IN THE INCOME-TAX APPELLATE TRIBUNAL "E" BENCH MUMBAI

BEFORE SHRI G. S. PANNU, VICE-PRESIDENT AND

SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.3123/Mum/2015 (Assessment Year 2010-11)

Silvassa Wooden Drums (SWD Industries), C-202, Panchwati Gardens, Raheja Township, Malad (E), Mumbai-400097. **PAN: AAOFS8319L**	Vs.	Pr. Commissioner of Income-Tax-30, Room No. 507, 5th Floor, C-13, Pratyakash Kar Bhavan, Bandra Kurla Complex, Mumbai.
Appellant		Respondent

Appellant by : Shri Rishabh Shah (AR)

Respondent by : Shri R. Manjunatha Swamy (DR)

Date of Hearing : 24.01.2019

Date of Pronouncement : 30.01.2019

ORDER UNDER SECTION 254(1)OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee under section 253 of the Income-Tax Act (the Act) is directed against the order of ld. Pr. Commissioner of Income-Tax-30, Mumbai (the ld. PCIT) passed under section 263 dated 24.03.2015 for Assessment Year 2010-11. The assessee has raised the following grounds of appeal:

> 1. The order U/s 263 passed by the learned Pr. Commissioner of Income Tax is contrary to the facts of the case, based on erroneous understanding of the facts and law and prejudicial to the assessee.
>
> 2. On appreciation of the facts and in the circumstances of the case the learned Pr. Commissioner of Income Tax has erred in assuming jurisdiction U/s. 263 of the Act and invoking the powers there under.

3. On appreciation of the facts and circumstances of the case and interpretation of law, the Learned Pr. Commissioner of Income Tax has erred in holding that the order U/s. 143(3) in respect of A. Y. 2010-2011 dated 05.12.2012 passed by the Learned Assessing Officer is erroneous as well as prejudicial to the interest of Revenue.

4. On appreciation of the facts and circumstances of the case and interpretation of law, the Learned Pr. Commissioner of Income Tax while passing the order U/s. 263 of the Act has erred in holding that the appellant's business activity involving galvanization of steel tapes and (Cold Rolled) strips is not a manufacturing activity not entitled for deduction U/s. 80lB and also erred in directing the Learned Assessing Officer to complete the assessment de-novo.

5. On appreciation of the facts and circumstances of the case and interpretation of law, the Learned Pr. Commissioner of Income Tax while passing the order U/s. 263 of the Act has erred in considering that the business activity of the appellant involves only galvanization of steel tapes and CR (Cold Rolled) strips instead of considering that the appellant's business involves manufacturing and / or production of galvanized steel tapes and CR (Cold Rolled) Steel & Strips.

6. On appreciation of the facts and circumstances of the case and interpretation of law, the Learned Pr. Commissioner of Income Tax while passing the order U/s. 263 of the Act has erred in not treating the business of the appellant firm as manufacturing and / or production of galvanized steel tapes and CR (Cold Rolled) Steel & Strips for the purpose of availing deduction U/s 801B of the Income tax Act, 1961.

2. Brief facts of the case are that the assessee-firm is engaged in the business of manufacturing of Cold Rolled Coils, Slites from Hot Rolled Coils, Galvanized Tape from Cold Rolled Slits and Galvanized Wire & Strips from M S Wire Rod. The assessee filed its return of income for Assessment Year 2010-11 on 27.09.2010. The return of income was selected for scrutiny and assessment order was passed under section

143(3) on 05.12.2012. The assessing officer while passing the assessment order allowed deduction under section 80IB. The assessment order was revised under section 263 by ld. PCIT vide its order dated 24.03.2015. The ld. PCIT while revising the assessment order observed that originally the claim of assessee under section 80IB was accepted in Assessment Year 2005-06, which was subsequently revised under section 263 of the Act. The assessment for Assessment Year 2005-06 travelled up to Supreme Court and the issue was decided in favour of assessee. The Hon'ble Supreme Court decided the issue of jurisdiction under section 263, leaving the question of law whether the assessee's activity amounts to manufacturing/production. By following the order of Assessment Year 2005-06, the Tribunal decided the issue in favour of assessee for Assessment Year 2004-05, 2006-07 & 2007-08. The assessment for the year under consideration was completed after the decision of Hon'ble Supreme Court but before the order, the deduction for Assessment Year 2004-05, 2006-07 & 2007-08 was accepted by Assessing Officer. On the above observation, the ld. PCIT issued show-cause notice dated 29.10.2013.

3. The assessee contested the revision proceeding before ld PCIT and contended that the issue has been decided by Hon'ble Bombay High Court in favour of assessee that new and distinct product emerges in the course of manufacturing process, therefore, the order passed by Assessing

Officer is not erroneous. The contention of assessee was not accepted by ld PCIT and the assessment was set-aside holding that the issue whether the assessee activities is amounting to manufacturing or not is yet to be finally decided. Thus, aggrieved by the order of ld. PCIT, the assessee has filed the present appeal before us.

4. At the outset of hearing, the ld. Authorized Representative (AR) of the assessee submits that the grounds of appeal raised by assessee is covered in favour of assessee in assessee's own case for Assessment Year 2005-06 in ITA No. 7235/Mum/2008 dated 20.08.2010. It was submitted that the decision of Tribunal was challenged by the revenue before the Hon'ble Bombay High Court vide ITA No. 2504 of 2011 and the appeal of revenue was dismissed vide order dated 19.04.2012. Further, SLP filed by the revenue before the Hon'ble Supreme Court is also dismissed vide order dated 10.09.2012. The ld. AR of the assessee further submits that similar disallowance was made for Assessment Year 2004-05, 2006-07 & 2007-08 in Assessment order passed under section 143(3) r.w.s. 147 of the Act. However, on appeal before the ld. CIT(A), the assessee was allowed the deduction under section 80IB. And on further appeal by the revenue before the Tribunal, the appeal of the revenue was dismissed in ITA No. 8333 to 8336/Mum/2010 dated 02.01.2013. Further, appeal of the assessee before the Hon'ble Bombay High Court was also dismissed

vide ITA No. 1364 of 2013 dated 07.04.2015. The ld. AR of the assessee placed on record the copy of all the order/decisions referred above.

5. The ld. AR of the assessee further submits that the Hon'ble jurisdictional High Court while deciding the appeal of revenue for Assessment Year 2005-06 has affirmed the finding of Tribunal observing that under the Central Excise Act, HR coils, CRCA coils/strips and galvanizing steel tapes are classified under different heads. Moreover, upon the evidence before it, the Tribunal has noted that the uses of the final product are distinct in respect of various industries and that the raw material and end products have a different commercial connotation and use. A new and distinct product emerges during the course of the manufacturing process.

6. On the other hand, the ld. Departmental Representative (DR) for the revenue after going through the various order placed on record submits that he rely upon the order of ld. PCIT.

7. We have considered the rival submission of the parties and have gone through the impugned order passed by ld. PCIT dated 24.03.2015. We have noted that on identical issue for Assessment Year 2005-06, the Tribunal passed the following order:

> "18. The above discussion clearly shows that the Assessee was not carrying out merely a process. The raw material and end product were different having different commercial name and different commercial use. Galvanising is one of the intermediary process and not the only process .The conclusion of the CIT that the Assessee was merely carrying on galvanizing process in our view is without any basis. In our view, learned CIT(A) has taken a very

narrow view and had concluded that the assessee was merely carrying on a process. We have already seen that the approach of the Court on this issue has now changed. Apart from the above in cases of this nature where two views are possible and the AO has taken one of the possible views, the CIT cannot exercise power of revision just because the other view will benefit the revenue. On the facts and circumstances of the case, we are satisfied that the assessee was manufacturing of an article or thing. The Input material and output material was different and it had different commercial use and name. It had different end use. The activity carried on by the assessee cannot be said to be a mere process. We therefore hold that the assessee was manufacturing an article or thing. The order u/s. 263 is therefore set aside and the order of the Assessing Officer allowing claim of the assessee for deduction u/s. 80IB of the Act is held to be proper. In other words, the order u/s. 263 is quashed."

8. Aggrieved by the order of Tribunal, the revenue filed appeal before the Hon'ble jurisdictional High Court and the revenue has raised one of the question of law that *"whether galvanization and CR (cold Rolled) strips activity does amount to manufacturing a thing or article as envisaged in Section 80IB of the Income Tax Act, 1961."* The appeal of the revenue was dismissed holding that no substantial question of law arises. The Hon'ble High Court affirmed the finding of Tribunal that under the Central Excise Act, HR coils, CRCA coils/strips and galvanizing steel tapes are classified under different heads. Moreover, upon the evidence before it, the Tribunal has noted that the uses of the final product are distinct in respect of various industries. It was held that Tribunal has entered two fold findings. Firstly, the raw material and end products have a different commercial connotation and use. A new and distinct product

emerges during the course of the manufacturing process. Secondly, even if two views are possible the ld. CIT ought not to have exercised jurisdiction under section 263.

9. We have noted that the SLP of revenue was also dismissed by Hon'ble Supreme Court vide SLP (Civil) 26047/2012 dated 10.09.2012. We have also noted that by following the decision of Tribunal for Assessment Year 2005-06, the similar relief was allowed to the assessee for Assessment Year 2004-05 to 2007-08 vide order dated 02.01.2013 and appeal filed by revenue was again dismissed by Hon'ble jurisdictional High Court on 07.04.2015. In view of the above discussion, we are of the view that grounds of appeal raised by assessee are covered in favour of assessee.

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

Order pronounced in the open court on 30/01/2019.

Sd/	**Sd/-**
G.S. PANNU	**PAWAN SINGH**
VICE-PRESIDENT	**JUDICIAL MEMBER**

Mumbai, Date: 30.01.2019
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Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "E" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai