

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.5950/Del./2015
Assessment Year 2010-2011

The ACIT, Circle – 59(1), Room No.101, F-Block, Vikas Bhawan, New Delhi	vs	M/s. Vasundhara Flavours (Presently known as Gopal Consumer World), 339, Functional Industrial Estate, Patparganj, New Delhi – 110 092. PAN AAHFV6205B
(Appellant)		(Respondent)

For Revenue :	Ms. Ashima Neb, Sr. D.R.
For Assessee :	Ms. Rano Jain, Advocate

Date of Hearing :	03.12.2019
Date of Pronouncement :	05.12.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-10, New Delhi, Dated 02.06.2015, for the A.Y. 2010-2011, on the following revised grounds of appeal :

1. *“The order of the Ld. CIT(A) is bad in law and not in consonance with the facts of the case.*
2. *On the facts and circumstances of the case, Ld. CIT(A) has erred on facts by not appreciating that plant and machinery relevant for production was purchased between 24.11.2009 to 06.01.2010 whereas the assessee had claimed commencement of business as in form 10CCB which is not possible.*
3. *On the facts and circumstances of case, Ld. CIT(A) had erred in accepting the additional evidences furnished by the assessee including the evidences of transporting plant and machinery from Delhi to Baddi during the course of appellate proceedings without giving any opportunity to the Assessing Officer of being heard in this issue.*
4. *On the facts and circumstances of case, Ld. CIT(A) has not appreciated the findings of the Assessing Officer that the assessee did not produce a single*

sample of finished goods or empty pack which could prove (i) the name of manufacturer (ii) weight & volume or production (iii) produce ingredients (iv) date of manufacture of product or batch No. and (v) chemical composition, which was pre-requisite for such manufacturing activities.

5. *On the facts and circumstances of case, Ld. CIT(A) has erred in accepting the claim under section 80IC(2)(a)(ii) of assessee whereas the case is not covered under this section since the assessee during the assessment proceedings has claimed that its unit is lactated at 'Kasauli' whereas in Form 10CCB it is evident that the unit is located at Baddi, Distt. Solan. Thus there is discrepancy in the claim of the assessee.*
6. *The appellant craves leave to add, allow or amend any or all the ground of appeal before or during the course of hearing of the appeal."*

2. Briefly the facts of the case are that the assessee firm has filed return of income declaring NIL income. The assessee is engaged in business of “manufacturing of Perfumery and Fragrances” at its production unit at Burnwala, Baddi Distt, Solan (Himachal Pradesh). The A.O. on perusal of the return of income found that assessee has claimed deduction of Rs.3,71,26,467/- under section 80IC of the Income Tax Act from the gross total income. In order to ascertain the genuineness of the deduction claimed by the assessee, the Profit & Loss Account, Balance Sheet and Audit Report filed in Form 10CCB, along with relevant books of accounts were examined by the A.O. in detail. The A.O. on examination of details/books of accounts has made certain observations against the assessee. The observations made by the A.O. against the assessee were with respect to incorrect claiming of deduction under section 80IC of the I.T. Act by furnishing inconsistent information in Form 10CCB Audit Report. It is observed that scrutiny of the audit report reveal that assessment year under appeal is the initial year of commencement of business, wherein a claim

of deduction under section 80IC(3)(ii) & 80IC(2)(a)(ii) of the I.T. Act has been made by the assessee, while simultaneously a claim has been made that assessee manufactures item in "Fourteenth Schedule" as evident from Column 25(f) of Form 10CCB. However, prima facie, it was seen that the business of the assessee, i.e. "Manufacture of perfumery and fragrances" is not one of the eligible businesses enlisted under the fourteenth schedule of the I T. Act. It was further seen that the date of commencement of business as per the Form 10CCB filed by assessee is 02.11.2009, while examination of schedule of fixed assets filed reveal that the Plant & Machinery for the unit was purchased during the period 24.11.2009 to 06.01.2010. It was also seen that Generator was purchased on 21.12.2009. Therefore, it is apparent that the information furnished regarding commencement of business in Form 10CCB is factually incorrect. The assessee, therefore, required to justify the claim of deduction under section 80IC of the I.T. Act, 1961, in the light of these facts. The assessee, in response thereto, reiterated that claim by

reproducing the relevant portion of the section 80IC of I T. Act 1961. It was further claimed that as per the provisions of section 80IC any undertaking or enterprise should either produce or manufacture articles which are not any article or thing specified in Thirteenth Schedule or produce of manufacture articles or things which are article or thing specified in Fourteen Schedule. The assessee stated that it has manufactured industrial perfumes and fragrances which do not fall under any article or things specified in Thirteen Schedule of the I.T. Act 1961. The assessee further claimed that it is eligible to claim deduction under section 80IC(2)(a) of the I T. Act. The assessee further submitted that while filing preparing Form 10CCB, the Chartered Accountant inadvertently mentioned "Yes" against Para 25(f) instead of "No" in Para 25(e) of Form 10CCB of the Income tax Act, 1961. Affidavit of the Auditor was also filed to show that it was an inadvertent mistake. The A.O, however, did not accept the contention of assessee and noted that Audit Report itself disentitle the assessee for making claim of deduction under section 80IC of the I.T. Act. The A.O. noted

that Perfumes and Fragrances is not a business enlisted in Schedule-XIV. Therefore, assessee's case is not even covered under section 80IC(2)(a)(ii) of the I.T. Act, since the assessee's business premises located at Buranwala, Tehsil Baddi, District Solan is not covered under the Industrial area notified vide Notification Dated 14.11.2003 [as amended by Notification dated 27.08.2008]. Therefore, the claim of the assessee was also rejected on that count. The assessee further filed detailed reply before A.O. to show that the assessee firm has began manufacturing activities from 06.12.2009 after acquisition of plant and machinery required for manufacturing the products of the assessee firm. The Chartered Accountant has mentioned 02.11.2009 as commencement of operation/activity which is the date of execution of Partnership Deed. Therefore, the Chartered Accountant has taken the same date of commencement of operation/activity of the assessee firm. Confirmation of Chartered Accountant was also filed. It was submitted that assessee firm has began manufacturing of its product on 06.12.2009 in notified area of Himachal Pradesh. The A.O,

however, again did not accept the contention of assessee because the assessee could not have manufactured its final product since it had not purchased vital plant and machinery before January, 2010.

2.1. The A.O. further examined the genuineness of the plant and machinery installed and noted that destination as per bills of plant and machinery are Baddi, Delhi and assessee failed to furnish evidence as to how plant and machinery have been installed at Baddi from Delhi. It was also noted that it is practically impossible to achieve turnover of Rs.14 crores in assessment year under appeal which is the first year. It was also noted that generator was purchased only on 21.12.2009. The assessee's claim regarding electricity charges being paid by him is also not correct since the electricity bill for that period are in the name of M/s. Flakes n Flavours.

2.2. The A.O. further examined the genuineness of actual manufacture of Perfumes and Fragrances. Assessee submitted the detailed process of manufacturing which is noted in the assessment order. The A.O. further found

certain discrepancies in the same and further noted that assessee has insufficient material to carry out production as claimed. The assessee does not have gas burner required for production. Sale bills/invoices produced by assessee do not mention brand name or chemical name of items being sold. An Income Tax Inspector was deputed to examine the facts and spot who was furnished his report Dated 27.02.2013 in which it was submitted that the premises belong to M/s. Gopal Group of Industries who is in the business of Chewing Tobacco, Pan Chatni etc., and there is no manufacturing of Perfumes and Fragrances. The A.O. also noted that assessee was asked to produce an empty pack of finished goods for verification. In response to the query, assessee produced a pair of empty plastic jar fixed with plain label showing the name of "Gopal Perfumery Compound". The assessee failed to explain why it is producing the product of Gopal Industries instead of producing the product of M/s. Vasundhara Flavours i.e., assessee. The A.O. also noted that assessee failed to produce empty pack of manufacturing goods as is claimed

in the audit report. The A.O. further noted that assessee has made sales to three firms i.e., (i) H.M. Sales Corporation, Delhi (ii) Aman Marketing and (iii) Radha Rani Impex, Delhi. The A.O. noted that these companies belong to one Shri Kusum Kumar Sethia who has filed income tax return in Gauhati, who has close association with the assessee firm. The statement of Shri Kusum Kumar Sethia was recorded in which he has admitted to have given loan to the assessee firm. It was also noted that in the firms of Shri Kusum Kumar Sethia there are cash deposits in their bank accounts and no evidence have been produced why such cash have been deposited. The A.O. also noted that neither the assessee nor the witness in the case of assessee explained reason or produced the documentary evidences of alleged unsecured loans, sales, advance given and commission etc., paid. Further, statement of assessee is noted in the assessment order in which assessee explained that sale is being made to few parties through limited Consignment Sale Agents ["CSA"] and Dealers for better control of sales instead of numerous Dealers, Distributors.

It was further submitted that above firms are CSA of the firm operating in Uttar Pradesh by Shri Kusum Kumar Sethia who is filing income tax return in Gauhati because he is working for gain at Gauhati also. The assessee further explained that CSA is making cash sales as per trade practice. The assessee was given further opportunity to explain as to why deduction under section 80IC cannot be denied. The assessee filed detailed reply to show that it is engaged in genuine business activity and made a right claim of deduction under section 80IC of the I.T. Act. The A.O. further did not accept the contention of assessee and noted that assessee has changed the name of firm M/s. Vasundhara Flavours to M/s. Gopal Consumer World during the pendency of the assessment proceedings without intimating to the A.O. The A.O. on the basis of all these facts and material on record, denied the claim of assessee under section 80IC of the I.T. Act in a sum of Rs.3,71,26,467/-. The crux of the findings of the A.O. are reproduced as under :

“In view of the above facts and discussion, it is clearly established that the assessee is ineligible for claim of deduction U/s 80IC of the Income Tax Act, due to following reasons, discussed elaborately in above paragraphs :

1. *Assessee does not fulfill fundamental criteria:-*
 - (i) *Neither the assessee's business premises is located in the area notified by the CBDT vide Notification No-S.O 1269(E) dated 04.11.2003 requisite for eligibility of deduction U/s.80IC(2)(a)(ii) nor is it covered under specified businesses enlisted in Schedule-XIV to be eligible for deduction U/s80IC(b)(ii) of the Income Tax Act.*
 - (ii) *Not produced/manufactured item/article as claimed and also not produced any evidence/sample in physical form of salable manufactured goods.*
 - (iii) *The assessee could not prove its distinguished entity at the registered office*

and business address i.e. 240, Okhla Industrial Estate Phase-III, New Delhi-110020 is also shared by its sister concern M/s Gopal Industries. The manufacturing unit at Khasra No. 117, Baddi Barotiwala Road, Village Burnwala Distt. Solan (HP) is also shared by M/s Gopal Industries, its sister concern.

2. *No Product in name of “perfumes & fragrances” produced:-*

- (i) The assessee not only failed in producing a sample of its product i.e. "Perfumery & Fragrances" with all necessary packing mode but also failed in producing the bills/vouchers of sales which can prove the description of item sold and to whom it is sold.*
- (ii) The assessee also failed to produce the evidences of produced goods pack showing the prescribed details on it under Consumer Act and other Acts.*

3. *The unit at Baddi is not equipped with plant & machinery to carry out production:-*
 - (i) *As per the assessee's note submitted vide its letter dated 08/02/2013, there was basic requirements of sufficient items of Plant & Machinery (as discussed in Para "C" examination of genuineness of actual 'Manufacture' of 'Perfumes & Fragrances'.) and without the same production of salable goods/items could have not taken place.*

4. *Definite evidence that Sales claimed by the assessee are not genuine.*
 - (i) *As discussed above, the assessee did not produce/manufacture "Perfumery & Fragrances" and also failed to produce the sample or evidence of produced goods, the claim of the assessee in respect of sales is bogus and without any documentary*

evidences of sale bills/vouchers/name of the parties to whom it is made.

Therefore, the claim of the assessee for the deduction u/s 80IC of I.T. Act 1961 of Rs.3,71,26,467/- is disallowed and the same is added back to the income of the assessee.”

3. The assessee challenged the addition before the Ld. CIT(A). The detailed written submissions of the assessee on each and every aspect noted by the A.O. were explained before the Ld. CIT(A) to show that assessee is entitled for deduction under section 80IC of the I.T. Act. It was also highlighted that assessee falls in notified area of Himachal Pradesh and assessee manufacture goods so as to entitle the claim of deduction under section 80IC of the I.T. Act. It was also highlighted that documentary evidences including Excise Records and Others were produced before A.O. and that all explanations were supported by documentary evidences. No statement of Shri Kusum Kumar Sethia or report of Inspector was provided to assessee for rebuttal. It

was submitted that assessee filed all details along with replies. Therefore, no additional evidences have been filed. The assessee submitted sufficient documentary evidences before the A.O. i.e., bills of transportation for plant and machinery from Delhi to Baddi and the plant and machinery have been installed at Baddi for manufacturing purposes. Further all other Forms in respect of movement of goods were furnished. The assessee filed detailed explanation of events occurred before the first clearance i.e., on 10.12.2009 made by assessee firm as under :

<i>Date of Event / Activity</i>	<i>Event / Activity</i>	<i>Evidence</i>
02.11.2009	<i>Partnership Deed of "Vasundhara Flavours" executed to carry on the business in Himachal.</i>	<i>Partnership Deed as Annexure - 2.</i>
09.11.2009	<i>Factory premises in Buranwala (H.P.) was taken on lease vide lease deed dated 09.11.2009</i>	<i>Lease Agreement as Annexure - 2.</i>
13.11.2009	<i>First purchase was made</i>	<i>Copy of bill as Annexure - 5.</i>
19.11.2009	<i>Registration with Department of Excise and Taxation, Himachal Sales Tax, Himachal Pradesh.</i>	<i>Central Sales Tax Registration Certificate and HP Value Added Tax Registration Certificate issued by the Department of Excise and Taxation, Himachal Pradesh as Annexure - 6.</i>

20.11.2009	Purchase of 5/6 (five) Electronic Scales	Copy of Bills as Annexure-7.
24.11.2009	Purchase bill of Packaging material from outside suppliers directly delivered at Buranwala, Baddi, Himachal Pradesh.	Copy of bills Annexure – 8
26.11.2009	Some purchase bill of Raw materials from outside suppliers directly delivered at Buranwala, Baddi, Himachal Pradesh.	Copy of bills Annexure – 9
26.11.2009	1 (one) S.S. Tank with Fittings (Perfumery Tank) Capacity 1000 Ltr.	Copy of bills as Annexure – 10
26.11.2009	2 (two) Nos. of Sintex Tank (For Perfumery Mixing) Capacity 2100 Ltr each	Copy of bills as Annexure – 11
02.12.2009	Declaration filed with Excise Department to claim exemption under Notification No.50/2003 Dated 10.06.2003	Duly acknowledged copy of Letter submitted with Excise Department as Annexure – 12.
04.12.2009	Purchase of Hacop Motorised Barrel Pump	Copy of bill as Annexure – 13
05.12.2009	Purchase of 4/6 (four) Nos of Sintex Tank (For Perfumery Mixing) Capacity 2100 Ltrs each.	Copy of bills as Annexure – 14
05.12.2009	Purchase of 2 (two) nos. Monoblock Pumpset.	Copy of bills as Annexure – 15.
06.12.2009	Commencement of manufacturing of perfumery compound as WIP.	Stock Register of finished goods in Form-IV as per Excise Rules as Annexure-16.
10.12.2009	First Clearance of Final Product from factory	First Transfer Challan along with Excise and Taxation Department, Himachal Pradesh declaration Form dated 10/12/2009 and GR of transporter 'The

		Nalagarh Truck Operators' Union, Nalagarh, HP' as Annexure-2.
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3.1. The assessee, therefore, highlighted that assessee started all manufacturing activities proved through documentary evidences. The assessee, therefore, claimed that it is entitled for deduction under section 80IC of the I.T. Act, 1961. The Ld. CIT(A) considering all documentary evidences on record, allowed the deduction of claim of assessee under section 80IC of the I.T. Act. The findings of the Ld. CIT(A) in paras 6 to 8 of the appellate order are reproduced as under :

“6. Findings on Ground of Appeal No.1 & 2 :

I have considered the grounds raised by the appellant in the Appeal and the facts of the case. I have also considered the assessment order, written submission and oral arguments of Ld. A.R. of the appellant along with paper book for proper disposal of the appeal, which are placed on record.

The appellant has raised grounds against the disallowance of deduction of Rs.3,71,26,467/- claimed under section 80-IC of the Income Tax Act, 1961 made by AO only on the basis of conjectures and surmises and also on various redundant grounds in violation of settled law that beneficial legislation should have liberal construction with a view to implementing the legislative intent.

Now I deal with point-wise issues raised by the AO in his order to reject the claim of deduction made by the appellant under section 80-IC of the Income tax Act, 1961 and submission of the AR along with documents/evidences on the same :

The AO alleged in the assessment order that inconsistent information furnished in Form 10CCB.

The appellant has claimed deduction u/s 80-IC(2)(a)(ii) & 80-IC(3)(ii) while, as per Form 10CCB filed before the AO, on perusal of point no 25(f) of Form

10CCB, it revealed that the item manufactured fall in the item enlisted in Fourteenth Schedule.

And, the commencement of business is 2nd November, 2009 i.e. before installation of necessary plant & machinery which has takes place 24th Nov., 2009 to 6th Jan, 2010.

And, it is seen from registration accorded by Excise Department vide Reg. no - 02030100434 for business mentioned therein as “Manufacturing of Industrial Perfumes & Flavoured Pan Chatni (Pan Flavouring Material) while in Form 10CCB column No. 25(i)(c) it is mentioned as manufacturing of “Perfumes & Fragrances”.

And, the business premises of the assessee is not located in the area of notified by the CBDT vide Notification No.- S.O. 1296(E) dated 04.11.2003 and also not produced the article mentioned in Schedule - XIV requisite for eligibility of deduction u/s - 80IC(2)(a)(ii) of The Income Tax Act, 1961.

The AR of the appellant contended that the appellant has fulfilled and satisfied all the three condition as laid down u/s.80IC of the Act, 1961 which are as under :

- 1. The appellant firm has manufactured industrial perfumes and fragrances, which does not fall under any article or things specified in Thirteenth Schedule of the Income Tax Act, 1961.*
- 2. The appellant firm has started business on 02.11.2009 and begun manufacturing industrial perfumes and fragrances on 06.12.2009.*
- 3. Manufacturing unit of the appellant firm is located at Khasra No. 117. Hudbust 201. Buranwala, Baddi Barotiwala Road, PO Barotiwala, Kanungo Circle Patta. Tehsil Kasauli, District Solan, Himachal Pradesh which is a notified industrial area as per the notification No.S.O.1269(E) dated 04.11.2003 (as amended by Notification dated 27.08.2008).*

Hence, the profit on the product manufactured by the appellant firm in the notified area is eligible to claim deduction under section 80-IC(2)(a)(ii) and 80-IC(3)(ii) of the Income tax Act, 1961.

The AR further contended that unit of the appellant at Buranwala is eligible under the same Industrial Policy for availing exemptions under provision of Central Government levies/tax i.e. (1) Income Tax & (2) Excise Duty. The notified area is common for the above two exemptions. The Excise Duty exemption is being allowed for the same unit of the assessee, but surprisingly, the other exemption of Income Tax is being denied by the AO.

The AR of the appellant has furnished various documents / evidences in support of manufacturing unit located in the notified industrial area as per the notification No. S.O.

1269(E) dated 04.11.2003 (as amended by Notification dated 27.08.2008) before the AO during the course of assessment proceedings which cannot be disregarded such as Notification dated 04.11.2003 issued by Ministry of Finance, Department of Revenue, Central Board of Direct taxes. Lease Agreement dated 09.11.2009 between M/s Flakes N Flavours for plot bearing khasra No. 117. Baddi - Barotiwala Road. Village Buranwala, Distt. Solan, Himachal Pradesh along with copy of patta or registry of land, Central %les Tax Registration Certificate, HP Value added tax registration certificate issued in the name of unit Buranwala and Inspector report dated 26.12.2009 of Himachal Pradesh Fire Service physically verified the unit of the appellant at Buranwala. The same has been furnished before the undersigned and have been duly considered and placed on record.

The AR contended that appellant has manufactured Industrial Perfumes & fragrance, not being an activity or article or thing specified in Thirteenth Schedule of the Income Tax Act, 1961, however, in preparing Form 10CCB, the Chartered Accountant inadvertently mention “Yes” instead of “No” in Para 25(f) of Form 10CCB of the Income Tax Act, 1961. The AR also furnished an Affidavit of the Auditor dated 22.03.2013 confirming the said fact before the AO during the course of assessment proceedings.

The AO further alleged that plea of figures in Audit Report being mistakenly incorrect is only an afterthought on the part of assessee, and ought to be rejected and the assessee cannot alter statutory statement / report as per his whims at later stage claiming these vitals discrepancies to be mere “clerical mistake”.

The AR contended in this respect that the AO himself mentioned in the assessment order that “Perfumes & Fragrances” is not a business enlisted in Schedule - XIV, then how these mistake can be after thought of the appellant.

The AR further contended that AO himself satisfied that the article / thing produced by the appellant is not listed in Schedule Thirteenth of the Income Tax Act, 1961. The AR further contended that to claim deduction under the said section it is not compulsory to produce / manufacture article / thing which is listed in Schedule -Fourteenth as there is other provision i.e. 80-IC(2)(b)(ii) of the Income Tax Act, 1961 for the same. Hence both are separate provisions to claim deduction under section 80-IC, independent of each other and both cannot be combined. The AR of the appellant also cited judgment pronounced by jurisdictional Hon’ble ITAT of Delhi bench in the case of Assistant

*Commissioner of Income Tax v Sobhagia
Clothing Co.*

The AR further contended that mere inadvertent mistake committed by a Chartered Accountant should not be the basis for disallowing deduction otherwise allowable to the appellant as it is well settled law vide plethora of judgments of the Hon'ble Supreme Court and High Courts that beneficial legislation should have liberal construction with a view to implementing the legislative intent.

The AO has raised another objection in his assessment order that the appellant has not produced manufactured article/thing as claimed and also not produced any evidence/sample in physical form of salable manufactured goods.

The AR contended in this respect that the appellant has produced before the AO both

empty as well as filled packs of finished goods vide its reply dated 22.03.2013. The AR of the appellant in support of its claim of deduction under section 80-IC of the Income Tax Act, 1961 has submitted replies time to time along with relevant supporting evidences which clearly established that the manufacturing activities carried out at the manufacturing unit of the appellant located in notified area of Himachal Pradesh.

The AR further contended that the appellant vide its reply dated 08.02.2013, 22.03.2013 and 26.03.2013 furnished various document in support of manufacturing activities carried out at manufacturing unit under the notified area before the AO during the course of assessment proceedings and also before the undersigned such as Declaration filed with Excise Department to claim exemption under Notification No 50/2003 dated 10.06.2003

along with detail of Plant & Machinery installed therein, Capacity of the Plant of the appellant, detail and type of Raw Material used. Detail of Packing Material etc. and duly acknowledged copy of letter submitted with Excise department, Return filed with Commissionerate of Central Excise, Chandigarh in respect of finished goods actually manufactured and moved out from the manufacturing unit. Stock register of finished goods maintained in Form - IV as per Excise Rules in support of Commencement of manufacturing of perfumery, Sales Tax assessment order passed by Assessing Authority. BBN, Baddi - I. Himachal Pradesh, Sales Tax returns and Stock transfer Challans of finished goods along with Declaration under Form - XXVI - A issued by Excise and Taxation Department. Himachal Pradesh and GRs of Transporters and Month wise detail of salary & wages paid to workers employees along with

their name & addresses, electricity bill for consumption of electricity for the manufacturing plant. The same has been furnished before the undersigned and have been duly considered and placed on record.

The AR further contended that the A.O. himself acknowledged in the assessment order that assessee produced pair of empty plastic Jar with a label showing the name Gopal Perfumery Compound, 505 and 435.

The AR further contended that all purchase and sales made to and from manufacturing undertaking at Buranwala, Himachal Pradesh has to pass through the Himachal Pradesh sales Tax Barrier and at the time of passing the said Barrier, Sales Tax Declaration Form No. - XXVI - A has to be issued which is ample proof to support that the Raw Material had actually been brought to the undertaking of the

appellant at Buranwala, Himachal Pradesh and that the Finished Goods have moved out from undertaking of the appellant at Buranwala, Himachal Pradesh. The AR further contended that all these Forms are generated online by the respective departments at respective places.

The AO also raised his objection in the assessment order that it has not proved its distinguished entity at the registered office and business address i.e. 240, Okhla Industrial Estate Phase - III, New Delhi - 110020 and the manufacturing unit at Khasra No. 117, Baddi, Barotiwala Road, Village Burnwala Distt. Solan (HP) is also shared by its sister concern M/s Gopal Industries.

The AR contended that as regard premises at Khasra No. 117, Baddi Barotiwala Road, Village Burnwala Distt. Solan (HP) and at 240, Okhla Industrial Estate Phase - III, New Delhi -

110020 taken on lease by the appellant company from M/s Flakes N Flavours and Sh. Sri Gopal Gupta respectively, the same have never been shared or taken on lease by M/s Gopal Industries during the financial year under consideration.

The AR further contended that M/s Gopal Industries does not have any manufacturing and registered / business office at both the alleged premises during the financial year under consideration while it has business address 296 and 467, F.I.E. Patparganj Industrial Area Delhi - 92 which is corroborated from the Invoices / bills raised by M/s Gopal Industries during the financial year under consideration and submitted before the AO during the course of assessment proceedings.

The AR further contended that the AO during the course of assessment proceedings also

asked the appellant to explain its business relation with M/s Gopal Consumer World. In response, of which the appellant submitted before the AO that the appellant firm M/s Vasundhara Flavours vide Addendum dated 26th September, 2012 to its Partnership Deed dated 2nd November, 2009 changed the name of the firm from “Vasundhara Flavours” to “Gopal Consumer World”. Apart from the change of name, everything else remains the same. The change in the name of the firm is also reflected in its PAN number, which remained same with the changed name.

The AR further contended that doubt raised by the AO in his order on change of appellant firm's name from M/s Vasundhara Flavours to M/s Gopal Consumer World is a question on liberty of business houses. It is pertinent to note that decision in respect of running of business lies solely with the owner, partners or director

of that business and no one can interfere in the decision taken by the key person of that business because he is the only person who knows need of its business and how to accomplish the same. It is well settled law that the assessing officer should assess the income of the assessee as per the provisions of the Income tax Act, 196 and should not step into shoes of the assessee and tell how to do business and cited judicial precedent rendered by Hon'ble Supreme Court and High Court in support of its contention.

The AR submitted various documents in support of its contention that the manufacturing unit is never been shared by M/s Gopal Industries during the course of assessment proceedings such as Lease Agreement dated 09.11.2009 between M/s Flakes N Flavourz for plot bearing khasra No. 117. Baddi - Barotiwala Road, Village Buranwala, Distt.

Solan, Himachal Pradesh along with cop}' of patta or registry of land. Addendum to Partnership Deed dated 26.09.2012 along with copies of PAN issued to the appellant in the name of M/s Vasundhara Flavours as well as Gopal Consumer World which are duly considered and placed on record.

The AO has raised two objections in his assessment order, (i) the assessee not only failed in producing sample of its product i.e. "Perfumer & Fragrance" with all necessary packing mode but also failed in producing bills vouchers of sales which can prove the description of item sold and to whom sold (ii) The assessee also failed to produce the evidences of produced goods pack showing the prescribed details on it as prescribed under Consumer Protection Act and other Acts.

The AR contended that appellant has produced before the A.O. sample of empty pack as well as filled packed of finished goods bearing label which contained the information of the product as per the norms of the Industry such as name of the product, weight & volume, date of manufacturing, expiry date, manufacturing company details etc. and the same is acknowledged by the A.O. in the assessment order that assessee has produced a pair of empty plastic Jar fixed with plain label showing the name “Gopal Perfumery Compound”, 505 and 435.

The AR further contended that the appellant has produced the sale and purchase bills/invoices which contained all the detail of article / thing sold during the financial year such as name of item sold, quantity, value etc. The AO further contended that the appellant has manufactured Industrial Perfumery and

Fragrance hence, Consumer Protection Act is not applicable to the appellant. The AO contended that as per section 2(d) of Consumer Protection Act, 1986, a consumer is a person who buys or hires goods or services for a consideration, i.e. free services are not covered under the said Act and most importantly, it excludes a person who buys or hires goods or services for commercial purpose / activity.

The AO further alleged in his order that unit at Baddi is not equipped with plant & machinery to carry out production as per the assessee's note submitted vide its letter dated 08/02/2013, there was basic requirements of sufficient items of plant & machinery and without the same production of saleable goods/items could have not taken place.

The AR contended in this respect that note on manufacturing process submitted by the

appellant before the AO is not exhaustive and just gives the broad outline of process flow of manufacturing, hence does not contain detailed process along with detail of material such as quantity, composition and plant & machinery used at different stage of production, so on the basis of said note, allegation in respect of shortage of plant & machinery is bad in law while the appellant has submitted detail of plant & machinery installed at its manufacturing unit along with invoices / bills / Transfer challans of fixed assets purchased along with Form XXVI-A declaration under Excise and Taxation Department. Himachal Pradesh in respect of goods / material / capital goods which is an ample proof of transporting capital goods to Buranwala unit, Himachal Pradesh.

The A.O. also alleged that that pivotal “plant & machinery” has been purchased in Delhi and no evidence of its transportation to manufacturing unit at Buranwala has been furnished by the

appellant, hence, no vital plant & machinery installed at manufacturing unit during the year.

The AR submitted that on perusal of the invoices and other evidences furnished before the A.O, it is quite evident that the appellant has purchased plant and machinery against Form "C", hence the same cannot be considered as purchases made in Delhi. The AR also furnished the detail in support of its contention which reproduced as under :

<i>Item Purchased</i>	<i>Quantity</i>	<i>Date</i>	<i>Purchases against Form "C"</i>	<i>Place of Purchase</i>	<i>Destination as per bill</i>
<i>Plant and Machinery</i>					
<i>Motorised Barrel Pump</i>	<i>1</i>	<i>24.11.09</i>	<i>Yes</i>	<i>Pune</i>	<i>Baddi</i>
<i>Monoblock Pumpset</i>	<i>2</i>	<i>12.11.09</i>	<i>Yes</i>	<i>Delhi</i>	<i>Baddi</i>
<i>Stacker – Loose</i>	<i>1</i>	<i>21.01.10</i>	<i>Yes</i>	<i>Faridabad, Haryana.</i>	<i>167, FIE Patparganj Delhi.</i>
<i>S.S. Tank with Fittings 1000 Ltr</i>	<i>1</i>	<i>24.11.09</i>	<i>Yes</i>	<i>Faridabad, Haryana.</i>	<i>167, FIE Patparganj Delhi.</i>
<i>Sintex 2100 Ltr</i>	<i>2</i>	<i>24.11.09</i>	<i>Yes</i>	<i>Delhi.</i>	<i>167, FIE Patparganj Delhi.</i>
<i>Sintex 2100 Ltr</i>	<i>2</i>	<i>30.11.09</i>	<i>Yes</i>	<i>Delhi.</i>	<i>167, FIE Patparganj Delhi.</i>
<i>Sintex 2100 Ltr</i>	<i>2</i>	<i>30.11.09</i>	<i>Yes</i>	<i>Delhi.</i>	<i>Baddi.</i>
<i>Storage Tank</i>	<i>1</i>	<i>04.01.10</i>	<i>Yes</i>	<i>Delhi.</i>	<i>Baddi.</i>
<i>Storage Tank</i>	<i>3</i>	<i>06.01.10</i>	<i>Yes</i>	<i>Delhi.</i>	<i>Baddi.</i>

<i>GENERATOR</i>					
<i>D.G. Set</i>	<i>1</i>	<i>21.12.09</i>	<i>Yes</i>	<i>Delhi.</i>	<i>Baddi.</i>
<i>Generator</i>	<i>1</i>	<i>21.12.09</i>	<i>Yes</i>	<i>Delhi.</i>	<i>Baddi.</i>
<i>WEIGHT & MEASUREMENT</i>					
<i>Electronic weighing scale (3,6,30,60,150 KG capacity)</i>	<i>6</i>	<i>23.11.09</i>	<i>Yes</i>	<i>Faridabad, Haryana.</i>	<i>Baddi.</i>
<i>Electronic weighing scale (300 KG to 600 KG capacity)</i>	<i>1</i>	<i>01.02.10</i>	<i>Yes</i>	<i>Faridabad, Haryana.</i>	<i>167, FIE Patparganj Delhi.</i>

The AR, stated on perusal of the above table, it is quite evident that the purchases of all the pivotal plant and machinery are inter-state inter-state purchases against Form "C" which cannot be issued by Sales Tax Department until and unless purchased goods reaches to the state issuing Form "C". The AR further contended that the appellant has produced sales tax declaration Form XXVI-A which is issued at the time of entry of the goods in the state of Himachal Pradesh, without which Form "C" cannot be issued and it is ample proof of transporting capital goods

to the manufacturing unit at Buranwala, Himachal Pradesh.

The AR also contended that the appellant in support of its contention that it has installed sufficient plant and machinery has submitted, the detail of event and activity taken place before the first clearance (i.e., on 10/12/2009) of finished goods from the manufacturing unit.

The AR also furnished the details of events occurred before the first clearance (i.e., on 10.12.2009) made by the assessee firm which are reproduced as under :

<i>Date of Event / Activity</i>	<i>Event / Activity</i>	<i>Evidence</i>
02.11.2009	Partnership Deed of "Vasundhara Flavours" executed to carry on the business in Himachal Pradesh	Partnership Deed as Annexure-2.
09.11.2009	Factory premises in Buranwala (H.P) was taken on lease vide lease deed dated 09.11.2009.	Lease agreement as Annexure - 2.
13.11.2009	First purchase was made.	Copy of bill as Annexure - 5.
19.11.2009	Registration with Department of Excise and Taxation, Himachal Pradesh Sales Tax, Himachal Pradesh.	Central Sales Tax Registration Certificate and HP Value Added Tax Registration

		<i>Certificate issued by Department of Excise and Taxation, Himachal Pradesh as Annexure – 6.</i>
20.11.2009	<i>Purchase of 5/6 (five) Electronic Scales.</i>	<i>Copy of bills as Annexure -7</i>
24.11.2009	<i>Purchase bill of Packaging material from outside suppliers directly delivered at Buranwala, Baddi, Himachal Pradesh.</i>	<i>Copy of bills as Annexure – 8</i>
26.11.2009	<i>Some purchase bill of Raw materials from outside suppliers directly delivered at Buranwala, Baddi, Himachal Pradesh.</i>	<i>Copy of bills as Annexure – 9</i>
26.11.2009	<i>1 (one) S.S. Tank with Fittings (Perfumery Tank) Capacity 1000 Ltr.</i>	<i>Copy of bills as Annexure – 10</i>
26.11.2009	<i>2 (two) Nos. of Sintex Tank (For Perfumery Mixing) Capacity 2100 Ltr each</i>	<i>Copy of bills as Annexure – 11</i>
02.12.2009	<i>Declaration filed with Excise Department to claim exemption under Notification No.50/2003 Dated 10.06.2003</i>	<i>Duly acknowledged copy of Letter submitted with Excise Department as Annexure – 12.</i>
04.12.2009	<i>Purchase of Hacop Motorised Barrel Pump</i>	<i>Copy of bills as Annexure – 13</i>
05.12.2009	<i>Purchase of 4/6 (four) Nos of Sintex Tank (For Perfumery Mixing) Capacity 2100 Ltrs each.</i>	<i>Copy of bills as Annexure – 14</i>
05.12.2009	<i>Purchase of 2 (two) nos. Monoblock Pumpset.</i>	<i>Copy of bills as Annexure – 15.</i>
06.12.2009	<i>Commencement of manufacturing of perfumery compound as WIP.</i>	<i>Stock Register of finished goods in Form-IV as per Excise Rules as Annexure-16.</i>
10.12.2009	<i>First Clearance of Final Product from factory</i>	<i>First Transfer Challan along with Excise and Taxation Department, Himachal Pradesh declaration Form dated 10/12/2009 and GR of transporter 'The Nalagarh Truck Operators' Union, Nalagarh, HP' as Annexure-2.</i>

The AR further contended that plant & machinery purchased after commencement of production i.e. 06/12/2009 was storage tanks, aluminum sheets and M.S. frame etc. which were used for increasing the production capacity of the undertaking and other miscellaneous purpose in response to the allegation made by the AO in the assessment order that some vital item like Storage tank” and “stacker” were purchased in the month of January, 2010 only, therefore, commercial production could not have started prior to January, 2010.

