

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Sh. N. S. Saini, Accountant Member

ITA No. 5691/Del/2017 : Asstt. Year : 2013-14

M/s B. A. International, 35/14, Chameli Sadan Purani Delhi Chungi, Meerut	Vs	Income Tax Officer, Haldwani, Uttarakhand
(APPELLANT)		(RESPONDENT)
PAN No. AAHFB0501C		

Assessee by : P. C. Yadav, Adv.

Revenue by : Sh. S. L. Anuragi, Sr. DR

Date of Hearing: 05.02.2019

Date of Pronouncement: 06.02.2019
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ORDER

This is an appeal filed by the assessee against the order of CIT(A), Haldwani dated 23.05.2017.

2. Only issue involved in the appeal is that the CIT(A) was not justified in confirming addition of Rs.1,70,794/- on account of carriage out ward charges.

3. I have heard the rival submissions and perused the orders of the lower authorities and material available on record. In the instant case, the undisputed facts of the case are that the assessee is engaged in manufacturing of air conditioner, geyser, water cooler and electronics items. The assessee is eligible for deduction u/s 80IC of the Income Tax Act, 1961 in respect of income derived from its industrial undertaking. The year under consideration being the 7th year of deduction, the assessee is eligible for deduction of 25% of its income derived from the industrial undertaking.

4. The Assessing Officer observed that the assessee separately charged carriage outward in its bill and the surplus amount of such receipt after adjustment for expenses incurred was Rs.6,83,176/-. According to the Assessing Officer, this surplus amount cannot be treated as income derived from industrial undertaking and therefore, he reduced deduction allowable u/s 80IC of the Act by 25% of the above surplus which came to Rs.1,70,794/-.

5. On appeal, CIT(A) confirmed the action of the Assessing Officer.

6. Before me, the Id. Authorized Representative of the assessee submitted that the nature of business of the assessee is such that it has to install the manufactured goods at the site of its customers. Therefore, the manufacturing activity gets completed only on installation of the finished goods at the site of the customers. Therefore, to complete the process, the assessee has to transport finished goods from its factory to the site of customers. In these circumstances, simply because a part of the sale price of the finished goods was collected in the bill under a separate head of carriage outward it cannot be held that the assessee was carrying on any separate and independent activity. In the facts of the case, the entire amount including carriage outward was part of sale of finished goods.

7. I find that no material is brought on record to show that any carriage outward charges was collected by the assessee which was not related to transportation of its own finished goods for the purpose of installation at the site of the customer. Hence, I find force in the submission of the assessee that carriage outward charge was in the course of manufacturing activity of the industrial undertaking of the assessee and was integral part thereof and part of the sale proceeds of the industrial undertaking. The submission of the assessee that this is the 7th year of claim of deduction u/s 80IC of the Act and in none of the earlier years

such a disallowance was made by the revenue could not be controverted by the Id. Departmental Representative.

8. The decisions relied upon by the lower authorities are distinguishable on facts. In the case of Liberty India Vs CIT 317 ITR 218 (SC), the Hon'ble Apex Court was confronted that the issue of DEPB licence received by way of export incentives and the Court found that the receipt was accrued on export which was undertaken after completion of manufacture and had no direct nexus with the manufacturing.

9. Similarly, in the case of CIT Vs Sterling Foods 237 ITR 579 (SC), the issue related to income by sale of import entitlement.

10. Similarly, in the case of CIT Vs Pandian Chemicals Ltd. 262 ITR 278 (SC), the issue was receipt of interest income on deposit made by the assessee for its industrial undertaking.

11. On the other hand, I find that the Ahmadabad Bench of the Tribunal in the case of ITO Vs Horizon Microtech Pvt. Ltd. in ITA No. 1619/Ahd./2007 vide order dated 04.06.2010 held as under:

"12. We find from the order of assessment that the assessee's nature of business is of manufacturing and dealing in computers and Microtech systems, panels etc. Thus, in our considered opinion, the installation charges received in respect of own manufactured goods are an integral part of the process of sale of manufactured goods therefore, the installation charges received in respect of own manufactured goods are directly derived from the industrial undertaking therefore the Learned Commissioner of Income Tax(Appeals) was justified in holding that installation charges in respect of own manufactured goods shall form part of profit derived from the industrial undertaking. The order of the Learned Commissioner of Income Tax(Appeals) also finds support from the decisions of the Hon'ble Gujarat High court in the case of K. Kachradas Patel Specific Family Trust Vs. CIT (2006) 282 ITR 317 (Guj), wherein it was held that excess recovery of advertisement

charges on the basis of sale is eligible for deduction under section 80I. Similar was the view taken by the Hon'ble Madras High Court in the case of CIT Vs. Fal Industries Ltd. (2009) 27 DTR 157 (Mad) wherein it was held that income earned by way of rectification charges by the manufacturer of vacuum cleaner from its purchasers is covered by expression "income derived from industrial undertaking" for the purposes of deduction under section 80HH."

12. In view of the above, I set aside the orders of the lower authorities on the above issue and delete the disallowance of Rs.1,70,746/- and allow the ground of appeal of the assessee.

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

(Order Pronounced in the Open Court on 06/02/2019).

Sd/-
(N. S. Saini)
Accountant Member

Dated: 06/02/2019

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR