

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

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

I.T.A. No.2907/DEL/2016  
Assessment Year: 2011-12

Income-tax Officer,  
Ward 1(4)(1), Rishikesh.

vs

M/s M.L. Creation,  
Plot No.A-15, 17 & 18,  
Mini Industria Estate,  
Rani Pokhari, Tehsil Rishikesh,  
Distt. Dehradun.  
PAN: AAPFM5910L

(Appellant)

(Respondent)

Assessee by: Shri Raj Kumar Gupta, CA  
Department by: Smt. Aparna Karan, CIT-DR

Date of Hearing: 28.8.2019

Date of Pronouncement: 13.9.2019

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 18.3.2016 of the learned Commissioner of Income-tax (Appeals), Dehradun {for short "Learned CIT(A)"} passed in Appeal No.44/14-15, revenue preferred this appeal.

2. Briefly stated facts are that the assessee is a firm engaged in the manufacture of gold and precious stone ornaments under name and style of M/s M.L. Creations at business undertaking A-15, 17 & 18, Mini Industrial Estate, Rani Pokhri, Rishikesh. According to them the date of commencement of operations was on 6.11.2008 and the deduction u/s 80IC was claimed for

the first time in the Asstt. Year 2009-10, therefore, Asstt. Year 2011-12 is the third year for claim of deduction u/s 80IC of the Act.

3. For the Asstt. Year 2011-12, assessee filed their return of income on 28.9.2011 declaring nil income by claiming deduction u/s 80IC of the Act to the tune of Rs.14,88,68,870/-. Learned AO rejected the claim of the assessee for benefit u/s 80IC of the Act firstly on the ground that the manufacturing activities could not possibly have been carried out at the factory premises at Rani Pokhri, secondly, on account of the fact that the employees were not from Uttarakhand and also that the assessee is not entitled to the relief in respect of the interest earned on FDRs to the tune of Rs.1,22,398/-. Learned AO, therefore, computed the taxable income of the assessee at Rs.14,89,91,268/- making addition of the same.

4. Aggrieved by the denial of the deduction u/s 80IC of the Act preferred appeal before the Id. CIT(A). Learned CIT(A) referred to the material on record, discussed at length and found that for an earlier year 2009-10, similar question had arisen in the case of the assessee and his predecessor as a matter of fact found that the assessee's production facility was inspected by the learned AO and his officials. They found production being carried out actually and the assessee had maintained production record which was examined by the AO during which nothing amiss was found barring minor discrepancies in quantities.

5. Learned CIT(A) further observed that even if the interest was earned on security or FDR pledged as margin money as per the decision of the Hon'ble Supreme Court in the case of Pandian Chemicals Ltd. vs CIT, 262 ITR 278 (SC), the said interest cannot be said to arise out of the business of manufacturing and it is, therefore, not eligible for deduction u/s 80IC even though it may be

attributable to the business and assessable as business income rather than other income. Learned CIT(A), therefore, while placing reliance on the factual findings of his predecessor for the AY 2009-10, allowed the appeal for this year also.

6. Aggrieved by the impugned order, Revenue preferred this appeal on the ground that the manufacturing activities upto the extent of earning Rs.14,88,68,870/- cannot be genuinely carried out with the help of inadequate manpower employed by the assessee in comparison of the result declared of the production. Learned DR heavily relied upon the order of AO.

7. At the outset, learned AR submitted that in respect of the AYs 2009-10, 2010-11, 2012-13 and 2013-14, Id. AO disallowed the deduction u/s 80IC to the assessee on very similar grounds and in appeal, learned CIT(A) allowed the claim of the assessee basing on some factual findings as to the actual manufacturing activity carried out by the assessee at the premises at Rishikesh. He further submitted that in respect of Asstt. Years 2009-10 and 2010-11, the matter travelled to the Tribunal and the appeals of the assessee were dismissed by coordinate benches on cogent reasons. He further submitted that in respect of Asstt. Years 2012-13 and 2013-14, revenue accepted the order of the Id. CIT(A) without preferring any appeal to the Tribunal. He filed the copies of the relevant orders for the AYs 2009-10 and 2010-11.

8. We have gone through the record in the light of the submissions made on either side. In so far as the facts are concerned, there is no dispute that in the initial year i.e. Asstt. Year 2009-10, the Id. AO and his officials inspected the production facility of the assessee and found the production being carried out actually and the assessee was maintaining the production record. It is also not in dispute that the finding of the Id. CIT(A) for the AY 2009-10 to the effect that

nothing amiss was found in the production record except some minor discrepancies as to the quantities. Further important factor is that the VAT authorities vide asstt. order dated 25.3.2013 for the AY 2011-12 held that the assessee is a manufacturing unit and accepted the declared manufacturing turnover for assessment purposes. The inspector visited the premises and found the karigars there.

9. Learned CIT(A) for the earlier year considered the following factors:

- (i) The factory is in the notified industrial area for which evidence and notification of CBDT to this effect have already been filed;
- (ii) The factory premises are owned by the assessee for whom the copy of lease deed has already been filed.
- (ii) The assessee has been registered as an industrial unit with District Industry Centre Dehradun. Copy of registration certificate has already been filed.
- (iv) VAT Registration certificate has also been filed.
- (v) The assessee is registered with EPF. Registration Certificate has already been filed.
- (vi) Copy of approved map of unit has already been filed.
- (vii) The electricity connection has been installed for which certificate for electricity loan sanction has been filed.
- (viii) Pollution certificate which is mandatory has also been filed.
- (ix) Copies of all machinery purchased bills used for manufacturing has been already filed.
- (x) The accounts have been audited and audit report in form 10CCB as required for claim u/s 80IC also already stands filed.
- (xi) Copies of the relevant documents were claimed to have been furnished before the AO.

Basing on the said factors, the Id. CIT(A) rejected the contention of the Id.AO that manufacturing was not carried at Rani Pokhri.

10. Further for the Asstt. Year 2010-11 also, Id. CIT(A) reached a similar conclusion and in the appeal preferred by the revenue, the Tribunal upheld the findings of the Id. CIT(A). Though the learned DR tried to justify the order of the Id. AO, she failed to point out any infirmity in the orders of the first appellate authority for the Asstt. Years 1009-10 and 1010-11.

11. Further the submission of the learned AR that in respect of Asstt. Years 2012-13 and 2013-14, the allowance of deduction to the assessee u/s 80IC by the Id. CIT(A) goes unchallenged and remain accepted by the revenue without preferring any appeal, is not disputed by the revenue.

12. Having regard to the factual matrix, we are of the considered opinion that rule of consistency has to be followed when the facts remain the same and while respectfully following the decision of the Hon'ble Apex Court in the case of Radhasoami Satsang, 193 ITR 321, we hold that the Id. CIT(A) did not commit anything wrong in deleting the disallowance of 80IC benefit to the assessee. We hold the same.

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

**Order Pronounced in the open court on 13<sup>th</sup> September, 2019.**



**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**



**(K.NARASIMHACHARY)  
JUDICIAL MEMBER**

Dated: 13<sup>th</sup> September, 2019

VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Draft dictated on	4.9.2019
Draft placed before author	5.9.2019
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on	
Date of uploading order on the website	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	