

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SMT BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No. 5994/DEL/2014
[A.Y 2010-11]**

The Income tax Officer Vs.
Ward - 11 (2)
New Delhi

Excel Pack Ltd.
1004-05-06, Devika Towers,
6, Nehru Place,
New Delhi

PAN : AABCE0195J

[Appellant]

[Respondent]

**ITA No. 6550/DEL/2015
[A.Y 2010-11]**

The A.C.I.T
Circle - 8 (2) Room No.194
1st Floor, C. R. Building,
New Delhi

Vs. Excel Pack Ltd.
1004-05-06, Devika Towers,
6, Nehru Place,
New Delhi

PAN : AABCE0195J

**Date of Hearing : 12.02.2019
Date of Pronouncement : 18.02.2019**

Revenue by : Shri Mithun Sheth, Sr. DR

Assessee by : Shri R.K. Kapoor, CA
Shri Pradeep Dinodia, FCA

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above captioned two appeals are preferred by the Revenue against two separate orders of the Id. CIT(A)-13, New Delhi dated 07.08.2014 pertaining to assessment year 2010-11 and Id. CIT(A)-3, New Delhi dated 21.09.2015 pertaining to assessment year 2012-13.

2. In both the years, the common grievance is the allowance of deduction u/s 80IC of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] by the Id. CIT(A). Since the underlying facts in issue are identical in both the years, both these appeals were heard together and are being disposed of by this common order for the sake of convenience and brevity.

3. Briefly stated, the facts of the case are that assessee company is engaged in the business of manufacturing and sale of linear material used in packaging. Returns for the years under consideration were selected for scrutiny assessments and, accordingly, statutorily notices were issued and served upon the assessee.

4. During the course of scrutiny assessment proceedings, the assessee was asked to justify its claim of deduction u/s 80IC of the Act. The assessee filed a detailed reply, which is extracted in the body of the assessment order.

5. After considering the facts and submissions, the Assessing Officer was of the opinion that the product of the assessee comes under schedule 13 at Sl. No. 19 - paper product consisting of sheet of paper or paper board impregnated, coated or covered with plastic etc. Excise classification 4811.20, 4811.31, Paper and paper board, coated, impregnated or covered with wax/plastic etc. The Assessing Officer was of the firm belief that the product of the assessee is not covered under schedule 14 as claimed by the assessee but under Schedule 13.

6. The Assessing Officer concluded by holding that the assessee's product is not entitled for deduction u/s 80IC of the Act and accordingly, disallowed the claim of Rs. 1.87 crores in assessment year 2010-11 and Rs. 2.86 crores in assessment year 2012-13.

7. The assessee carried the matter before the ld. CIT(A) and reiterated its claim of deduction and pointed out that the Assessing Officer has grossly erred in considering the product of the assessee under Schedule 13 in place of Schedule 14.

8. After considering the facts and submissions, the ld. CIT(A) was convinced with the claim of the assessee and allowed deduction u/s 80IC of the Act. The relevant findings read as under:

"From the documentary evidence adduced during the proceedings, it is clear that the products manufactured by the assessee do not fall under tariff No. 4811.20, 4811.31 and rather the products falls under the Tariff 7607-20-90 of CETA and 8309-8309 90 20 of CETA.

The Circular No. 28/89 dated 26.09.1989, F.No. 164/1/89-CX.4] issued by Government of India Ministry of Finance (Department of Revenue), New Delhi

"Subject:- Classification of aluminum foils-regarding-

A doubt has been raised as to whether aluminum foils, cleared in running length in the form of strips and subsequently used for sealing of milk bottles, would be classifiable under chapter 76 or chapter 83 of CET.

The matter had been examined earlier. Vide Board's Telex F.No. 164/8/87-CX.4, dated 17.06.1987, it was clarified that aluminum foils used for sealing milk bottles would be classifiable under heading 83.09 of CET. However, this clarification was subsequently withdrawn vide Board's Circular No. 11/89 (F.No. 141/14/87 -CX.4) dated 13.03.1989 and it was clarified that aluminum foil caps arising in the course of sealing of milk bottles would not be excisable.

The matter of classification of aluminum foil cleared in running length has been examined. It is considered that aluminum foils, cleared in running length in the form of strips and subsequently used for sealing milk bottles would be appropriately classifiable under chapter 76 (Heading 76.06 or Heading No. 76.07, as the case may be) of CET."

Further, Circular No. 141/2/2003 dated 06.10.2003, F.No. 141/2/2003-CX.4] issued by Government of India Ministry of Finance (Department of Revenue), New Delhi

"Subject:- Classification of Aluminum foil laminated on both sides with plastic film-reg-

I am directed to invite your attention to Board's Circular No. 7/90-CX dated 23.10.1990 and 461/27/-CX, dated 11.06.1999 (1999 (111) E.L.T T10) regarding classification of aluminum foil backed with plastic material.

The department had proposed the classification of aluminum foil laminated on both sides with plastic films under chapter heading 3920 on the basis of Board's Circular No. 461/27/99 dated 11.06.1999. The referred classification was set aside by CEGAT vide order No. 59/02 dated 12.02.2002 classifying the product under the chapter Heading 7607 Department's Appeal against this order was set aside by the Supreme Court in CA No. 5148/02 on 24.02.2003 (2003) (157) E.L.T. A35 (SC) on the ground that the Department did not file appeal against the CEGAT order in the case of Indian Foils Limited, Calcutta.

This judgment of the Supreme Court has been accepted by the Boards and it has been decided by the Board that classification of aluminum foil laminated on both sides with plastic film would be under the Chapter Heading 7607 Instead of Chapter Heading 3920."

In view of the aforesaid discussion, it is clear that the appellant is not covered under tariff 4811 and the Assessing Officer is directed to allow the deduction u/s 80IC of the Act."

9. Similar finding was given for assessment year 2012-13.
10. Aggrieved by this, the Revenue is in appeal before us. The ld. DR strongly supported the findings of the Assessing Officer.

11. Per contra the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

12. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. There is no dispute that the industrial unit was set up on 26.10.2006 and, therefore, the initial assessment year in which deduction u/s 80IC of the Act was claimed was assessment year 2007-08. Subsequently, the claim of deduction was also considered and allowed in assessment years 2008-09 and 2009-10. The assessment orders are placed in the paper book.

13. In our considered opinion, the claim of deduction in the subsequent assessment year comprising of block of years in which the assessee is entitled for deduction cannot be disturbed unless the claim for initial year is disturbed. Our this view is fortified by the decision of the Hon'ble High Court of Delhi in the case of International Tractors Ltd 297 CTR 119. The relevant findings of the Hon'ble High Court read as under:

"There is no specific provision which states that eligibility for availing the deduction should be shown to be fulfilled at the end of each and every relevant to the assessment year relevant to the ten successive assessment years for which the benefit is granted. The context of definition of 'initial assessment year' as contained in Section 80IA(12)(c) is relevant. This refers to the assessment year relevant to the previous year "in which the industrial undertaking begins to manufacture or produce articles or things...." Under sub-cl. 12 (f) of section 80IA, an SSI is defined to mean an industrial undertaking which is "as on the last day of the previous year, regarded as a small-scale industrial undertaking under section 11B of the IDR Act."

14. We further find that while allowing the claim of deduction u/s 80IC of the Act, the first appellate authority has considered the Board Circular issued by the Government of India, Ministry of Finance, Department of Revenue in which the Board has considered the classification of aluminium foil laminated on both sides with plastic films would be under Chapter heading 7607 instead of Chapter heading 3920.

15. Considering the facts of the case from all angles, we do not find any error or infirmity in the finding of the ld. CIT(A).

16. In the result, both the appeals of the Revenue in ITA Nos. 5994/DEL/2014 and 6550/DEL/2015 are dismissed.

The order is pronounced in the open court on 18.02.2019.

Sd/-

[BEENA PILLAI]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 18th February, 2019

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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