

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'जे', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "J", BENCH MUMBAI
BEFORE SHRI G.S.PANNU, AM & SHRI SANJAY GARG, JM

आयकर अपील सं./ITA Nos.6151 to 6153 & 6123/Mum/2011

(निर्धारण वर्ष / Assessment Years :1994-95 to 1997-98)

Jagkumar & Co. Pvt. Ltd., 10/11, Prospect Chambers, Annexe-317-21, D.N.Road, Fort, Mumbai-400001	Vs.	ITO Ward-2(2)(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACJ 1367 N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Sameer G. Dalal
राजस्व की ओर से /Revenue by : Shri Akhilendra Yadav
सुनवाई की तारीख / **Date of Hearing** : **04/08/2015**
घोषणा की तारीख/**Date of Pronouncement** **06/11/2015**

आदेश / O R D E R

Per Sanjay Garg, Judicial Member :

This order shall govern the disposal of four appeals, filed by the assessee, arising out of the order, passed by the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)], Mumbai, relating to assessment years 1994-95 to 1997-98, on the following grounds :-

- “1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in disallowing the claim of the appellant for deduction under Section 80IA of the Act.
2. The appellant submits that the CIT(A) has erred in holding that the salary register was not authentic and in concluding that the appellant had failed to bring any material on record to rebut the statement of the director made during the survey operations ignoring the submission made in appellate proceedings and in holding that the order of the PTO a government authority was self serving and that the conditions of S.80IA were thus not satisfied.”

2. As the issue involved in all the four appeals is common, therefore, all the appeals have been heard and are being disposed of by this consolidated order. For the sake of brevity, we shall take into consideration the facts stated in ITA No.6123/Mum/2011 (AY : 1996-97).

2. Succinct facts giving rise to the appeal are that the assessee is engaged in the manufacturing of various items. The assessee filed its return of income on 30-11-1996 declaring total income at Nil for A.Y.1996-97. Thereafter the assessment was completed u/s.143(3) of the Act by the Assessing Officer (hereinafter referred to as the AO) determining total income at Rs.33,02,041/- after disallowing the assessee's claim of deduction under Section 80IA of Rs.33,02,041/-. Against this order, the assessee preferred appeal before the CIT(A), whereby the CIT(A) passed an ex-parte order confirming the disallowance made by the AO. On further appeal before the Tribunal, the matter was restored back to the file of CIT(A) vide order dated 31-5-2004, passed in ITA No.5784/Mum/1999. This time, the CIT(A) allowed the appeal of the assessee by allowing the deduction u/s.80IA of the Act, against which the department came before the Tribunal, wherein the Tribunal vide order dated 28-4-2009, passed in ITA No.718/Mum/2006, restored the appeal of the revenue to the file of AO to verify as to whether the employees/workers shown by the assessee were integrally connected with the manufacturing or production process

of the assessee. However, the AO kept on its decision as was before by holding that the assessee failed to furnish classification (designation) of the employees/workers as to whether the employees/workers were integrally connected with the manufacturing or production process. On further appeal before the CIT(A), the action of the AO was upheld. Now, the assessee is in turn to appeal before the Tribunal, agitating the orders of the authorities below.

3. Ld. AR submitted that the workers were employed for the purpose of manufacturing process at the Silvassa Unit. It was further contention of Id. AR that the workers were low paid persons of salary of about Rs.5000/- or less and no particulars designations were assigned to them. It was also argued by Id. AR that the words used in the Section is "workers" and such person, being low paid employed in manufacturing unit normally do not have any particular designation at all and for this reasons there are no records in support of the designation, however, workers name are already figuring in the details submitted before the lower authorities. Ld. AR further submitted that the employment of workers in the Unit itself was solely for the purpose of carrying out manufacturing/processing activity and by virtue of this fact workers were integrally connected with the process. The Ld. A.R. has further submitted that the assessee company had been registered as SSI unit. It obtained the registration certification under the Excise Laws as the goods manufactured by it were chargeable to excise duty.

