

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G", NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

	I.T.A.No.2004/Del/2012	
	A.Y. : 2008-09	
INCOME TAX OFFICER, MANDI SAMITI PARISAR, POST: BAGWARA, KICHHA ROAD, RUDRAPUR, DISTT. UDHAM SINGH NAGAR, UTTARAKHAND - 263153	VS.	M/S SHANTI REFREGERATION INDUSTRIES, PLOT NO. 27 & 28, DISTRICT: UDHAM SINGH NAGAR, UTTARAKHAND (PAN: ABCFS1076R)
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
	I.T.A.No.3840/Del/2012	
	A.Y. : 2009-10	
ASSTT. COMMISSIONER OF INCOME TAX, INCOME TAX OFFICE, HALDWANI DISTT. NAINITAL, UTTARAKHAND - 263139	VS.	M/S SHANTI REFREGERATION INDUSTRIES PVT. LTD. PANTNAGAR (SIDCUL), HALDWANI (PAN: AALCS3426J)
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
	I.T.A.No.5530/Del/2013	
	A.Y. : 2010-11	
DY. COMMISSIOINER OF INCOME TAX, INCOME TAX OFFICE, HALDWANI DISTT. NAINITAL, UTTARAKHAND - 263139	VS.	M/S SHANTI REFREGERATION INDUSTRIES PVT. LTD. PANTNAGAR (SIDCUL), HALDWANI (UTTARAKHAND) (PAN: AALCS3426J)
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Department by : Sh. Koushlendra Tiwari, Sr. DR  
Assessee by : Sh. Rahul Khare, Adv.

**ORDER**

**PER H.S. SIDHU : JM**

The Revenue has filed these 03 appeals against the respective impugned orders passed by the Ld. Commissioner of Income Tax (Appeals)-II, Dehrdaun relevant to assessment years 2008-09 to 2010-11.

Since the issues involved in these appeals are common and identical, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. The grounds raised in ITA No. 2004/Del/2012 (AY 2008-09) read as under:-

i) In the fact and circumstance of the case, the Ld. CIT (A) has erred in law & on facts in allowing deduction u/s 80IC the LT. Act 1961 to the assessee without appreciating the clear finding given by the Assessing Officer on the basis of physical inspection during survey proceedings that the machinery installed was old and previously used to such extent which makes the assessee ineligible for deduction u/s 80IC as per the provisions contained in the said section.

(ii) Ld.CIT (A) also erred in law & on fact in allowing deduction u/s 80IC to the assessee on the basis of certificate from a Chartered Engineer without questioning the reason as to why such certificate was not produced before the Assessing Officer in spite of ample opportunity given by him to the assessee during assessment proceedings.

(iii) Ld.CIT (A) also erred in law & on facts in allowing relief to the assessee without considering the discrepancies in the bills and certificate of Chartered Engineer furnished by the assessee whereas the Assessing Officer in the assessment order as well as during appellate proceedings had clearly remarked regarding the discrepancies contained therein which eventually make the plea of the assessee incorrect.

(iv) Ld.CIT(A) also erred in law & on facts in admitting the additional evidence in complete disregard of the fact that none of the four circumstances under Rule 46A were present in the case to warrant admittance of fresh evidence furnished by the assesses for the first time in appellate proceeding.

(v) On facts and circumstances of the case Ld. CIT(A) has erred in law and on facts in allowing appeal on the issue of disallowance of depreciation particularly in view of the fact that the Plant & Machinery was old and previously used.

(vi) Any other grounds raised during the proceedings of appeal.

3. The grounds raised in ITA No. 3840/Del/2012 (AY 2009-10) read as under:-

1. That the Ld. CIT(A)-II, Dehradun has erred in law and on fact in allowing deduction u/s. 80IC of the I.T. Act without appreciating the clear finding on the basis of physical inspection during survey proceedings that the machinery installed was old and previously used to such extent which makes the assessee ineligible for deduction u/s. 80IC of the I.T. Act, 1961 as per the provision contained in the said section.
2. That the order of the Ld. CIT(A), is against the spirit of legislature and the order of the AO is liable to be restored.
3. That the appellant craves, leave to add, after, amend or vary from the above grounds of appeal.

4. The grounds raised in ITA No. 5530/Del/2013 (AY 2010-11) read as under:-

1. That the Ld. CIT(A)-II, Dehradun has erred in law and on fact in allowing deduction u/s. 80IC of the I.T. Act without appreciating the clear finding on the basis of physical inspection during survey proceedings that the machinery installed was old and previously used to such extent which makes the assessee ineligible for deduction u/s. 80IC of the I.T. Act, 1961 as per the provision contained in the said section.
2. That the order of the Ld. CIT(A), is against the spirit of legislature and the order of the AO is liable to be restored.
3. That the appellant craves, leave to add, after, amend or vary from the above grounds of appeal.

5. The facts narrated by the Revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

6. At the time of hearing, Ld. DR has relied upon the order of the AO and reiterated the grounds of appeal. He stated that Ld. CIT(A) has wrongly admitted the additional evidences in complete disregard of the fact that none of the four circumstances under Rule 46A were present in the case to warrant admittance of fresh evidence furnished by the assessee for the first time in appellate proceedings, which is against the provisions of law. Hence, he requested that the issues in dispute raised in assessment year 2008-09 may be set aside to the file of AO to examine and adjudicate the same afresh, after considering the additional evidences filed before the Ld. CIT(A). He further stated that similarly in the assessment years 2009-10 & 2010-11 the identical and similar issues have been raised before the Ld. CIT(A) and Ld. CIT(A) by following the order in his Appeal No. 98/CIT(A)-

II/2010-11 dated 21.2.2012 for assessment year 2008-09 has allowed the claim of the assessee and decided the issue in dispute in favour of the assessee. Hence, he requested that issues involved in assessment years 2009-10 & 2010-11, raised before the Tribunal may also be set aside to the file of AO with the similar directions as requested aforesaid in respect of assessment year 2008-09.

7. On the contrary, Ld. Counsel of the assessee has relied upon the order passed by the Ld. CIT(A) and stated that the assessee has filed all the evidences before the AO as well as before the Ld. CIT(A) and requested to uphold the impugned order passed by the Ld. CIT(A).

8. After hearing both the parties and perusing the records available with us, especially the impugned order passed by the Ld. CIT(A) for the assessment year 2008-09, we are of the considered view that since the assessment was completed after giving proper opportunities, sufficient time and after taking into consideration all the written / documents, therefore, admission of additional evidence at the appellate stage is not justified. We also note that Assessee has filed the additional evidences only before the Ld. CIT(A) and the Ld. CIT(A) in violation of Rule 46A of I.T. Rules, 1962 has admitted the additional evidences which is contrary to principles of natural justice. But, in the interest of justice, we are setting aside the issues in dispute to the file of the AO for fresh consideration, as per law, after giving adequate opportunity of being heard to the assessee. The Assessee is at liberty to produce any evidence/ additional evidences for substantiating its claim before the Assessing Officer and fully cooperate with him.

9. Since we have already set aside the issues in dispute to the file of AO for the assessment year 2008-09, as aforesaid, for fresh adjudication, therefore, the issues involved in assessment year 2009-10 & 2010-11 are also set aside to the file of AO with the similar directions, as aforesaid, being the issues identical and similar and also due to the fact that Ld. CIT(A) has followed his finding of assessment year 2008-09.

10. In the result, all the 03 appeals of the Revenue are allowed for statistical purposes.

Order pronounced in the Open Court on 05/10/2017.

**Sd/-**

**[PRASHANT MAHARISHI]  
ACCOUNTANT MEMBER**

*Date 05/10/2017*

**“SRBHATNAGAR”**

**Copy forwarded to: -**

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

**Sd/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

By Order,

Assistant Registrar, ITAT, Delhi Benches