

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member  
and Shri Sandeep Gosain, Judicial Member**

**ITA No. 6146/Mum/2014**  
(Assessment Year: 2008-09)

Filtru Catalysts & Chemicals Ltd. Golden Plaza, 3 <sup>rd</sup> Floor Opp. Navnit Motors, Gokul Nagar LBS Marg, Thane 400601	Vs.	ACIT, Circle - 1 Ashar IT Park, Road No.16-Z Wagle Industrial Estate Thane 400604
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PAN - AAACF5296L

**Appellant**

**Respondent**

Appellant by: Shri Chetan A. Karia  
Respondent by: Shri A.K. Dhondial

Date of Hearing: 03.08.2016  
Date of Pronouncement: 17.08.2016

**ORDER**

**Per Jason P. Boaz, A.M.**

This appeal by the assessee is directed against the order of the CIT(A)-II, Thane dated 06.08.2014 for A.Y. 2008-09.

2. The facts of the case, briefly, are as under: -

2.1 The assessee, a company engaged in the business of manufacturing of catalysts and chemicals, supply of dust suppression systems and other engineering items on turnkey basis, filed its return of income for A.Y. 2008-09 on 29.09.2008 declaring total income of ₹7,41,784/- after claiming deduction of ₹2,58,57,760/- under section 80IB(4) of the Income Tax Act, 1961 (in short 'the Act') in respect of profits from its Dabhel Unit. The return was processed under section 143(1) of the Act and the case was subsequently taken up for scrutiny. In the period under consideration the assessee was having four units and the deduction under section 80IB of the Act was claimed in respect of Dabhel Unit. It has a separate in-house R&D Unit at Thane.

2.2 The Assessing Officer (AO) while examining the assessee's claim for deduction under section 80IB(4) of the Act for Dabhel Unit called for details/information in respect the four units operated by the assessee i.e. at Daman, Dombivali, Lote and Dabhel. The AO observed from the details filed that the activity at Dabhel Unit involved the manufacturing process of mixing and blending raw materials with the help of electric stirrer followed by filtration and testing. The AO then visited, inter alia, the Dabhel Unit and after inspection thereof came to the view that the activity carried out by the assessee at this unit is not manufacturing activity, since there was, inter alia, minimal use of plant and machinery in the process adopted. The consumption of electricity and transport expenses, material handling charges were low, the profitability at different units were varied widely to shift profits from others to 80IB(4) unit at Dabhol; staff was neither sufficient nor qualified, etc. In that view of the matter, the AO disallowed the assessee's claim for deduction under section 80IB(4) of the Act amounting to ₹2,58,57,760/- while completing the assessment under section 143(3) of the Act vide order dated 30.12.2010, thereby determining the assessee's income at ₹2,65,99,540/-.

2.3.1 Aggrieved by the order of assessment dated 31.12.2010 for A.Y. 2008-09, the assessee preferred an appeal before the CIT(A)-II, Thane challenging the AO's action in denying it the deduction claimed under section 80IB(4) of the Act. Before the learned CIT(A), the assessee, inter alia, made submissions as recorded at paras 3 to 3.4 of impugned order. According to the assessee, the concerned unit at Dabhel for which the deduction under section 80IB(4) of the Act was claimed, had been granted deduction under section 80IB(4) of the Act for the first time in A.Y. 2004-05 vide assessment order under section 143(3) dated 29.12.2006 and the same claim was disallowed for the first time in the year under consideration, i.e. A.Y. 2008-09. Various details/evidences/paper books were filed by the assessee to evidence that activities were in fact being carried out at the Dabhel Unit for manufacture of ITK-04A and DTK-04B (6C Weldable coatings). According to the assessee, manufacturing activity at Dabhel, the 80IB(4) Unit, consisted of mixing and blending of raw

material by its 10 employees to make homogenous solutions with the help of electrically driven stirrer, filtration of output, testing thereof and then the final product consisting of speciality chemical like anti caking additives, fertilizer melt/ granulation additives and metal coating for insulation which are then packed in HDPC barrels/IBC tanks and despatched to customers. The assessee submitted documentary evidences that Central Excise Department authorities had inspected the premises in 2009 and in their audit report No. 24/2009-10 for the period of 2004-2009 it was mentioned that the assessee was engaged in the manufacturing of coating chemicals. It was contended that the AO's inspection report dated 27.01.2011 was never made available to the assessee for rebuttal of his contention therein. As regards the expenses incurred in its manufacturing activities being minimal, the assessee submitted that its manufactured products were sold on ex-factory basis, material handling (loading/unloading) charges were incurred, as were inward transport expenses which were debited with the purchase of raw materials in the manufacturing account. The details/ documents filed by the assessee were remanded by the CIT(A) to the AO for his report thereon.

2.3.2 The AO's remand report dated 14.09.2011 was made available to the assessee. In response thereto, the assessee filed further submissions explaining its manufacturing activities/process and furnished copies of letters of the Ministry of Commerce and Industry acknowledging the receipt of memorandum for manufacturing of material coating chemicals, anti caking additives, fertilizer malt/granulation additives in respect of Dabhel Unit, copy of 'licence to work a factory' to manufacture performance chemicals issued by Chief Inspector of Factories, Daman dated 08.06.2004, copy of letter dated 15.03.2004 of Act, Central Excise, Daman, being a Central Excise Registration for manufacture of excisable goods at Dabhel Unit, filed list of ten employees with Provident Fund Registration numbers, copy of Wages Register, copies of purchase and sale invoices, delivery challans, copies of bills for purchase of machinery and equipments, details of fixed assets of the company (plant and machinery of Dabhel Unit being ₹12,04,933/-), copy of unit-wise Profit & Loss Account

and Balance Sheet. It was also evidenced that the Department, except for the year under consideration, had allowed the assessee's claim for deduction under section 80IB(4) of the Act for earlier years since A.Y. 2004-05 to 2007-08 and also in subsequent assessment years 2008-09 to 2011-12 also. In the light of the above facts, the assessee vehemently argued that it was clearly engaged in the business of manufacturing in the specified area eligible for deduction under section 80IB(4) in this assessment year also.

2.3.3 After considering the assessee's aforementioned submissions, the learned CIT(A), at para 4.1 of the impugned order, observing the letters of the Ministry of Commerce and Industry dated 26.02.2009, Registration under the Central Excise Act, the inspection by Central Excise authorities in 2009, licence to work a factory, etc. and the other details of expenses and activities, etc. held that the assessee has established that it is engaged in the manufacturing activity of speciality products, such as metal coating chemicals, anti caking additives and fertilizer malt/granulation additives (i.e. manufacture of coating materials). The learned CIT(A) at para 4.2 of his order also noted that the date of the AO's visit in March 2010, did not pertain to the year under consideration and therefore his negative observation would not be relevant for this year. The learned CIT(A), however, on perusal of the financial statements of the assessee, observing that the assessee has disproportionately enhanced profits of Dabhel unit to claim higher deduction under section 80IB(4) of the Act by debiting most of the fixed cost and establishment cost to the loss making Lote Unit of the assessee, came to the view that only 6% of the profit of Dabhel Unit was derived from manufacturing activity. The learned CIT(A), while acknowledging that the assessee had employed ten persons as per the Provident Fund Register, observed that only one employee, a B.Sc. Chemistry graduate was qualified and since the designation of the others were not known, it cannot be said that all ten employees were engaged in the assessee's manufacturing activities. In the light of the above observations, the learned CIT(A) disposed the assessee's appeal vide the

impugned order dated 06.08.2014, disallowing the assessee's claim for deduction under section 80IB(4) of the Act.

3. Aggrieved by the order of the CIT(A)-II, Thane, the assessee has preferred this appeal raising the following grounds: -

- “1) The Learned Commissioner of Income Tax (Appeals) erred in confirming assessment order determining total income at Rs. 2,65,99,540/- and the same is without jurisdiction and bad in law.*
- 2) The Learned Commissioner of Income Tax (Appeals) erred in confirming disallowance of claim for deduction u/s. 801B(4).*
- 3) The Learned Commissioner of Income Tax (Appeals) erred in holding that number of employees is less than 10 and therefore the appellant is not entitled to deduction u/s. 801B(4).*
- 4) The Learned Commissioner of Income Tax (Appeals) erred in holding that only 6% of profit from Dabhel unit is derived from industrial undertaking and only the said amount is entitled to deduction u/s. 801B(4).*
- 5) The learned Commissioner of Income Tax (Appeals) erred in disallowing the claim on grounds other than grounds on which claim was disallowed by Assessing Officer and also relying on inadmissible evidences, presumptions and without giving opportunity to the appellant to controvert the same.*
- 6) The appellant prays that:
  - i. Assessment order may be annulled as being without jurisdiction and bad in law;*
  - ii. Deduction may be directed to be allowed u/s. 801B(4) as per claim in return of income at Rs. 2,58,57,760/-;*
  - iii. Recovery of demand in dispute may be stayed;*
  - iv. Personal hearing may be granted;*
  - v. Any other relief your honours may deem fit.**
- 7) The Appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

4. **Ground Nos. 6 & 7**

4.1 At the outset, the learned A.R. for the assessee submitted that the grounds at S.Nos. 6 & 7 are general in nature and therefore not being urged specifically. In these circumstances, no adjudication is called for thereon.

**5. Grounds 1 to 5 - Deduction under section 80IB(4) of the Act.**

5.1.1 In these grounds (supra) the learned A.R. for the assessee assailed the impugned order of the learned CIT(A) denying the assessee's claim for deduction under section 80IB(4) of the Act. It is contended that the learned CIT(A) erred in holding that only 6% of the profit from Dabhel unit is derived from the industrial undertaking and is entitled to deduction under section 80IB(4) of the Act, and that since the number of employees in Dabhel Unit was less than ten, the assessee was not entitled to deduction under section 80IB(4) of the Act. The learned A.R. reiterated the submissions put forth before the learned CIT(A) as recorded at paras 3 to 3.5 of the impugned order. According to the learned A.R., admittedly, the learned CIT(A) after examining the details/documents put forth by the assessee at para 4.2 of the impugned order held that the assessee has established that the Dabhel Unit of the assessee is engaged in manufacturing activity of speciality products, i.e. manufacture of metal coating materials, fertilizer melt/granulation and anti caking additives. The learned A.R. submitted that the learned CIT(A) also ruled that the adverse observations made by the AO post his visit to Dabhel in March, 2010 (i.e. in the period relevant to A.Y. 2010-11) would not be relevant for the year under consideration.

5.1.2 The learned A.R. vehemently argued that the learned CIT(A)'s finding that less than ten persons were employed at the Dabhel Unit of the assessee and therefore the assessee is not entitled to deduction under section 80IB (4) of the Act is factually incorrect. The learned A.R. submitted that the record shows that the learned CIT(A) in the impugned order has himself acknowledged that the assessee had employed ten persons at its Dabhel Unit as per the copy of the Provident Fund Register placed before him for the period under consideration and it is therefore incomprehensible as to how the learned CIT(A) could so blatantly disregard the material evidence placed before him to presume otherwise. The observations by the learned CIT(A) that there were less than ten employees

employed by the assessee at the Dabhel Unit is not only factually incorrect, but is also based solely on his presumptions, assumptions and flight of fancy without any cogent reason and ought to be set aside.

