

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 6153/Del/2015
A.Y. 2012-13**

DCIT, Circle II, Block 1-B CGO Complex, NH IV Faridabad	<u>Vs.</u>	Sh. Sunil Prakash Plot no.62, Sector 25 Faridabad PAN: AFVPP5777K
(Appellant)		(Respondent)

Appellant by	Shri Atiq Ahmad, Sr.D.R
Respondent by	Sh Tarun Kumar, Adv.
Date of Hearing	21 st November, 2017
Date of Pronouncement November, 2017

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

The present appeal has been filed by the revenue against order dated 23/09/13 passed by Ld. CIT (A), Faridabad for assessment year 2012-13 on the following grounds of appeal:

- “1. Whether on the facts and in the circumstances of the case, ld.CIT(A) was right in law in deleting the disallowance of deduction u/s 80IB and 80IC of the Income Tax Act, 1961, disregarding the fact that assessee was not engaged in the manufacturing activities in the said unit as per provision of law?”*
- 2. “Whether on the facts and in the circumstances of the case, ld.CIT(A) was right in law in deleting the disallowance of deduction u/s 80IB and 80IC of the Income Tax Act, 1961 on the income*

accrued from the central excise duty refund disregarding the fact that the same was not derived from business of industrial undertaking as per provision of section 80IB(4) of the Act?

3. The appellant craves for permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal.”

2. Brief facts of the case are as under.

2.1. Assessee filed its return of income on 30/09/12 declaring total income of Rs.2,73,56,100/-after claiming deduction under section 80 IB and 80 IC of the Act. The return was selected for scrutiny and notices under section 143 (1) and 143 (2) of the Act along with questionnaire was issued to the assessee. In response to notices received, representatives of the assessee appeared before Ld.AO and filed necessary information/documents/books of accounts which were examined on test check basis and the case was discussed.

2.2. During assessment proceedings Ld.AO observed that assessee was engaged in the business of manufacturing of sheet Metal Components, Engineering Parts, D.G.Sets, Electrical Panels, canopy etc. it was observed by Ld.AO that in the computation of income assessee has claimed deduction under section 80 IB of the Act for Rs.18,18,404/-and u/s 80 IC for Rs.35,10,248/-in respect of units at Jammu and Kashipur respectively.

3. On examination of the details filed, the Assessing officer observed that assessee was operating two units at Jammu in the name and style of M/s GSP Structures and M/s GSP Power Projects. It was observed that these units started functioning w.e.f. 27/06/05 and 04/04/2007 respectively and had claimed deduction

under section 80 IB in respect of the profits derived from these units.

3.1. Further it was observed that assessee had started another unit in the name of M/s GSP Power Projects at Kashipur, Uttaracchal, w.e.f. 07/09/07 and had claimed deduction under section 80 IC of the Act in respect of the profits derived from this unit.

4. Ground No. 1.

Ld.AO was of the opinion that assessee was merely assembling parts at these units and no manufacturing activity of any article or thing as required by provisions of section 80 IB and 80 IC of the Act were carried out. He accordingly disallowed the claim of assessee.

4.1. Aggrieved by the order of Ld. AO, assessee preferred appeal before the Ld. CIT (A). Ld. CIT (A) by relying upon the decision of his predecessor in assessee's own case, for assessment years 2008-09 to 2011-12 deleted the addition and allowed the claim made by assessee under section 80 IB and 80 IC of the Act. He held as under:

“6.5. Hence, after a careful consideration of the facts of the case together with various judicial pronouncements on this issue, particularly the case of CIT vs. Jackson Engineers Ltd. (supra), and also considering my predecessors orders in appellant's case on the same issue in appeal nos. 261/2010-11, 340/2011-12, 08/2012-13 and 305/2013-14 for the Assessment Year 2008-09, Assessment Year 2009-10, Assessment Year 2010-11 and 2011-12 vide order dt. 01.12.2011, 24.08.2012, 30.06.2014 and 26.08.2014, I hold that the

appellant is entitled to deductions u/s 80IB and 80IC of the Income Tax Act amounting to Rs.18,18,404/- and Rs.35,10,248/- respectively. Thus ground nos. 3 and 4 of the appeal are allowed.”

4.2. Aggrieved by the order of Ld. CIT (A) assessee is in appeal before us now.

4.3. Ld. DR placed reliance upon the orders passed by Assessing Officer.

4.4. Ld.AR however submitted that this Tribunal in assessee's own case for assessment year 2006-07 to 2009-10 in ITA No. 2955/del/2009,1191/del/2010, 767/del/2012 and 5683/del/2012 upheld the findings of Ld. CIT (A) therein, by observing as under:

“ 15. The CIT(A) on the issue of disallowance of claim of deduction u/s 80 IB has held that the process flow chart of manufacturing of DG sets filed by the assessee exhaustively describes the manufacturing process which involves three stages i.e. manufacturing of canopy of DG sets, manufacturing of DG set and manufacturing of AMF panel which also includes drilling, cutting acoustic foam pasting, fixing of electrical items, drilling of mounting plate fixing of switch gear, load testing, sound testing etc. The CIT(A) further held that the process of manufacturing DG sets does not involve mere ascending of parts but is actually a manufacturing process resulting in the manufacture of new product from the raw materials by giving them new properties. The CIT(A) has exhaustively given its finding based on the evidences placed before the Assessing Officer as well as before the CIT(A). The CIT(A) has also gone through the details of plant and machinery and also the copies of bills relating to the purchase of the same filed by the assessee. The CIT(A) has also given clear finding that the Assessing Officer has picked out and highlighted only those machines which are used for lifting and shifting work and ascending on the DG set

and ignored the other machines used by the assessee for various purposes deployed by the assessee in its manufacturing process. After careful consideration, the CIT(A) held that the assessee is entitled to claim deduction u/s 80 IB of the Act. There is no need to interfere with the detailed finding on record given by the CIT(A). Therefore, this issue is decided correctly by the CIT(A) in all the Assessment Years and there is no need to interfere with the findings of the CIT(A).”

5. We have perused the submissions advanced by both the sides in the light of the records placed before us and the decision of the Tribunal in assessee’s own case for the preceding assessment years. It is observed that in the preceding assessment years this Tribunal dealt with the claim of assessee under section 80 IB and 80 IC, in respect of the same units at Jammu and Kashipur. This Tribunal in the preceding assessment years has held that assessee is into manufacturing activity rather than mere assembling of parts. This Tribunal has upheld the findings of the Ld.CIT(A) therein which was based on evidences placed before the authorities at that stage. We do not find any change in the factual position for the year under consideration neither has the Department been able to establish any dissimilarity to deviate from such findings of this Tribunal in the preceding assessment years.

5.1. Respectfully following the same we are also of the considered opinion that no fault can be found with the findings of Ld. CIT (A) in the appeal before us today. Accordingly the same is upheld.

5.2. In the result ground No. 1 filed by the revenue stands dismissed.

6. Ground No. 2

This ground has been raised by revenue as Ld.CIT(A) has deleted the addition by holding that assessee was entitled to the deduction under 80 IB on the excise duty refund.

6.1. Ld. AO had relied upon the assessment order passed for assessment year 2008-09 and 2009-10 while disallowing this claim of the assessee.

6.2. Aggrieved by the assessment order, assessee preferred appeal before Ld.CIT(A), who, based on the decision of his predecessor for assessment year 2010-11, was of the opinion that assessee was entitled to deduction under section 80 IB of the Act on the excise duty refund.

6.3. Aggrieved by the order of Ld.CIT(A), revenue is in appeal before us now.

6.4. Ld. DR submitted that the issue was sub judice as the revenue has filed a SLP before Hon'ble Apex Court which has not yet been decided and therefore he places reliance upon the order of Ld. AO.

Ld.AR placed reliance upon the findings of this Tribunal in assessee's own case for order dated 01/08/17 for assessment years 2008-09 and 2009-10 in ITA No. 767/del/2012 and 5683/del/2012.

6.5. We have perused the submissions advanced by both the sides in the light of the records placed before us and the order passed by this Tribunal in assessee's own case for preceding assessment years.

6.6. This Tribunal has observed as under:

“17.As related to issue relating to Excise Duty refund, the CIT(A) has rightly relied upon the Hon'ble Supreme Court decision in case of Liberty India 317 ITR 218 wherein it is held that the payment of Central Excise Duty had a direct nexus with the manufacturing activity and similarly of the refund of Central Excise Duty also had a direct nexus with the manufacturing activity. The issue of payment of Central Excise Duty would not arise in the absence of any industrial activity. There is inextricable link between the manufacturing activity, payment of Central Excise Duty and its refund. Therefore, the CIT(A) has rightly directed the Assessing Officer to allow deduction u/s 80IB on the Excuse Duty refund received by the assessee. There is no need to interfere with the same finding. This issue raised in Assessment Year 2008-09 by the Revenue is dismissed.”

6.7. Respectfully following the same we do not find any reason to interfere with the findings of Ld.CIT(A). Accordingly this ground raised by the revenue stands dismissed.

7. In the result appeal filed by the revenue stands dismissed.

Order pronounced in the Open Court on 30.11.2017.

Sd/-

(R.S. SYAL)
Vice President

Sd/-

(BEENA A PILLAI)
Judicial Member

Dated the 30th November, 2017.

*mv

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By Order

Asst. Registrar
ITAT, Delhi Benches, New Delhi

ITA 6153/Del/2015 Assessment Year 2012-13
Sh. Sunil Prakash, Faridabad

		Date	
1.	Dragon dictation	21.11.2017	
2.	Draft placed before author	29.11.2017	
3.	Draft proposed & placed before the second Member		
4.	Approved Draft comes to SrPS/PS		
5.	Kept for pronouncement on		
6.	File sent to Bench Clerk		
7.	Order uploaded		