

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 5532/Del/2013
(Assessment Year: 2009-10)

M/s. Padm Services, Plot No. 27, Sector-1B, IIE Sidcul, Ranipur, PAN:AAJFP4857F	Vs.	ITO, Ward-2, Haridwar
(Appellant)		(Respondent)

Assessee by :	Sh. Shankarsh, CA
Revenue by:	Sh. FR Meena, Sr. DR
Date of Hearing	18/05/2017
Date of pronouncement	19/05/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. Assessee against the order of the Id CIT(A)-II, prefers this appeal, Dehradun dated 29.07.2013 for the AY 2009-10.
2. The assessee has raised the following grounds of appeal:-
 - “1. *The impugned order is against the law and facts of the case.*
 2. *That the impugned order is violative of the principle of natural justice conferred by the Constitution of India.*
 3. *That the appellant set-up a new industrial undertaking in the notified area of Uttarakhand for the manufacturing of Talcum Powder. The main process of manufacturing of Talcum Powder as inspected and verified by the assessing authority involves grading by sieving (screening), mixing and blending of several ingredients in certain proportions used for the production of a new final product Talcum Powder’.*
 4. *That the appeal before Id. Commissioner of Income Tax (Appeals) - II, Dehradun is preferred mainly on following two issues -*
 - (i) *denial of relief U/s - 80IC of the Income Tax Act, 1961 on the ground that return of income for the A.Y 2009-10 was filed beyond the due date within the meaning of section 139 of the Act and*
 - (ii) *the activities carried out by the appellant do not cover under the definition of manufacturing as required by section 2(29BA) of the Income Tax Act, 1961, hence not eligible for deduction under section 80IC of the Act.*

5. *That the Id. CIT(A)-II, Dehradun rejected the appeal by taking into consideration the first issue of 'delay in filing of return of income' by the consultant of the appellant.*
6. *That it is placed on record that a petition before Central Board of Direct Taxes, New Delhi for condonation of delay in filing of the return of income for the assessment year 2009-10 under Section 119(2)(b) of the Act is preferred by the appellant on 12.03.2012. The issue is pending for decision by the CBDT, which is the ultimate authority on the subject-matter. This very fact should have been kept in mind while deciding the appeal by the first appellate authority.*
7. *That no cognizance of the another vital issue regarding the decision on the nature of activities of the appellant as to whether the same falls within the meaning of the definition of "manufacturing" or not has not been discussed by the first appellate authority at all.*
8. *That it is pertinent to note that if the delay in filing of the return is condoned by the Central Board of Direct Taxes, the respondent shall again challenge the allowability of the claim U/s - 801C of the Act on the second ground of nature of activities of the appellant not falling within the scope of manufacturing. The said issue of "manufacturing activities" should have therefore, been decided by the Id. CIT (A)-II, Dehradun in his order.*

In view of the above facts and circumstances, your good self is humbly prayed to set aside the impugned order passed by the Commissioner of Income Tax (Appeals) - II, Dehradun."

3. The brief facts of the case is that assessee is a partnership firm filed its return of income for Assessment Year 2009-10 on 28.03.2010. In the return of income the assessee has claimed deduction u/s 80IC of the Income Tax Act. According to the provisions of section 80AC of the Act if the return is not filed on or before the due date specified u/s 139(1) of the Act then such deduction are not allowable. In view of this, the Id Assessing Officer disallowed the deduction claimed by the assessee. Further, it was also held by the Assessing Officer that the assessee's activity was not covered under the definition of manufacturing u/s 2(29BA) of the Act and therefore the deduction is not allowable. Accordingly, against the returned income of the assessee of Rs. Nil the total income was determined at Rs. 1184143/-. The assessee aggrieved with the order of the Id Assessing Officer has preferred an appeal before the Id CIT(A), who dismissed the appeal of the assessee applying the provisions of section 80AC of the Act. Therefore, the assessee is in appeal before us.
4. The Id Authorised Representative submitted the application seeking adjournment stating that his other matters are placed before the Mumbai Benches and therefore, he

is unable to represent the case and therefore requested the adjournment. We have perused the proceeding sheet before us wherein we have noted that on the first date on 07.04.2014 none appeared on behalf of the assessee. Further, on 26.05.2014, 11.11.2014, 08.07.2014 and 18.08.2016 at the request of the Id AR this appeal is adjourned for hearing. We have perused the issue involved also, therefore, due to repeated adjournment sought by the assessee as well as for the reasons of judicial pronouncement on the issue involved we do not find any merit in the request for adjournment and hence, it is rejected.

5. The short issue involved in this appeal is that the return of income was due on 30.09.2009 whereas same was actually filed on 28.03.2010 and therefore, according to the provisions of section 80AC deduction u/s 80IC claimed by the assessee is disallowed. The above issue is squarely covered against the assessee by the order of the Hon'ble Karnataka High Court in case of Unique Shelters Pvt. Ltd Vs. Union of India (2013) 37 Taxmann.com 338 holding that for the delayed return deduction under specified section CBDT alone can consider the claim of the assessee to condone the delay, therefore, apparently the deduction is not eligible if the return is not filed in time. The Special Bench in case of Saffire Garments Vs ITO 140 ITD 6 (Rajkot) (Special Bench) has also decided similar issue. Further, Hon'ble Delhi High Court in case of Nath Brothers Exim International Ltd. Vs. Union of India 80 Taxmann.com 327 has also decided the similar issue with respect to provisions of section 80A(5) with respect to deduction u/s 10A, 10AA, 10B and section 10BA of the Act. In view of this, we do not find any merit in the appeal of the assessee in rejection of the claim of the assessee u/s 80IC on this count. It is also noted by us that assessee has made a petition u/s 119(2)(b) of the Income Tax Act requesting to condonation of delay in filing of the appeal on 19.05.2015 before CBDT, which is pending for disposal. We do not feel it necessary to keep the issue alive till the disposal of the above application as already two years have passed and no response has been received. However, in case the CBDT condones the delay in filing of the return of income certainly the case of the assessee would be required to be disposed off on the merits of its manufacturing activities. In case, the assessee receives any positive response from the Central Board of Direct Taxes he may approach the Assessing Officer for necessary remedies. In the result, we dispose off the appeal of the assessee dismissing ground

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No. 4 of the appeal on application of the provision of section 80AC of the Act. As the assessee is not eligible for deduction u/s 80IC of the Act on this ground, we do not adjudicate on other issues.

6. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 19/05/2017.

-Sd/-

**(BHAVNESH SAINI)
JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 19/05/2017
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi