

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI**

**BEFORE  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 990/Del/2017  
Asstt. Year: 2012-13

ACIT, Circle-62(1), Room No. 2202, 22 <sup>nd</sup> Floor, Civic Centre, Minto Road, New Delhi - 110002	Vs.	M/s. Fiberfill Engineers C-9/9574, Vasant Kunj, New Delhi - 110 070.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Lalit Mohan, CA
Department by :	Shri G. Johnson, Sr. DR
Date of Hearing	30/07/2019
Date of pronouncement	18/10/2019

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal is preferred by the department against order dated 5.12.2016 passed by the Ld. CIT (Appeals)-20, New Delhi {CIT (A)} for Assessment Year 2012-13.

2.0 Brief facts of the case are that the assessee company is involved in the business of executing government/public sector

and private contracts for various civil and also executes allied works including all kinds of signages. The return of income was filed declaring gross total income of Rs. 3,81,59,363/-. The assessee had claimed deduction u/s 80IC of the Income Tax Act, 1961 (hereinafter called 'the Act') to the tune of Rs. 2,39,15,894/. The assessee was asked by the Assessing Officer (AO) to substantiate its claim of deduction u/s 80IC of the Act. The AO, after examining and considering the submissions of the assessee with respect to its claim u/s 80IC of the Act, was of the opinion that the raw material used by the assessee did not undergo a substantial change and a commercially different product of distinctive name character and use did not come into existence and, therefore, the assessee could not be said to have undertaken business activities which amounted to manufacture or production of an article and, therefore, the assessee was not eligible for deduction u/s 80IC of the Act as it could not be said that it had manufactured or produced any article or thing.

2.1 The assessee's appeal before the Ld. CIT (A) was allowed by the Ld. First Appellate Authority by noting that assessee's appeal on identical issue in Assessment Year 2010-11

had been allowed by the ITAT wherein the Tribunal had held that the assessee was eligible for deduction u/s 80IC of the Act.

2.2 The department is now in appeal before the ITAT challenging the order of the Ld. CIT (A).

3.0 At the outset, the Ld. Authorised Representative (AR) submitted that the ITAT Delhi Bench in assessee's own case for Assessment Year 2010-11 in ITA No. 1853/Del/2015 in its order dated 25.2.2016 had given a categorical finding in favour of the assessee that the activities carried out by the assessee culminated in producing of an article which had a distinct utility in the commercial sense. Our attention was drawn to the copy of the said order. It was further submitted that although the revenue had filed an appeal before the Hon'ble Delhi High Court against the order of the Tribunal, however this finding of the Tribunal was not challenged before the Hon'ble High Court. A copy of the order of the Hon'ble Delhi High Court in ITA No. 405/2016 was also placed on record.

4.0 The Ld. Senior Departmental Representative (Sr. DR) placed reliance on the order of the AO. He, however, fairly accepted that there was no change in the facts and

circumstances of the case in the year under appeal as compared to assessment year 2010-11. He also fairly accepted that the order of the Tribunal in assessee's own case in the preceding assessment year was a binding precedent to be followed.

5.0 We have heard the rival submissions and have also perused the material on record. We find that the ITAT in assessee's own case for Assessment Year 2010-11 had allowed the assessee's claim of deduction by holding that the final product of the assessee was a different product in the commercial sense and, therefore, the assessee could be said to be manufacturing or producing an article or thing. The relevant paragraphs of the order of the ITAT are produced hereunder:-

*“51. All these activities definitely culminate into producing of an article, which has different utility in commercial sense. The fabricated item cannot be said to be the same as was the raw material for producing the same. The raw material may not be undergoing any chemical changes but nonetheless the same is fabricated in a manner so as to create an article which is of use to assessee's customer as per their specifications.*

*52. Ld. Counsel has referred to the decision of Hon'ble Supreme Court in the case of Oracle Software India Ltd. (supra) which clearly holds that if a process renders a commodity or article fit for use, which otherwise is not fit, the operation falls within the letter and spirit of manufacturing,. In our opinion this test is clearly met in the case of assessee and, therefore, following the*

*decision of Hon'ble Supreme Court in the case of Oracle Software India Ltd. (supra), assessee's claim is liable to be allowed.*

*53. Ld. Counsel has also referred to the decision in the case of Ms. Megha Dadoo (supra), wherein it has been held that manufacture of 'Route Markers' by undertaking process of cutting stainless steel pipes of larger sizes with electric cutter including painting and welding of pipes amounts to manufacture or production. In our opinion both these decisions clearly support the assessee's claim that it was carrying on the manufacturing activity and therefore this objection of revenue authority stands rejected.*

*The revenue though has filed an appeal before the Hon'ble High Court of Delhi at New Delhi in ITA No. 405/2016 but has not disputed the above conclusion. A copy of the appeal is placed at pages 33-54 of Paper Book and, order dated 15.5.52017 is placed at pages 55-56 of Paper Book."*

5.1                    Thus, the coordinate bench of the Tribunal in assessee's own case has decided in assessee's favour in Assessment Year 2010-11 as aforesaid and has reached the conclusion that the activities performed by the assessee culminated into producing article which had a different utility in the commercial sense. We also note that the revenue did not prefer an appeal before the Hon'ble Delhi High Court on this issue and, therefore, the order of the Tribunal has reached finality. The Ld. CIT (A) has also followed the order of the Tribunal in the present year while accepting the assessee's claim

of deduction u/s 80IC of the Act. Therefore, we find no reason to interfere with the findings of the Ld. CIT (A) and we refuse to interfere with his order.

6.0 In the final result, the appeal of the department stands dismissed.

**Order pronounced in the open court on 18<sup>th</sup> October, 2019.**

**sd/-**

**(O.P. KANT)  
ACCOUNTANT MEMBER**

**sd/-**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 18.10.2019

***Veena***

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi