

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I.T.A. Nos. 198 & 199/(Asr)/2014
Assessment Years: 2003-04 & 2004-05

Kashmir Tubes
Bari Brahmana, Jammu
[PAN: AAAFK 9392D]
(Appellant)

Vs. Deputy Commissioner of Income
Tax Circle-1, Jammu
(Respondent)

Appellant by : Sh. Tarun Bansal (Adv.)
Respondent by: Sh. Rajeev Gubgotra (D.R.)

Date of Hearing: 20.03.2018

Date of Pronouncement: 31.05.2018

ORDER

Per Sanjay Arora, AM:

This is a set of two Appeals by the Assessee raising identical grounds and, thus issues arising for determination, in respect of two consecutive years, i.e., Assessment Years (AYs.) 2003-04 and 2004-05, *qua* assessments u/s. 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter), since confirmed by the Commissioner of Income Tax (Appeals), Jammu ('CIT(A)', for short) vide his orders of even date, i.e., 17.01.2014.

2. The first issue, agitated per Grounds 2 and 3; Gd. 1 being general in nature, warranting no adjudication, is the denial claim for deduction u/s. 80IB of the Act on galvanisation charges earned by the assessee on job-work basis. The matter, it was claimed by the Id. Authorized Representative (AR), the assessee's counsel,

Shri Bansal, is no longer *res integra* as the same stands since decided by the Hon'ble jurisdictional High Court vide its judgment dated 31.08.2017 in the assessee's own case, adducing a copy thereof (ITA No. 05/2008). He would then take us through the operating part of the judgment. The Hon'ble High Court has, after noting the case of either side, including the case law relied upon, held the process of galvanizing to constitute 'manufacture' as the activity of galvanization converts a raw iron pipe (say) into a galvanized pipe, a different commercial commodity. The Id. Departmental Representative (DR) could not bring to our notice any contrary decision by either the larger bench of the jurisdictional High Court or by the Apex Court, so as to impact the binding nature of the afore-referred decision in *Kashmir Tubes* (supra). In fact, as we observe, the Hon'ble Court in the said decision has also considered the decision by the Apex Court in *Gujarat Steel Tubes Ltd. v. State of Kerala* AIR [1990] (SC) 1779, wherein its stands held that galvanizing an iron pipe only makes it weather-proof, so as it still remains a steel tube, and that therefore the process does not bring any new commodity into existence, so as to regard galvanizing as an manufacturing activity. The same stands distinguished by the Hon'ble Court, stating it to be rendered under the sales-tax law and, therefore, not applicable, as indeed it found the decision by the Apex Court in *Siddhartha Tubes Ltd. v. CCCE* [2005] (8) Supreme 511, being rendered under the Central Excise Act. We decide accordingly, upholding the assessee's claim for deduction u/s. 80IB on galvanizing charges.

3. The only other ground raised per the instant appeal is the non-acceptance of the assessee's additional ground in respect of interest subsidy by the Id. CIT(A). The assessee's claim for deduction u/s. 80IB on interest subsidy stands denied by the Revenue relying on decisions in the case of *CIT v. Sterling Foods* [1999] 237 ITR 579 (SC) and *Cambay Electric Supply Industrial Co. Ltd. v. CIT* [1978] 113

ITR 84 (SC). The Hon'ble jurisdictional High Court in *Shree Balaji Alloys v. CIT* [2011] 333 ITR 335 (J&K) has held interest subsidy to be a capital receipt. The assessee, accordingly, raised an additional ground in its respect before the Id. CIT(A), who rejected the same stating the same to be inconsistent with the assessee's own stand of interest subsidy being a revenue receipt and, further, eligible for deduction u/s. 80IB. No claim *qua* the interest subsidy being a capital receipt stands made per the return of income. True, but that would not in any manner detain the assessee from, alternatively, raising a plea before the first appellate authority, as indeed was the case in the case of *Shree Balaji Alloys* (supra). The assessee's additional ground was therefore liable to be admitted by the Id. CIT(A). In-as-much as the said ground could be raised even before us for the first time, we, accordingly, in deference to the decision by the Hon'ble jurisdictional High Court in *Shree Balaji Alloys* (supra), admitting the assessee's additional ground, also urged before us, direct it being regarded as a capital receipt. The Assessing Officer shall compute the assessee's business income u/s. 28 accordingly. We decide accordingly.

4. In the result, the assessee's appeals are allowed.

Order pronounced in the open court on May 31, 2018

Sd/-

(N. K. Choudhry)
Judicial Member

Sd/-

(Sanjay Arora)
Accountant Member

Date: 31.05.2018.

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant: Kashmir Tubes Bari Brahmana, Jammu
- (2) The Respondent: Deputy Commissioner of Income Tax Circle-1, Jammu
- (3) The CIT(Appeals), Jammu
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

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By Order