

आयकर अपीलीय अधिकरण, “जे” न्यायपीठ, मुंबई  
IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI  
श्री बी. आर.बास्करन, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष  
BEFORE SHRI B.R.BASKARAN, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.2751/Mum/2015  
(निर्धारण वर्ष / Assessment Year: 2005-06)

D.C.I.T Central Circle 7(2) Room No.655, Aayakar Bhavan, M. K.Road, Churchgate, Mumbai - 400020	<b>बनाम/</b> Vs.	Mamania Family Trust C/o. Appolo Plastics, 33-Huges, 3 <sup>rd</sup> Floor, Opp. Prempuri Ashram, N.S.Patkar Marg, Grant Road (W), Mumbai - 400007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAM1339D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Shri Nitesh Joshi
Assessee by:	Shri C.S.Sharma

सुनवाई की तारीख / Date of Hearing: 21.11.2016  
घोषणा की तारीख /Date of Pronouncement: 30.11.2016  
आदेश / ORDER

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 26.12.2014 passed by the Commissioner of Income Tax (Appeal)49, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2005-06.

2. The revenue has raised the following grounds:-

“1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in allowing the deduction u/s.80IB(4) in respect of Scrap Sales amounting to Rs.52,95,310/- by treating the same as income derived from business activity of the industrial undertaking for the purpose of deduction u/s.80IB(4).”*

3. The brief facts of the case are that the assessee is a family trust and carrying the business activities under the name and style of M/s. Apollo Plastics, having two units at Daman and engaged in the activity of manufacturing of electrical goods and plastic moulding articles, fans, brass and copper parts of electrical goods. The original assessment u/s.143(3) of the Income Tax Act, 1961( in short “the Act”) was completed on 17.12.2007 determining the assessable income to the tune of Rs.53,00,640/- as against the returned income at Rs.Nil. The Assessing Officer disallowed the scrap amounting to Rs.53,00,640/- claimed by the assessee, thereafter, the assessee filed an appeal before the CIT(A) who confirmed the said order by virtue of order dated 15.10.2008. The assessee filed an appeal u/s.254 of the Act before the Hon’ble ITAT, Mumbai. The Hon’ble ITAT relying upon its own order dated 30.11.2010 in assessee’s own case set aside the issue to the file of Assessing Officer with the direction containing para 8 of the order dated 30.11.2010. The para 8 of the said order is hereby reproduced as under:-

“From the orders of the lower authorities, it is not clear as to how the scrap was generated and therefore, in order to verify

whether the scrap had direct nexus with the industrial operation or it was scrap of other nature, we restore this issue to the file of the A.O. for necessary verification. To the extent, the scrap has direct nexus with the industrial operations thereby implying that to the extent scrap is in the nature of bye-product of industrial operations, the same would qualify for deduction u/s.80IB. In the result, ground No.3 for A.Y.2003-04 and ground No.1 for A.Ys. 2004-05 and 2005-06 are allowed for statistical purposes.”

4. Thereafter, the Assessing Officer examined the case in view of the directions of the Hon’ble ITAT and was of the view that the assessee failed to provide the corroborative evidence to support the scrap generated from industrial activities which has direct nexus with industrial operations, therefore, the claim was declined and the assessee filed further appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

**ISSUE NO.1:-**

5. We have heard the arguments advanced by the learned representative of the parties and perused the record. The learned representative of the revenue has argued that the assessee did not submit any evidence before the Assessing Officer, therefore, the

Assessing Officer has rightly declined the claim of the assessee but the CIT(A) has wrongly allowed the claim of the assessee, therefore, the finding of the CIT(A) is wrong against law and facts which is liable to be set aside. The learned representative of the assessee has placed reliance upon the order of the CIT(A) in question. Before going further, it is necessary to advert the finding of the CIT(A) on record.:-