5.1.3 The learned A.R. for the assessee also assailed the view of the learned CIT(A) as baseless; that only 6% of the Dabhel Unit of the assessee company was derived from its manufacturing activity. It is submitted that in this regard it is clear that the authorities below have erred in deciding about scientific issues of manufacturing activities of the assessee without taking the help of any experts in the field. It is contended that the learned CIT(A)'s observation that the expenses were loaded in Lote Unit which incurred a loss, while the 80IB(4) unit at Dabhel profits were enhanced to derive extra deduction thereunder even though the items produced were the same, is factually incorrect. The learned CIT(A) completely ignored the fact that the Lote Unit was launched by the Government of India and that the Lote Unit manufactured Ortho Cresol, Xylidine, etc. whereas the Dabhel Unit, in which deduction under section 80IB(4) was claimed, manufactured different products like C6 Weldable coatings, ITK-04A, etc. (placed at pages 65-66 of assessee's paper book). It is also submitted that contrary to the learned CIT(A)'s allegations that the expenses were loaded in units other than the Dabhel Unit to inflate its profits and claim deduction under section 80IB(4) of the Act, the common/ fixed expenses were allocated to different units on the basis of their respective turnovers. It is contended that if the authorities below had some doubts in the matter, seeing that the assessee is recognized by the Ministry of Science and Technology, Government of India, the least they could have done is to get in touch with the Ministry to seek their help in understanding the activities of the assessee, instead of coming to adverse decisions solely based on incorrect appreciation of facts and assumptions and presumptions to deny the assessee deduction claimed under section 80IB(4) of the Act. In support of this proposition the assessee placed reliance on the decision in the case of Girija Smelters Ltd. (2015) 378 ITR 487 (T&AP). The learned A.R. also drew the attention of the Bench to pages 519 to 551 of the paper book to evidence that except for the year under

consideration the assessee's claim for deduction under section 80IB(4) of the Act was allowed in the earlier years from A.Y. 2004-05 onwards and also in the subsequent assessment years upto 2011-12 also. The learned A.R. prays that in the light of the facts, details and evidences placed before the authorities below as put forth in the preceding paras 5.1.1 to 5.1.3, the assessee may be held to be entitled to be allowed deduction of ₹2,65,99,540/- under section 80IB(4) of the Act.

5.2 Per contra, the learned D.R. placed reliance on the impugned order of the learned CIT(A) in the matter.

5.3.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record. That the assessee is engaged in manufacturing activity at the Dabhel Unit is not disputed. The learned CIT(A) has held so in the impugned order at para 4.1. The issue for consideration/adjudication now before us is whether the assessee company is entitled to be allowed deduction claimed under section 80IB(4) of the Act in respect of its Dabhel Unit in the year under consideration. Admittedly, the assessee has been allowed its claim for deduction under section 80IB(4) of the Act for both the earlier assessment years from A.Y. 2004-05 onwards and also for the subsequent assessment years upto 2011-12. It is only in the year under consideration, i.e. A.Y. 2008-09, i.e. the period under consideration that the deduction claimed by the assessee has been negated by the authorities below.

5.3.2 In the course of assessment proceedings, the AO after examining the details filed before him and inspecting the Dabhel Unit premises in March, 2010 observed that the activity of the assessee at the Dabhel Unit is not manufacturing activity. Observing that since the manufacturing process followed there was only of mixing and blending of raw material with the help of electric stirrer, followed by filtration, testing and packing; involved the use of minimal plant and machinery; that there was low consumption of power and minimal expenses for handling charges; staff available was neither qualified nor sufficient for the manufacturing activity and that the expenses were loaded to other units to increase profits of the Dabhel Unit

in order to claim enhanced deduction under section 80IB(4), the AO proceeded to disallow the assessee's claim for deduction under section 80IB(4) of the Act.

5.3.3 On appeal, the learned CIT(A) after considering the elaborate submissions of the assessee (submissions at paras 2.2 and 2.3 of this order (supra) in support of its claim for deduction under section 80IB(4) in respect of its Dabhel Unit, and the remand report of the AO dated 14.09.2011, rendered the following findings. At para 4.1 of the impugned order, the learned CIT(A) held that the assessee had established that it is engaged in the activity of manufacture of speciality products, such as metal coating chemicals, anti caking additives and fertilizer melt/granulation additives. At para 4.2 of the impugned order, the learned CIT(A) was also of the view that the adverse observations by the AO pursuant to his Dabhel factory visit in March, 2010 were not relevant to the year under consideration, i.e. A.Y. 2008-09 but to A.Y. 2010-11. The learned CIT(A), however, disallowed the assessee's claim for deduction under section 80IB(4) of the Act as he was of the view that the assessee employed less than ten people at the Dabhel Unit and that the expenses were loaded in the Lote Unit which was running at a loss in order to inflate the profits in the Dabhel Unit with a view to obtain enhanced deduction under section 80IB(4) even though both the Lote and Dabhel Units were manufacturing the same items.

5.3.4 In respect of the learned CIT(A)'s view that the assessee was employing less than ten persons in the Dabhel Unit, it was seen that this view is not borne out by the facts on record. We find from a perusal of the impugned order that the learned CIT(A) himself has noted that the assessee employed ten persons at its Dabhel Unit as per the copy of the relevant Provident Fund Register placed before him for the year under consideration. We find merit in the contentions of the learned A.R. for the assessee that the learned CIT(A)'s presumptions to the contrary, that less than ten persons were employed by the assessee at the Dabhel Unit, is not borne out by the facts on record but on his own assumptions, which are

not based on any clinching evidence to support his view. If his suspicions were aroused, the learned CIT(A) ought to have conducted an inquiry and had the assessee examined in this regard by the AO to prove his suspicions, instead of which he proceeded to act on his unfounded presumptions. In this factual matrix of the case, as discussed above, we are of the view that the assessee on the basis of details in the copy of the Provident Fund Register, placed before the CIT(A) has established that 10 persons were employed in its Dabhol unit and we therefore reverse the finding of the learned CIT(A).

5.3.5 Now coming to the second contention of the learned CIT(A) that the assessee was loading the expenses in the loss making Lote Unit, which was manufacturing the same products as Dabhel Unit in order to increase the profits of Dabhel Unit so as to claim enhanced deduction under section 80IB(4) of the Act and only 6% of the profit of Dabhel Unit is derived from manufacturing activity. At the outset, it is seen from the details placed before the learned CIT(A) that, contrary to the learned CIT(A)'s allegation that these two units manufactured same items, pages 65 and 66 of the assessee's paper book shows that all the units of the assessee company manufacture different products. The details therein show that while the Lote Unit manufactured Ortho Cresol 2, Xylidine, etc. the Dabhel Unit manufactured different products like C6 Weldable Coatings, OTL-04a. Etc/ The assessee has also submitted that contrary to the allegations of the learned CIT(A) the expenses were loaded in the Lote Unit, the fixed costs incurred by the assessee company were allocated to each unit on the basis of their respective turnovers. Thus it can be seen that both in respect of the fact that Lote Unit and Dabhel Unit, the assumptions of the learned CIT(A) that these two units were manufacturing the same products and that there was loading of expenses in the Lote Unit to inflate profits and enhance claim for deduction under section 80IB(4) in the Dabhel Unit are factually incorrect as they are not borne out by the facts on record. It is seen that the evidences placed before him in this regard have also not been controverted by the learned CIT(A). If there were any suspicions in this regard, the learned CIT(A) could have engaged the assistance of scientific

experts in the field in order to attempt to understand the manufacturing activities of different units, instead of rushing to adverse conclusions on the basis of unfounded presumptions, suspicions and assumptions.

5.3.6 In view of the facts and circumstances of the case on hand, as discussed and recorded in paras 2.1 to 2.33 and 5.11 to 5.35 of this order we are of the considered opinion and hold that the assessee is entitled to be allowed deduction under section 80IB(4) of the Act of ₹2,58,57,760/- in respect of Dabhel Unit. We hold and direct the AO accordingly. In coming to this decision, we are also fortified by the fact that the assessee's claim for deduction under section 80IB(4) has already been considered and allowed/accepted by the Department for earlier years from assessment years 2004-05 to 2007-08 and for the subsequent assessment years 2009-10 to 2011-12. Consequently, assessee's grounds at S. No. 1 to 5 are allowed.

6. In the result, the assessee's appeal for A.Y. 2008-09 is allowed.

Order pronounced in the open court on 17<sup>th</sup> August, 2016.

Sd/-  
**(Sandeep Gosain)**  
**Judicial Member**

Sd/-  
**(Jason P. Boaz)**  
**Accountant Member**

Mumbai, Dated: 17<sup>th</sup> August, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -II, Thane*
4. *The CIT - I, Thane*
5. *The DR, "F" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.