The assessee company had also been registered with Sales Tax Authorities and with Professional Tax Authorities. In its return filed before the Professional Tax Authorities on 27.09.96 for the period from 01.04.95 to 31.03.96, the monthwise detail of the workers was submitted and that the monthly returns clearly showed the number of workers of the each month. The total liability for payment of professional tax was shown at Rs.5,565/-. The company was facing great financial difficulties and the company could not make the financial professional tax. Subsequently, the Professional Tax Authorities passed the assessment order for the period 01.04.93 to 31.03.01 and assessed the professional tax liability. The professional tax liability assessed for the year under consideration exactly matched with the liabilities disclosed in the return filed by the assessee under the Professional Tax Act. The Ld. A.R. has further invited our attention to the order of the Tribunal dated 28.04.2009 vide which the Tribunal had remanded the matter back to the file of the AO for the limited purpose to verify whether the employees/workers shown by the assessee were integrally connected with manufacturing or production process. The relevant part of the order of the Tribunal is reproduced as under:

“7. On the rival submissions of the parties, we find that the controversy is revolving around the compliance of one condition i.e. in respect of employing ten or more workers in the manufacturing or production. As per clause (iv) to section 80-IA(2) one of the conditions is that assessee should employ ten or more workers in the manufacturing or production of the articles or goods. In fact the Tribunal has taken very much wider view in the case of Shri Fragrance_P. Ltd. (supra) by holding that all the

employees/workers connected with the manufacturing process including the workers which are indirectly helping the process also forms the integral part of the manufacturing process or production. We find that this controversy is not arising from the order of the Ld CIT(A) or the A.O. In respect of the decision relied on by the Ld D.R. in the case of the Shri Fragrance P. Ltd. (supra), the controversy was based on specific issue of classification of the workers but the A.O. has no occasion to examine this aspect. In our opinion, as held by the Hon'ble High Court of Bombay in the case of Ormerods Pvt. Ltd. (supra), even though prima fade the assessee has made the substantial compliance of a condition of employing minimum ten workers in the manufacturing and production of goods but nothing has been produced before us to show that said employees/workers were integrally connected with manufacturing process as held in the case of Shri Fragrance Pvt. Ltd. (Supra). We therefore consider it to restore this issue for limited purpose to verify whether the employees/workers shown by the assessee were integrally connected with the manufacturing or production process. The A.O. is directed to give reasonable opportunity of being heard to the assessee as per principles of natural justice. We therefore set aside the order of the CIT(A) and restore the issue to the file of the AO.”

4. A perusal of the above reproduced observation of the Tribunal reveals that the Tribunal has categorically held and distinguished the case of Shri Fragrance Pvt. Ltd. vs. ITO 20 SOT 40, holding that the controversy as to the issue of classification of workers is not arising from the facts of the present case. It has also been observed by the Tribunal that in the case of “Shri Fragrance Pvt. Ltd. (supra), the Tribunal had taken a very much wider view by holding that all the employees/workers connected with the manufacturing process including the workers which are indirectly helping the process and also forms the integral part of the manufacturing process or production. The Tribunal while restoring the issue back to the file of the AO has categorically held that this controversy was not involved in the case and the matter was restored for the limited purpose to verify whether the employees/workers shown by the assessee were integrally

connected with manufacturing production process. However, we find from the order of the AO that the AO has disallowed the claim of the assessee again relying in the case of Shri Fragrance Pvt. Ltd. (supra) by observing that the assessee had failed to furnish the classification (designation) of employees/workers. Thus, the AO has acted against the directions given by the Tribunal. We find that the Ld. CIT(A) has also overlooked this aspect of the matter. In view of this, the matter needs reconsideration at the hands of the AO. We, therefore, restore the matter to the file of the AO to decide the same strictly as per the directions given in the order of the Tribunal dated 28.04.09. Needless to say that the AO will give proper opportunity to the assessee to present its case and then to decide the issue by way of a speaking order.

Since the facts and issues involved in all the captioned appeals are identical in nature, hence the same are disposed of with the identical directions.

5. In the result, all the four appeals of the assessee are hereby allowed for statistical purposes.

Order pronounced in the open court on this 06/11/2015.

Sd/-

Sd/-

G.S.PANNU

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 06/11/2015

प्र.कु.मि/pkm, नि.स/ PS

SANJAY GARG

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), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai