be made based only on the process carried out by an assessee. This is evident from the fact that if as a result of processing, a different and distinct commodity comes into existence, then even a process of cutting can be considered as a process of 'manufacture'.

6. In the present case, the raw materials of the assessee are paper, printing ink, 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.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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