# Cit vs Sesa Goa Ltd. on 17 November, 2004

## Equivalent citations: [2004]271ITR331(SC)

ORDER

Civil Appeal No. 7456 of 2004 Heard learned counsel for the parties.

Delay condoned.

Leave granted.

2. The following question raised at the instance of the revenue in an appeal before the Bombay High Court was answered in favour of the assessee :

> "Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the assessee is entitled to deduction of investment allowance under section 32A of the Income Tax Act, 1961, in respect of machinery used in mining activity ignoring the fact that the assessee is engaged in extraction and processing of iron ore, not amounting to manufacture or production of any article or thing ?"

3. The High Court, while dismissing the appeal preferred by the revenue, held that extraction and processing of iron ore did not amount to "manufacture". However, it came to the conclusion that extraction of iron ore and the various processes would involve "production" within the meaning of section 32A(2)(b)(iii) of the Income Tax Act, 1961 (hereinafter referred to as, "the Act"), entitling the assessee to investment allowance under the said provision.

4. According to the revenue, which is in appeal before us, the High Court erred in its conclusion as it failed to consider that extraction and processing of iron ore did not produce any new product. The definition of the word "ore" in Strouds Judicial Dictionary, Volume 3, Fifth edition, has been relied upon in this context. Reliance has also been placed upon the decision of this court in Minerals and Metals Trading Corporation of India Ltd. v. Union of India (1973) 1 SCR 997 : AIR 1972 SC 2551 and on Chapter Note II of Chapter 26 of the Central Excise Tariff Act, 1985.

5. Learned counsel for the assessee, on the other hand, has contended that the High Court had correctly relied upon earlier decisions of this court in arriving at the conclusion it did. We have also been referred to the other provisions of the Act, which are substantially phrased in the same manner as section 32A(2)(b)(iii) of the Act, wherefrorn, according to the assessee, it will be abundantly clear that Parliament had intended to include the mining of ores within the meaning of the word "production".

6. At the outset, it may be noted that section 32A(2)(b)(iii) makes it clear that investment allowance is deductible in respect of, inter alia, a plant owned by the assessee which is wholly used for the

purposes of the assessees business under section 32A(1) if the plant is installed after 31-3-1976, in an industrial undertaking for the purposes of the business of construction or manufacture or production of any article or thing, except those articles or things mentioned in the Eleventh Schedule to the Act. There is no dispute that the plant in respect of which the assessee claimed deduction was owned by it and was installed after 31-3-1976, in the assessees industrial undertaking for excavating, mining and processing mineral ore. Mineral ore is not excluded by the Eleventh Schedule. The only question is whether such business is one of manufacture or production of ore. The issue had arisen before different High Courts over a period of time. The High Courts have held that the activity amounted to "production" and answered the issue in question in favour of the assessee. The High Court of Andhra Pradesh did so in CIT v. Singareni Collieries Co. Ltd. (1996) 221 ITR 48 (AP), the Calcutta High Court in Khalsa Brothers v. CIT (1996) 217 ITR 185 (Cal) and CIT v. Mercantile Construction Co. (1994) 74 Taxman 41 (Cal) and the Delhi High Court in CIT v. Univmine (P) Ltd. (1993) 202 ITR 825 (Del). The revenue has not questioned any of these decisions, at least not successfully, and the position of law, therefore, was taken as settled.

7. The reasoning given by the High Court, in the decisions noted by us earlier, is, in our opinion, unimpeachable. This court had, as early as in 1961, in Chrestian Mica Industries Ltd. v. State of Bihar (1961) 12 STC 150, defined the word "production", albeit, in connection with the Bihar Sales Tax Act, 1947. The definition was adopted from the meaning ascribed to the word in the Oxford English Dictionary as meaning "amongst other things that which is produced; a thing that results from any action, process or effort, a product; a product of human activity or effort". From the wide definition of the word "production", it has to follow that mining activity for the purpose of production of mineral ores would come within the arnbit of the word "production" since ore is "a thing", which is the result of human activity or effort. It has also been held by this court in CIT v. N. C. Budharaja and Co. (1993) 204 ITR 412 (SC) that the word ,production" is much wider than the word "manufacture". It was said (page 423) :

> "The word production has a wider connotation than the word manufacture. While every manufacture can be charaterised as production, every production need not amount to manufacture ....
>
> The word production or produce 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. It also takes in all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods."

It is, therefore, not necessary, as has been sought to be contended by learned counsel for the revenue, that the mined ore must be a commercially new product. The decisions and other authorities on the definition of the word "ore", as cited by the appellant, are irrelevant.

8. Learned counsel appearing on behalf of the assessee, correctly submitted that the other provisions of the Act, particularly section 33(1)(b)(B) read with Item No. 3 of the Fifth Schedule to the Act, would show that mining of ore is treated as "production". Section 35E also speaks of production in the context of mining activity. The language of these sections is similar to the

language of section 32A(2). There is no reason for us to assume that the word "production" was used in a different sense in section 32A.

9. We are, therefore, of the opinion that extraction and processing of iron ore amounts to "production" within the meaning of the word in section 32A(2)(b)(iii) of the Act and, consequently, the assessee is entitled to the benefit of section 32A(1) of the Act. The question whether the High Court was correct in holding that the activity did not amount to "manufacture" is left open.

The civil appeal is, accordingly, dismissed but without any order as to costs.

S. L. P. (C) No. 15724 of 2004, S. L. P. (C) No. 18232 of 2004, S. L. P. (C) No. 18525 of 2004, S. L. P. (C) No. 18537 of 2004 and S. L. P. (C) No. 9437 of 2004 :

> Following the decision given by us today in CIT v. Sesa Goa Ltd. (Civil Appeal No. 7456 of 2004), the special leave petitions are dismissed.
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> The provision required to be construed in this appeal is section 80-I of the Income Tax Act, 1961, the relevant extracts of which are substantially identical to the provisions of section 32A(2)(b)(iii) of the Income Tax Act, 1961, which have been construed by us in the order delivered by us today in CIT v. Sesa Goa Limited (Civil Appeal No. 7456 of 2004). Following the decision in M/s. Sesa Goa Limited (supra), the civil appeal is dismissed.

10. No costs.