IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI

BEFORE SH. K.N.CHARY, JUDICIAL MEMBER
AND
SH. O.P. MEENA, ACCOUNTANT MEMBER

ITA No.71/Del./2016 : Asstt. Year : 2012-13

Income Tax Officer, Ward-2(2), Dehradun	Vs	M/s. Rudra Woodpack Pvt. Ltd. VIII, Latherdeva Hoon, P.O.Jhaberera, Tehsil Roorkee, Distt. Haridwar PAN : AADCR6972N
(APPELLANT)		**(RESPONDENT)**

Appellant by : Sh. Kapil Goel, Adv.
Respondent by : Smt. Naina Soin Kapil, Sr. DR

Date of Hearing : 06.02.2019		**Date of Pronouncement : 07.02.2019**

ORDER

PER O.P.MEENA, ACCOUNTANT MEMBER

This appeal is filed by the revenue and is directed against the order of Commissioner of Income Tax (Appeals) , Dehradun dated 08.10.2015 which in turn has arisen from the order passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to the 'Act') by the ITO, Ward -2(2), Dehradun for the assessment year 2012-13.

2. The sole ground of the revenue states that the Ld. CIT(A) has erred in law and on facts in allowing deduction u/s 80IC to the assessee ignoring the

fact that a spot enquiry revealed that no manufacturing activities were seen at the premises of the company.

3. Briefly stated the facts of the case are that a survey u/s 133A of the Act was carried out at the factory premises of assessee by the Investigation Wing, Dehradun on 02.12.2013 wherein it was found that the activities of company were in the nature of assembling and not manufacturing. It was pointed out that the assessee company was claimed deduction u/s 80IC of the Act from Assessment Year 2008-09, but no manufacturing activities covered under the provision of Section 80IC of the Act were being carried out by the company. On spot verification, the AO found that about 13 to 15 laborers were there who were making Wooden Crate for which they were using readymade wooden planks, thermocol, fevicol and nails etc. The AO has reproduced some pictures of such manufacturing activities of product in the assessment orders at page 3 to 5. The assessee through submissions filed by his C.A. contended that the assessee's business is involved of manufacturing of wooden crates specially customized and designed for Asahi Glass. It was also submitted that the assessee has been granted registration by the District Industries Centre as manufacturer. Similarly the assessee is registered under the Factories Act for which factory is doing manufacturing activity. The assessee has also granted exemption from the excise duty by the Central Excise and the manufacturing units. It was further submitted that the assessed's activity of manufacturing are covered by the definition prescribed u/s 2(29BA) inserted by Finance Act, 2009 w.e.f. 01.04.2009. The reply and submissions filed by the assessee has been reproduced by the AO at page 6 to 7 of the assessment order which contains some case laws in support of his claim. However, the AO was of the view that the case laws cited by the assessee are not applicable in this case.

The activities of the assessee are purely assembling of wooden planks with nail into wooden crates, if nails are removed, it will get its original shape as it was before used. Therefore these facts proved that the activities of the assessee are assembling and not manufacturing. Accordingly the AO has disallowed the deduction u/s 80IC amounting to Rs. 1,10,38,278/-.

4. Being aggrieved the assessee has filed an appeal before the CIT(A) wherein the same submissions were repeated as made before the AO. It was contended that the word manufacture had now been defined in Section 2(29AB) to mean that :-

> *" Manufacture, with its grammatical variations, means a change in a non-living physical object or article or thing-*
> *a) Resulting in transformation of object or article or thing into a new and distinct object or article or thing having a different name, character and use or*
> *b) Bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure"*

5. It was submitted that the wooden crates were a new distinct object having a different name, character and use from the products that went into their manufacture. The Assessee has also placed reliance on the following decisions:-

> *"1. Aspinwall and Co. Ltd. vs. Commissioner of Income Tax 251 ITR 323 [2001]*
> *2. Commissioner of Income Tax vs. N.C.Budharaja and Co and Anr. Etc. 204 ITR 412 [1993]*
> *3. Union of India vs. Delhi Cloth and General Mills 1963 AIR 791, 1963 SCR Supl. (1) 586*
> *4. Deputy Commissioner, Sales Tax (Law) Board of Revenue (Taxes) vs. Pio Food Packers 1980 AIR 1227, 1980 SCR (3) 1271*

5. Indian Cine Agencies vs. Commissioner of Income Tax 308 ITR 98[2009]

6. Commissioner of Income Tax vs. Emptee Poly-Yarn Private Limited 320 ITR 665[2010]

7. Commissioner of Income Tax vs. Jamal Photo Industries (I) Private Limited 285 ITR 209 [2006] (Madras)

8. Commissioner of Income Tax vs. Darshak Limited 247 ITR 489 [2001] (Karnataka).

6. After considering the facts and submissions of the assessee, Ld. CIT(A) has given his finding in para 14 to 24 which is reproduced as under :-

"14. I have duly considered the facts of the case and the submissions of the assessee. In the first place it is quite clear that the survey conducted by the Investigation Wing and the inspection conducted by the AO, confirmed the findings of the inspection of the assessee's premises conducted by the Income Tax Inspector 0n 18.11.2011 i.e. that there was a labor intensive unit manufacturing wooden crates with the aid of small tools such as wood cutters, nailors, staplers, foam, fevicol etc. The only point of divergence is whether such activities amounted to manufacturing or not that would render the activity eligible for the deduction u/s 80IC. Thus, the crucial aspect for determination is the issue of whether the process employed by the asessee amount to manufacture or not.

15. The term manufacture has been defined by section 2(29)BA of the I.T. Act to mean any activity that result in the creation of an article or object that is new and distinct from the raw material that go into its manufacture and having a different name, character, use and/or integral structure. It cannot be denied that the wooden crates are completely distinct from the planks, nails, fevicol, foam etc. that are used to make them and have a use of their own ***.The fact that they are a different product*** *is recogniesd by both the Central Excise classification and the VAT which assigns them specific codes and serial nos. for the purposes of taxation. Thus,*

from this stand point they fulfil the criteria of being manufactured products. The AO seems to disagree primarily on two issues

i) *That the work does not involve plant and machinery and is labor intensive.*

ii) *That if the crates are dismantled the original products would return back.*

In this context, it may be relevant to quote from the various judgments cited by the asessee to show that the opinions on such matters expressed by the AO do not take the products, i.e. wooden crates out of the ambit of manufactured products that are not entitled for deduction u/s 80IC.

16. *In the case of Aspinwal & Co Ltd. Vs. CIT 251 ITR 323 (2001), the Hon'ble Supreme Court has held that*

"The word 'manufacture' has not been defined in the Act. In the absence of a definition of the word 'manufactu'e' it has to be given a meaning as is understood in common parlance. It is to be ur derstood as meaning the production of articles for use from raw or prepared materials by giving such materials new forms, qualities or combinations whether by hand labour or machines. If the change made in the article results in a new and different article then it would amount to a manufacturing activity."

17. *In the instant case from the process of manufacturing explained by the asessee, it is quite clear that the original procucts are wooden planks, evafoam, thermocol, adhesive tape/pneumatic stappler pins and nails. The final product is wooden crates which are a distinct and separate article different from all the products that go into its manufacture and recognized as a distinct product by the Central Excise and VAT classification which assigned tie product a specific HS Code and Serial No. respectively in the Central Excise and Vat Schedules. The AO has submitted that on his visit to the premises he on y found readymade wooden planks being fixed together to form wooden crates and this was assembling not*

manufacturing. In this context, it is observed that the asessee has submitted that the AO visited the premises after the logs had been cut and made into planks. However, even if that was not the case, it is still clear that wooden crates are different from the planks per se and the planks are only one of the many products that go into manufacturing the wooden crates. Since, the wooden crates stand apart as a distinct commodity from the items that go into makinc them, the making of the wooden crates amounts to manufacture within the meaning of the Supreme Court judgment in the case of Aspinwall & Co. Ltd (supra). Moreover, the judgment makes it clear that simply because the process may be manual and labor intensive would not take it out of the ambit of manufacturing.

18. *Furthermore, the Hon'ble Madras High Court has held in the case of CIT Vs. Jamal Photo Industries (I) Pvt. Ltd.*

"There cannot be any dispute that the expression "manufacture" involves the concept of changes effected to a basic raw matenal resulting in the emergence of, or transformation into, a new commercial commodity. But it is not necessary that the original articleor material should have lost its identity completely. All that is required is to find outwhether as a result of the operation in question, a totally different commodity had been produced having its own name, identity, character or end use"

19. From the above, it is quite clear that the mere fact that dismantling a manufacture article may bring back the original products (albeit in the form of waste), would not detract from the fact that a new and distinct product had emerged as a result of the process and therefore, it cannot be said that the same amounted to assembling and not manufacturing.

20. Finally, the Hon'ble Karnataka High Court has held in CIT Vs. Darshak Ltd. 247 ITR 489 (2001)

"The Supreme Court in Empire Industries Ltd. & Anr.** vs. **Union of India & Ors. (1987) 162 ITR 846 (SC) has held that

"manufacture" would include processes like bleaching mercerising, dyeing, printing, waterproofing, rubberising, shrink-proofing, grease-resisting, etc. It is clear from the judgment of the Supreme Court that the word "manufacture" is to be understood in a wider sense. Manufacture would employ a change and a transformation. 4 new and a different article must emerge having a distinct and different character and use."

21. Thus, it would be incorrect to hold that only products that involve installation of plant and machinery and production by automated processes amount to manufacturing. Rather, manufacturing must be understood in a wider sense to be any process that results in the creation of a new and distinct article having a distinct and different character and use from the ingredients that go into making the said product. In the instant case, the wooden crates had a distinct character and use of their own which is different from the various components that go into making them. They are therefore, quite clearly manufacture items and that is why they have been recognised as such in Central Excise classification.

22. Furthermore, in the A.Y. 2009-10, the AO passing the original order u/s 143(3), in the course of her office no[1]e has clearly recorded the fact that the product manufactured by the assessee is net covered by 13th Schedule and therefore, the assessee is eligible for deduction in respect of such products. The AO has not brought any fact on record to show that wooden crates fall under the 13th Schedule and are not eligible for the deduction j/s 80IC.

23. Thus, the stand taken by the AO that no manufacturing activities covered under the provision of section 80IC are being carried out by the company, is incorrect as the assessee is not only engaged in the process of manufacture but is also producing a commodity not covered by the 13th Schedule.

24. In the circumstances, the disallowance made is without basis and is accordingly deleted."

7. Being aggrieved the revenue has filed this appeal before this Tribunal. The Ld. Sr. DR submitted that the survey proceedings conducted u/s 133A revealed that the assessee was making wooden crates by assembling wooden planks with the help of nails by using his wooden cutters. There was no machinery install in the premises of the assessee. No other manufacturing activity has been seen at the premises of the companies except preparing the wooden crates by employing 13 to 15 laborers, hence making of wooden crates amounts to assembling and not manufacturing activities, therefore, the assessee is not entitled to claim deduction u/s 80IC which is allowable in respect of manufacturing activities. Ld. Sr. DR referred the photographs appearing at page 3 to 7 of the assessment order. The Ld. Sr. DR further drew our attention to page 8 of the assessment order which is finding of the assessing officer. The Ld. Sr. DR further referred a synopsis wherein definition of manufacturing given under the Excise Act has been discussed by the Hon'ble Supreme Court in the case of Union of India vs. Delhi Cloth and General Mills Company Ltd. AIR 1963 SC 791 wherein the Hon'ble Supreme Court held that the word 'manufacture' is generally understood to mean "as bringing into existence a new substance" and does not merely mean "to produce some change in substance". The Court quoted with approval a passage appearing in Volume 26 of the permanent Edition of the "Words and Phrases" as below :

"Manufacture' implies a change, but, every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation: a new and different article must emerge having a distinctive name, character or use."

8. Accordingly Sr. DR has emphasized that every change in manufacturing does not amounts to manufacturing within the meaning of Central Excise Act. Therefore the Ld. Sr. DR vehemently supported the order of the AO and contended that same may be restored.

9. On the other hand, Ld. Counsel for the assessee submitted that the four departments of the Government have accepted that the assessee is a manufacturing units. The Ld. Counsel referred page 6 of assessment order wherein the submissions filed by the assessee are reproduced and contended that the assessee has been registered as manufacturer by the District Industries Centre, Roorki (Haridwar) (PB-I). Similarly the assessee has also registered his factory under the Factories Act by labour department of Uttrakhand Government (Paper book page 2). Further the assessee has been also recognized as manufacturing units by the Sale Tax Department of which assessment order is placed on paper book page 21. It was further submitted that as per Uttrakhand VAT Act, 2005 wooden crates were recognized as a distinct product and item 122 in schedule IInd B which shows wooden crates to be distinct product in view of the foregoing submission. The Ld. Counsel has placed reliance on the decision of ITAT Delhi Bench in the case of Mobile Communication (India) P. Ltd. vs. DCIT, [2010], 125 ITD 309 (Delhi Trib.) and quoted from the said decision from para 9 page 10 that it is a well settled legal position as laid down by the Court of appeal in England in Moouat vs. Betts Motors Ltd. 1958 (3) All ER 402, that two Departments of the Government cannot in law adopt contrary or inconsistent stands or raise inconsistent contentions or act at a cross purposes. To use the famous words of Lord Denning in that case, the right hand of the Government cannot pretend to be unaware of the left hand is doing". The same principle of law has also been followed by apex court in the case

of M.G. Abro, Addl. Collector of Customs vs. Shanti Lal & Co. AIR 1966 SC 197, wherein it was laid down that the customs authorities cannot in law take a stand or adopt a view which is contrary authorities. Therefore it was contended that when four departments of Government has considered the assessee is a manufacturing unit than no contrary view can be taken by other department which is inconsistent with the stands taken by other four department. The Ld. Counsel further supported his above view by placing reliance on the decision of ITAT Delhi Bench in ITA no. 215/Del/2014 and others dated 30/05/2018 wherein para 13 it was observed that where the assessee is making packing material as per the requirement of the product with the aid and help of various kinds of machines as incorporated above and it is also registered as manufacturer under the various laws, then such a general inference based on statement of employees cannot be given much credence. Thus, we do not find any substantial merits in the grounds raised by the Revenue that assessee is not engaged in the manufacturing of packaging material (PB page 37-38).

10. Ld. Counsel for the assessee further placed reliance on the decision of Hon'ble Bombay High Court in the case of Pr. CIT - 31 vs. M/s. Unique Gem & Jewellery ITA no. 1623 of 2016 dated 23/01/2019 wherein the Hon'ble High Court in para 7 page 43 of paper book which is reproduced as under :-

> *"7. We note that the impugned order of the Tribunal has considered this very objection raised by Mr. Pinto and has inter alia come to the finding that the respondent was granted permission by the Government to make only handmade jewellery. Accordingly, nature of manufacturing activity carried out by the respondent did not require huge plant and machinery and the absence of plant and machinery could not lead to conclusive presumption that there was no*

manufacturing activity. The Tribunal further recorded the fact that the material produced by the respondent has not been contradicted or shown to be incorrect by the Revenue. Further, the small amount of labour charges and wages being the basis of the disallowance was also considered by the Tribunal and it was found that the Revenue had not carried out any examination / enquiry to ascertain what would be the fair market value of the labour charges and wages in this sort of activity. Thus, there is no reason to disbelieve the respondent."

11. Ld. Counsel further placed reliance on the decision of Co-ordinate bench of Bombay Tribunal in the case of ITO vs. Shri Ulhas Gopal Karle ITA no. 2369/Mum/2013 dated 16.10.2015 wherein at page 13 various case laws having cited to establish the assessee has been manufacturing wooden crates which implies change of substance in an article as a result of treatment of labour process. The Ld. Counsel submitted that the Hon'ble apex court in the case of India Cine Agencies vs. DCIT, 2010 taxmann. 253 SC held that even cutting of Jombo volumes rolls into small marketable sizes amounts to manufacturing. Similarly the Hon'ble Apex Court in CIT vs. MT Polo Yan Pvt. Ltd. Civil Appeal arising out of SLP (C. No. 26482/2008) Civil appeal no. 786792 of 2010 dated 21.01.2010 held that twisting of yarn amounts to manufacturing. The Ld. Counsel further heavily relied in the case of CIT vs. Oracle Software India Ltd. 2010 (1) SCALE 425 wherein the apex court has observed as under :-

"The term "manufacture" implies a change, but, every change is not a manufacture, despite the fact that every change in an article is the result of a treatment of labour and manipulation. However, this test of manufacture needs to be seen in the context of the above process. If an operation/process renders a commodity or article fit for use for which it is otherwise not fit, the operation/ process falls within the meaning of the word "manufacture"."

Therefore, it was contended that the Ld. CIT(A) has rightly allowed the appeal of the assessee and consequently deduction u/s 80IC of the Act.

12. We have heard the rival submissions and perused the material on record and case laws cited by the parties. We find that the original products used by the assessee are wooden planks, evafoam, thermocol, adhesive tape/ pheumatic, stapler pins, and nails. The final product obtained in the process by the assessee is wooden crates which are a distinct and separate article different from all the products that go into it manufacture and recognized as a distinct product by Central Excise and VAT classification which has assigned the product a specific HS Code and serial no. respectively in the Central Excise and VAT Schedules. It is further seen that as per Uttrakhand VAT Act, 2005, wooden crates were recognized as a distinct product and item. Similarly the assessee has been registered as manufacture with District Industries Centre and registered as a factory under the Factories Act. Further the assessee has been granted exemption from Excise Duty and has availed exemption from duty which is only granted to manufacturing units. Thus as per the term defined by Section 2 (29BA) of the Act would be any activity that results in the creation of an article for object that is new and distinct from the raw material that go into its manufacture and having a different name, character , use and / or integral structure. It cannot be denied that the wooden crates are completely distinct from the planks, nails, fevicol foam etc. that are used to make them and have a use of their own. The Ld. CIT(A) has supported his view by placing the reliance on the decision of Hon'ble Supreme Court in the case of Aspinwal & Co. Ltd. vs. CIT, 251 ITR 323 (2001) SC wherein the Hon'ble Supreme Court has held that :-

"The word 'manufacture' has not been defined in the Act. In the absence of a definition of the word 'manufacture' it has to be given a meaning as is understood in common parlance. It is to be understood as meaning the production of articles for use from raw or prepared materials by giving such materials new forms, qualities or combinations whether by hand labour or machines. If the change made in the article results in a new and different article then it would amount to a manufacturing activity."

13. Thus, in the light of ratio laid down in above decision. The change brought in wooden planks by hand by the labours using small cutters would amount as manufacture a product, which is obtained as wooden crates by the assessee. Similarly the Hon'ble Supreme Court in the case of Orcle Software India Ltd. (2010) 187 taxmann. 275 SC held that if an operation / process renders a commodity for article fit for use for which it is otherwise not fit for operation / process falls within the meaning of word 'manufacture'. In the case of assessee wooden crates are different from the planks per se and the planks are only one of the many products that go into the manufacturing the wooden crates. Since, the wooden crates stand apart as a distinct commodity from the items that go into making them, the making of the wooden crates amounts to manufacture within the meaning of the Supreme Court decision in the case of Aspinwal & Co. Ltd. (supra). The Ld. Counsel has placed reliance on the decision of Mobile Communication India Pvt. Ltd. (supra) wherein it was observed that it is the well settled legal position as laid down by the Court of appeal in England in Moouat vs. Betts Motors Ltd. 1958 (3) All ER 402, that two Departments of the Government cannot in law adopt contrary or inconsistent stands or raise inconsistent contentions or act at a cross purposes. Therefore when the 4 departments of the Government has considered the assessee as a manufacturing unit therefore, the other department of the

Government cannot take a contrary view or stand inconsistent with the view taken by the other departments of the Government.

14. Coming to the observation of the Ld. AO that the activities of the assessee are purely assembling of wooden planks with nail into wooden crates and if nails are removed it will cut its original shape as it was before used. However, we find that the original commodity used by the assessee as raw material are a wooden sleepers / planks which are go into sizes to according to the orders placed with the assessee then the cut two sizes wooden planks are subject to smoothening use of planting machine then the planks are treated to fix the evafoam and thermocol to make the material carried in the crates jerk resistant then the planks are stapler and nail are used industrial nails and staplers, therefore, the result of the process is wooden crates which is distinct from the wooden slippers planks being original commodity. Therefore, the end project is result of manufacturing activity which amounts change in the original articles. Hence, it cannot be treated as mere assembling of wooden planks even the Hon'ble Supreme Court in the case of Oracle Software India Ltd. (supra) held that if an operation / process renders a commodity or article fit for use for which it is otherwise not fit, operation / process falls within the meaning of word manufacture. We have also gone through the various case laws relied by the Ld. Counsel for the assessee which are discussed in submissions in the aforesaid para of this order which also supports the view taken of the Ld. CIT(A) and we also concur the view of Ld. CIT(A) in the light of aforesaid facts and circumstances and legal positions. We are of the considered opinion that Ld. CIT(A) has rightly held the assessee is manufacturer of wooden crates, and consequently allowed the deduction u/s 80IC of the Act. Therefore, We do

not find any infirmity in the order of the Ld. CIT(A). Accordingly the appeal of the revenue is therefore, dismissed.

(Order Pronounced in the Open Court on 07/02/2019).

Sd/-	Sd/-
(K.N.CHARY)	**(O.P.MEENA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 07 / 02/2019
BINITA
Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(Appeals)
5.DR: ITAT

ASSISTANT REGISTRAR

Date of dictation	06/02/2019
Date on which the typed draft is placed before the dictating Member	07/02/2019
Date on which the typed draft is placed before the Other Member	07/02/2019
Date on which the approved draft comes to the Sr. PS/PS	07/02/2019
Date on which the fair order is placed before the Dictating Member for pronouncement	07/02/2019
Date on which the fair order comes back to the Sr. PS/PS	07/02/2019
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	