IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
and
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.4163/Del/2015
Assessment Year: 2010-11

Shri Harsh Goyal, A-5, Ground Floor, Ashok Vihar-II, New Delhi.	vs	ACIT, Circle 19(1), New Delhi.

Appellant by	**Shri B.L. Gupta, Advocate** **Ms Manju Goel, Advocate**
Respondent by	**Shri Vijay Kumar Jiwani, Sr. DR**

Date of Hearing	**27.06.2018**
Date of Pronouncement	**28 .06.2018**

ORDER

PER K. NARASIMHA CHARY, J.M.

This is an appeal by the assessee against the orders dated 18.02.2015 in Appeal No. 75/2013-14 passed by the Ld. Commissioner of Income- tax (Appeals)-12, New Delhi (for short hereinafter called "Ld. CITA").

2. Brief facts of the case are that the Assessee is the proprietor of M/s Yash Electrical Systems in which Electric Services Connection Kits were made for use by various Contractors to provide electric connection to poor / rural people under the Rajiv Gandhi Gramin Vidyuti Karan Yojna. The BPL Electric Kits being made by

M/s Yash Electrical Systems are stated to contain Wooden Boards, Bakelite sheet , D.P. Switch , Piano Switch, Button Holder, Kitkat Fuse, Electrical Wire, PVC / G1 Pipes etc. The Assessee was enjoying deduction u/s 80 IC from its Unit-I of M/s Yash Electrical Systems at G-51 & 52, UPSIDC, Selaqui Industrial Area, Dehradun, Uttranchal. The Assessee also claimed to have commenced production in another Unit i.e. Unit-II at 1034 M, Central Hope Town, Camp Road, Selaqui, Dehradun, Uttranchal and claimed deduction u/s 80 IC for the first time for Unit-II in this year i.e. A.Y. 10-11. The Assessee has claimed a turnover of Rs. 1,06,73,278/- at Unit II, which is claimed to result in net profit of Rs.5,42,811/- and the deduction u/s 80IC was claimed for Rs. 5,42,811/-.

3. For the Asstt. Year 2010-11, the assessee filed return of income on 23.8.2010 declaring total income of Rs.89,78,770/- . During the scrutiny, the AO observed that Unit No.II is not eligible for deduction u/s 80IC of the Income-tax Act, 1961 ("the Act") because it does not fulfill the twin requirement, namely, undertaking should be new and should not have been formed by splitting up and reconstruction of any existing business and that the manufacturing or production process in relation to the specific articles or things must have been commenced within the stipulated time. Learned AO found that the purchase of machinery claimed in respect of Unit No.II was not in fact relate to Unit No.II, freight outward reveals that the sales were not made in the month of March 2010, freight inward reveals that the purchases were not made for Unit No.II, there is inter-branch transferor purchases to the tune of Rs.59,28,364/- and sales of Rs.6,45,270/-, Unit No.II is merely being used for the packaging of the goods of Unit No.1 but as a matter of fact, no manufacturing activity took place therein and the turnover statistical reveal that there is a splitting up of the business of Unit

No.1 which has already been in existence and its presentation as Unit No.II. Basing on these observations, AO disallowed a sum of Rs.5,77,79,100/- by disallowing the deduction u/s 80IC. Further, AO disallowed the claim of the assessee by Rs.1 lac u/s 80C and Rs.64,185/- u/s 80G by disallowing such claim for deduction on the ground that the assessee's claim u/s 80IC was allowed in respect of Unit No.1.

4. In appeal preferred by the assessee, learned CIT(A) endorsed the view taken by the learned AO. While confirming the same, he dismissed the appeal. Hence, the assessee is in appeal before us challenging the findings of the authorities below in respect of the claim of the assessee for deduction u/s 80IC and 80C of the Act.

5. It is the argument of the learned AR that both the units of the assessee are eligible for cent percent deduction u/s 80IC of the Act, as such, no additional benefit is accrued to the assessee by showing the production from Unit I as the production of Unit II. Sum and substance of the learned AR is that the business in the second unit was commenced in the last week of March 2010, as such, inasmuch as the address of the assessee is not updated in the data base of the TCI Ltd., the old address, namely, address of Unit No.1 is reflected in such bills raised by the transporter and this fact is evident when we verify the lorry receipt and route permit in juxtaposition of the bills raised by the transporter. It is his submission that when the transaction is covered by three documents, it is not fair to reach the conclusion basing on one document by ignoring the other two. It is further stated that in respect of alteration of dates, it could be seen that the dates were written by pencil on the bills to help the accountant to book the expenses in

the FY 2009-10 because the goods were dispatched in March, 2010 itself. He submits that this fact is evident from the lorry receipt and road permit also.

6. Nextly, it is the submission of the learned AR, should there be any doubt in the mind of the learned AO on the details furnished by the assessee, it is always open for the AO to invoke the powers u/s 131 or 136 of the Act to verify the fact from the transporter as to whether the goods were dispatched from Unit II or not. Though there is apparent ambiguity from the documents referred by the learned AO, the explanation submitted by the assessee dispels the same and should there be anything remaining for consideration, the law provides for clarification of the same by issuing the notice u/s 131 or 136 of the Act.

7. It is the submission of the learned AR that no show cause notice was issued to the assessee denying or cancelling the deduction u/s 80I of the Act thereby a reasonable opportunity was denied to the assessee to put forth all the submissions before the learned AO. Further, it is the submission of the learned AR that the copies of machineries for Unit II , excise registration letter, letter seeking exemption from excise, excise returns for the month of March 2010, attendance register for the month of March, 2010 and first invoice No.1 dated 24.3.2010 are all produced before the learned AO but learned AO failed to consider the evidence and circumstances in a holistic manner just to reach a reasonable and proper conclusion instead basing on surmises and conjectures and wild suspicion, the authorities below reached wrong conclusion.

8. Learned DR argued that the eligible period for deduction in respect of Unit No.I is drawikng to a close, as such, the assessee in his anxiety to see that Unit II is shown to have commenced its business, had shown the documents relating to

Unit No.I as the documents relating to Unit No.II. According to the learned DR, when the documents are speaking contrary to the explanation of the assessee, the authorities are duty bound to go by the language spoken by the documents, as such, they are justified in denying the deduction u/s 80IC of the Act. Learned DR submitted that it is not believable that when the turnover of Unit I in the entire year is Rs.26,12,27,549/-, the turnover of the second unit for one week along would be Rs.1,06,73,278/-. The sum and substance of the submissions of the learned DR is that only to escape the scrutiny in respect of Unit II freshly for the Asstt. Year 2011-12, the assessee had shown the production of Unit No.1 as the production of Unit No.2 with the machinery and other resources available at Unit No.II. He submits that the assessee did so because the machinery and other relevant purchases for unit No. II are not sufficient to achieve the production shown by the assessee.

9. We have gone through the record. As could be seen from the assessment order, learned AO denied the deduction u/s 80IC to the assessee on the ground that the assessee did not fulfill the twin conditions, viz., establishment of Unit No.II not by splitting up or reconstruction of Unit No.I and secondly, Unit No.1 did not commence production within the stipulated time. Learned AO based this finding on her observation in respect of the freight outward wherein the bills were containing the address of Unit No.I and it was altered to the address of Unit No.II and also the dates; on the address mentioned on the bills for purchase of machinery; absence of evidence of freight inward inasmuch as freight inward reveals only the purchase of electric goods, wooden boards and GI pipes. Bill issued by South India Transport carrier does not show the name and address of

the assessee and the other bills bearing the address of Unit I of the assessee. Learned CIT(A) upheld these findings of the learned AO.

10. There is no denial that both the units of the assessee are eligible for 100% deduction u/s 80IC of the Act. There is also no denial of the fact that during the financial year 2009-10, assessee claims that Unit No.II went for production only for a week. In the initial year of production when the machinery and other goods are purchased, the transporter bills contain the address of unit I of the assessee, assessee explains that this mistake occurred because of non updating of the new address in the data base of the transporter. There is no denial of the fact submitted by the assessee that lorry receipt and road permit contained the proper address where-from the goods were dispatched. Learned CIT(A) noted that these are the self serving documents. When two out of three documents relating to the freight booked for transport of dispatched goods speak of the address of Unit No.II, the authorities below solely relied upon the third document.

11. Learned CIT(A) stated that the bill issued by the Transport Corporation of India stands on a different footing and it has to be preferred. Further, he commented that having failed to manipulate at the end of TCI also, the assessee started pointing finger out at the TCI Ltd. We are unable to appreciate this because it has been contended by the assessee before the learned CIT(A) also that it is only because the non updating of the address of the assessee in respect of Unit No.II occurred in the bills raised by the TCIL in respect of the goods dispatched at Unit No.II. In all fairness, the authorities should have taken recourse to the process u/s 131 or 136 of the Act before commenting on the genuineness or otherwise of the incorporation of address on the bills. If an

industrial undertaking has started establishment for the first time, it is probable there could be no occasion for mistake in addresses. However, when the unit is working and the address of such unit is existing in data base of the transporter, unless a conscious act of updating the data base takes place, it would be go on mentioning the address of the existing unit in the bills that are raised in respect of the new unit also. It is not something unusual or impossible. For that matter, it is highly probable. In such an event the proper course is verification of the plea raised before the authorities.

12. Similar mistake, assessee submits, had taken place in respect of the purchase bills of machinery or other relevant materials. We do not find any strength in the argument of the learned DR that only to pre-empt the department from scrutinizing the claim u/s 80IC of the Act by the second unit after the eligibility of first unit comes to an end, the assessee had resorted to malpractice showing the production from Unit I as the production from Unit II. Even when Unit 1 is eligible for the deduction u/s 80IC still the department had booked up the case for scrutiny. It is not as though the department will pick up for scrutiny in the first year of claim of deduction u/s 80IC of any unit. We do not find any live reason attributabed by the department for the assessee to do anything wrong or to show the production from Unit I as the production of Unit II. No additional advantage is derived by the assessee by such an act and the reason attributed by the Revenue for such a thing is too weak to believe.

13. We, therefore, are of the considered opinion that stand taken by the revenue does not appear to be sound or tenable and absolutely, there is no additional advantage derived by the assessee by showing the production of Unit I

as the production of Unit Ii. We, therefore, direct the deletion of the addition made by disallowing the deduction u/s 80IC of the Act in respect of Unit No.II.

14. Now coming to the disallowance of deduction u/s 80IC of the Act, originally the assessee claimed it at Rs.1 lac but as could be seen from the order of the learned CIT(A) during appellate proceedings has restricted the same to Rs.55,858/-. Learned AO denied the same stating that no deduction be allowed under any section contained in Chapter VIA of the Act. Since the claim of the assessee u/s 80C in respect of Unit I was allowed, the claim for deduction u/s 80C of the Act cannot be allowed. Learned CIT(A) rejected the same.

15. It is the submission of the learned AR, under law no deduction u/s 80C can be allowed in respect of any amount allowable as deduction u/s 80IC of the Act but here the sum of Rs.55,858/- is the income from other sources, as such, the same cannot be denied. We agree with the learned AR and direct that a sum of Rs.55,858/- , which is not covered u/s 80IC of the Act has to be allowed.

16. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 28th June, 2018

Sd/- sd/-

(R.S. SYAL) **(K. NARASIMHA CHARY)**
VICE PRESIDENT **JUDICIAL MEMBER**

Dated: 28 .06.2018
VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
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