

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य,
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।

**BEFORE SHRI D. KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM**

आयकर अपील सं. / ITA Nos.2653 & 2654/PUN/2016
निर्धारण वर्ष / Assessment Years : 2010-11 & 2006-07

The Dy. Commissioner of Income-tax,
Circle-9, Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Kala Genset Pvt. Ltd.,
392/1, Village : Mahalunge,
Taluka : Khed, Pune – 410 501

PAN : AAACK6784C

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Yogesh Kamat

सुनवाई की तारीख / Date of Hearing : 20-12-2018

घोषणा की तारीख / Date of Pronouncement : 31-12-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These two appeals have been filed by the Revenue. ITA No.2654/PUN/2016 is directed against the order of Commissioner of Income-tax (Appeals)-6, Pune dated 30-08-2016 for the assessment year 2006-07 in reassessment proceedings u/s.147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). In ITA No.2653/PUN/2016, the Revenue has assailed the order of Commissioner of Income-tax (Appeals)-6, dated 31-08-2016 for the assessment year 2010-11.

ITA No.2654/PUN/2016 for A.Y. 2006-07 :

2. The brief facts of the case as emanating from the records are; the assessee is engaged in the business of manufacture and assembling of Generator sets. The assessee filed its return of income for the impugned assessment year on 22-11-2006 declaring total income of Rs.1,71,42,956/-. The assessee claimed deduction u/s.80IB(5) in respect of manufacturing unit located at Silvassa. In scrutiny assessment proceedings, the assessee's claim of deduction u/s.80IB(5) was allowed vide order dated 04-11-2008. Subsequently, the Assessing Officer (in short 'AO') reopened the assessment to reject assessee's claim of deduction amounting to Rs.1,63,06,945/- u/s.80IB(5) of the Act. The AO vide order dated 08-03-2013 passed u/s.143(3) read with section 147 disallowed the assessee's claim of deduction u/s.80IB(5) of the Act.

3. Aggrieved by reopening of assessment and disallowance of claim of deduction u/s.80IB(5), the assessee filed appeal before the CIT(A). The First Appellate Authority vide impugned order held that the assessee is eligible for claiming the deduction u/s.80IB(5) and reversed the findings of AO. Against the order of CIT(A), the Revenue is in appeal before the Tribunal.

4. Shri Yogesh Kamat representing the Department submitted that the CIT(A) has erred in coming to the conclusion that 'assembling' amounts to 'manufacturing'. The CIT(A) while allowing the appeal of assessee has placed reliance on the decision of Pune Bench of the

Tribunal in assessee's own case for the assessment years 2007-08 and 2008-09 in ITA Nos. 2056 & 2057/PUN/2012 decided on 28-02-2014. The Department is in appeal before the Hon'ble High Court against the said order of Tribunal. The ld. DR fairly conceded that the appeal of the Revenue may not be accepted by the Hon'ble High Court as the tax effect in the appeal is below the monetary limit as has been recently notified by the CBDT vide Circular No.21/2015. The ld. DR placed reliance on the decision of Hon'ble Calcutta High Court in the case of CIT Vs. Babcock & Wilcox of India Ltd. reported as 241 ITR 583 to contend that assembling of parts cannot be equated with 'manufacture of an article or a thing'. The ld. DR contended that the provisions of section 10A and 10B have been amended by the Finance Act, 2000 whereby definition of 'manufacturing', which included any process or assembling has been deleted w.e.f. 01-04-2001.

5. On the other hand, Shri Nikhil Patkalk appearing on behalf of the assessee submitted that the assessee claimed deduction u/s.80IB(5) for the first time in the assessment year 2005-06. The Revenue initially allowed the assessee's claim of deduction. Thereafter, the assessment was reopened and the assessee's claim of deduction u/s.80IB(5) was denied. The assessee carried the matter in appeal before the First Appellate Authority. The CIT(A) deleted the addition. Thereafter, the Department did not agitate the issue in appeal before the Tribunal on account of low tax effect. In assessment years 2007-08 and 2008-09, the assessee's claim of deduction was again disallowed. In the first appeal before the CIT(A), the assessee's claim of deduction u/s.80IB(5) in respect of Silvassa unit was allowed. The Department carried the issue in appeal before the Tribunal in ITA Nos. 2056 & 2057/PUN/2012 (supra). The Tribunal upheld the order of

CIT(A) in holding assessee eligible for claiming deduction. The ld. AR referred to the above order of Tribunal placed at pages 21 to 37 of the paper book. The ld. AR submitted that the Tribunal has held that 'manufacturing' includes assembly of parts. The ld. AR further pointed that the Tribunal while allowing assessee's claim has considered the decision rendered in the case of CIT Vs. Babcock & Wilcox of India Ltd. (supra).

6. We have heard the rival submissions and have perused the orders of the authorities below. The solitary issue in the appeal by Revenue is against allowing assessee's claim of deduction of Rs.1,63,06,945/- u/s.80IB(5). The assessee is engaged in the business of assembling and manufacture of Diesel Generator Sets for industrial and commercial applications. As per the contentions of the Revenue, assembling of various components does not amount to 'manufacture'. We find that, for similar reasons, the assessee's claim of deduction u/s.80IB(5) was denied by the Department in assessment years 2007-08 and 2008-09. The issue travelled to the Tribunal. The Tribunal after placing reliance on the decisions rendered in the case of Chiranjeevi Wind Energy Ltd. reported as 2011-TIOL-91-HC-MAD-IT, Tata Locomotive & Engineering Ltd. reported as 68 ITR 325 (Bom.), CIT Vs. Jackson Engineers Ltd. reported as 341 ITR 518 (Delhi) upheld the order of CIT(A) in allowing assessee's claim of deduction u/s.80IB(5). We further find that the Coordinate Bench of the Tribunal while deciding the issue in favour of the assessee has also considered the decision rendered in the case of CIT Vs. Babcock & Wilcox of India Ltd. (supra). Since this issue has already been considered and decided in favour of the assessee by the Tribunal, we find no reason to take a contrary view, especially when the facts are

identical. Accordingly, the impugned order is upheld and the appeal of the Revenue is dismissed.

7. In the result, the appeal of the Revenue is dismissed.

ITA No.2653/PUN/2016 for A.Y. 2010-11 :

8. The Revenue in appeal has assailed the order of CIT(A) in deleting the addition of Rs.1,37,66,943/-.

9. The ld. DR submitted that as per the information received from the Sales Tax Department, Govt. of Maharashtra the assessee has indulged in bogus purchases of material from Hawala operators. The assessee has obtained book entries indicting purchase of building material from the following hawala dealers amounting to Rs.1,37,66,943/- :

1. Ajkshar Distributors Pvt. Ltd.
2. Ramdev Trading Company
3. Darshat Trading Pvt. Ltd.,
4. Evershine Enterprises
5. Reliance Enterprises

The assessee failed to substantiate with cogent evidence that the material was procured from the aforesaid dealers. Consequently, the AO made addition. However, in the first appeal, the CIT(A) deleted the addition of bogus purchases on the ground that the assessee might have obtained the material locally in cash and only for the purpose of availing VAT credit the bills have been sought from the Hawala operators. The findings of CIT(A) are erroneous as they are merely based on presumptions and assumptions.

10. On the other hand, ld. AR vehemently defended the findings of CIT(A) in deleting the addition. The ld. AR submitted that, even if the purchases are admitted to be bogus, the construction of the building has not been disputed by the Department. The cash available with the assessee against bogus purchases of construction material have been invested for construction of the building. Therefore, the said amount can be set off against work-in-progress.

11. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. The solitary issue raised in appeal by the Department is against deleting the addition of Rs.1,37,66,943/- on account of bogus purchase of building material from the hawala operators by the assessee. The contention of the Revenue is that the assessee has never purchased the material for construction of the building. It has merely obtained the accommodation entries from hawala dealers. At the same time, construction of building by the assessee has not been disputed by the Department. The CIT(A) has deleted the addition by considering the fact that cash available with the assessee against alleged bogus purchases has been utilized towards construction of building and hence, it is part of work-in-progress. For the sake of completeness, the relevant extract of the findings of CIT(A) are reproduced herein below :

4.3.1

..... Considering this evidence and the fact that the WIP has been certified by the auditors, I am of the view that there has been a construction work which has been carried out during the year. The value as per valuation report is Rs.1,56,55,200/- and the WIP as per the books is shown at Rs.1,51,26,000/-. The material purchased from the alleged bogus suppliers is Rs.1,37,66,943/-. It is quite possible that the appellant may have incurred this expenditure by purchasing the material locally in cash and only for the purpose of

availing any VAT credit he may have sought the bills from these hawala operators. In view of the fact that the building has been constructed, it could not have been possible without purchasing the material. Therefore, the action of the AO in not considering the withdrawals made from the books as not having been invested in capita; WIP is erroneous. Therefore the addition made by the AO treating the investments in the WIP has unexplained investment is deleted. Further, as the withdrawn amounts have been utilized for the purpose of business, the disallowance of interest made by the AO is without any basis and hence deleted."

12. We find that the reasons given by the CIT(A) in deleting the addition are plausible and hence, we concur with the same. We find no reason to interfere with the findings of CIT(A). Accordingly, the appeal of the Revenue is dismissed.

13. In the result, the appeal of the Revenue is dismissed.

Order pronounced on Monday, the 31st day of December, 2018.

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st December, 2018
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-6, Pune
4. आयकर आयुक्त / The Pr.CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

| | | Date | |
|-----|--|----------|-------|
| 1. | Draft dictated on | 26-12-18 | Sr.PS |
| 2. | Draft placed before author | 27-12-18 | Sr.PS |
| 3. | Draft proposed & placed before the second member | | AM |
| 4. | Draft discussed/approved by Second Member. | | AM |
| 5. | Approved Draft comes to the Sr.PS/PS | | Sr.PS |
| 6. | Kept for pronouncement on | | Sr.PS |
| 7. | Date of uploading order | | Sr.PS |
| 8. | File sent to the Bench Clerk | | Sr.PS |
| 9. | Date on which file goes to the Head Clerk | | |
| 10. | Date on which file goes to the A.R. | | |
| 11. | Date of dispatch of Order. | | |