“7.1 The ITAT in the appellant’s case held that since it was not clear from the orders of the lower authorities as to how the scrap was generated, it restored the issue to the file of the Assessing Officer in order to verify whether the scrap had direct nexus with the industrial operation or it was the scrap of the other nature. During the course of re-assessment proceedings u/s.143(3) r.w.s. 254 of the Act, the appellant had furnished that detailed manufacturing process vide its letter dated 08.02.2012 which is reproduced in paragraph 6.1 above. The process of manufacturing as explained by the appellant shows that the generation of scrap is ingredient part of the manufacturing as explained by the appellant shows that the generation of scrap is ingredient part of the manufacturing activity. In the assessment order the AO did not contravene the submissions made by the appellant

with regard to the process of scrap generation. On the contrary, the AO merely asked the appellant to furnish information regarding the percentage of scrap generated by any other industrial undertaking engaged in similar manufacturing activities and also requested the appellant to furnish document for satisfaction of permissible level of scrap generation by association of Industries. In response to which the appellant vide its letter dated 18.03.2013 stated that the percentage of scrap generated by similar undertakings in manufacturing activities ranges from 3 to 5 % and in moulding of articles ranges from 7 to 10% in brass, copper, iron and aluminium. It was also submitted that the percentage differs depending upon the quality of raw materials and machineries. The appellant further submitted that the percentage of scrap generated in its own case ranges from 1 to 1.25% of sale which is reasonable. As regards the production of documents from association of industries which satisfies any percentage of scrap generation in similar type of activities it was submitted that no association of industries do certify any such percentage of scrap generation and all the industries have their different norms and specification of production. In the assessment order, the AO merely disregarded the claim of the

appellant on the basis that no supporting documentary evidence was furnished by the appellant in support of its claim. I am not able to agree with the views of the AO. The direction of the Hon'ble ITAT to the AO was to verify whether the scrap was generated out of industrial operation or otherwise. The appellant furnished details of process of manufacturing in which it could be seen that the scrap is generated as by-product. The assertion of the appellant has not been negated by Assessing Officer by bringing on record either contrary evidence or pointing out the inaccuracies in the process explained by the appellant. Nothing precluded the Assessing Officer from bringing on record the information sought by him from the appellant regarding comparable case or data released by the association of industries even after the appellant failed to produce such information. To my mind the nature of manufacturing activity in question would involve generation of scrap also. Considering the above facts and circumstances of the case as discussed above, I hereby delete the addition made by the Assessing Officer for the assessment years 2003-04 to 2006-07 regarding scrap sales.”

6. On appraisal of the above mentioned orders, no doubt the Assessing Officer has to verify the claim of the assessee and to certify the directions of the ITAT in view of the order dated 30.11.2010. The said directions are hereby reproduced below:-

“From the orders of the lower authorities, it is not clear as to how the scrap was generated and therefore, in order to verify whether the scrap had direct nexus with the industrial operation or it was scrap of other nature, we restore this issue to the file of the A.O. for necessary verification. To the extent, the scrap has direct nexus with the industrial operations thereby implying that to the extent scrap is in the nature of bye-product of industrial operations, the same would qualify for deduction u/s.80IB. In the result, ground No.3 for A.Y.2003-04 and ground No.1 for A.Ys. 2004-05 and 2005-06 are allowed for statistical purposes.”

7. According, to the said directions the Assessing Officer has been directed to verify this fact that the scrap has direct nexus with the industrial operations thereby implying that to the extent scrap is the nature of by productive industrial operation then the same would qualify for section 80IB of the Act. The appellant has explained his version by letter dated 18.03.2013 which has been mentioned in the order of the CIT(A), however, after furnishing of the details to the Assessing Officer, the Assessing Officer failed to do any exercise to

discredit the claim of the assessee. No claim of similar type of industry was compared. The explanation given by the assessee was verified. He further asked the details without verifying the explanation tendered by the assessee. No doubt in the said circumstances the CIT(A) has allowed the claim of the assessee in accordance with law. In view of the said circumstances, we are of the view that the CIT(A) has passed the order judiciously and correctly which is not required to be interfere with at this appellate stage.

8. In the result, the appeal filed by the **revenue is hereby Dismissed.**

Order pronounced in the open court on 30<sup>th</sup> November, 2016.

Sd/-

(B.R.BASKARAN)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 30<sup>th</sup> November, 2016

*MP*

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार/(Dy./Asstt.Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**