The AR contended that as regard to no Monoblock Pump is purchased before starting manufacturing process, the appellant has two Monoblock Pumps instead of one and also having one Barrel pump.

The AO also pointed out that the appellant does not have Gas Burner, the appellant has purchased Gas Burner before the commencement of production which is not capitalized. The AR also contended in respect of allegation made by the AO that mixing tanks fitted with nozzle to be connected to Monoblock Pump, since there is only one Monoblock pump, at one time only one set of chemicals in one tank could be processed while the appellant firm is having two Monoblock Pumpsets which were used to circulate the mixture of various ingredients in the tank in order to get a homogenized mixture.

The AR of the appellant in support of its contention has submitted various documents / evidences which were submitted before the AO during the course of assessment proceedings as well as before the undersigned which have been duly considered and placed on record.

The A.O. has also alleged in the assessment order that at very beginning stage of production with this minimal plant & machinery it is impossible to produce such huge production and to make the sale of Rs. 14.73 crore in just three month of the very first year of production in response of which the AR of the appellant submitted that product manufactured by the appellant firm is a high value Industrial Perfumes. The product being an Industrial product, sold in bulk which has been corroborated from the details/documents submitted by the appellant during the course of assessment proceedings such as month-wise detail of quantity manufactured and dispatched, during the months December 2009 to March 2010. The relevant portion is reproduced as under :

<i>Month</i>	<i>Quantity Manufactured (in kgs)</i>	<i>Quantity Dispatched (in Kgs)</i>	<i>Value of Dispatched (in lacs)</i>
<i>December, 2009</i>	<i>33,477</i>	<i>26,664</i>	<i>402.60</i>
<i>January, 2010</i>	<i>29,171</i>	<i>25,878</i>	<i>373.25</i>
<i>February, 2010</i>	<i>39,067</i>	<i>35,143</i>	<i>544.83</i>
<i>March, 2010</i>	<i>38,404</i>	<i>36,134</i>	<i>545.12</i>

The average value per Kg during the aforesaid four months of production during the Financial Year 2009-10 comes out to around Rs.1,507/- per Kg.

The AR also contended that the appellant also justified its plant and machinery with the production during the year and submitted that the basic manufacturing activity is more or less of manual in nature and the appellant firm by 5th December, 2009 was having 7 (seven) tanks, out of which, 6 (six) Tanks are having the capacity of 2000 - 2100 Ltrs each and 1 (one) with capacity of 1000 Ltr., for use during the manufacturing. The total capacity available for production by 5th December, 2009 of Perfumery Compound being around 13,600 Ltrs per day and the same got increased with the additions of tanks thereafter to 21,000 Ltrs during the financial year under consideration. Hence, there was more than

sufficient capacity to manufacture Perfumery compound and fair enough capacity to take care of the monthly production.

The AR further contended that the appellant has installed sufficient plant & machinery and is having production capacity of Perfumery compound around 13,600 Ltrs per day (i.e. 408000 ltrs per month), however the appellant has merely produced / manufactured 33,400 kg in the month of December, 2009, 29,171 kg in January, 2010, 39,067 kg in February, 2010 and 38,404 kg in March, 2010. Hence, doubt raised by the AO in his impugned order is baseless without considering the facts of the appellant's case

The A.O. further alleged in the assessment order that the sales claimed by the appellant are not genuine and bogus as the assessee did not produce/manufacture "Perfumery & Fragrance" and also failed to produce evidence of goods, so

produced and also failed to produce documentary evidence i.e. bills / vouchers and name of the parties to whom sale of goods has been so produced has been made.

The AR contended that the appellant has submitted various details / documents such as party-wise sales, party-wise purchase, details of sundry creditors and sundry debtors along with their address before the AO during the course of assessment proceedings. The appellant also produced sales bills / voucher etc. along with Sales Tax declaration Form No. XXVI-A, as these are online forms which are generated at the time of goods passing the Sales Tax Barrier at Himachal Pradesh, and GR of the transporter before the AO for the purpose of Verification. The appellant has also produced books of account, original bank statements and vouchers along with supporting evidences for the verification of the learned assessing officer during the course of assessment

proceedings. The appellant had also submitted copy of assessment order of Himachal VAT department, Himachal Pradesh assessing sales/stock transfers for the relevant financial year. However, the AO failed to appreciate the same and asked the appellant to justify huge sales made to few correlated parties and alleged that enquiries reveals that both H.M. sales Corporation and Aman Marketing are proprietorship concern owned by one Kusum Sethia who files his ITR in Guwahati on the basis of some alleged information / documents gathered by him conducting some private enquiry and issuing summon under section 131 / 133(6) of the Income Tax Act, 1961 during the course of assessment proceedings.

The AR contended that appellant submitted during the course of assessment proceedings that substantial part of sales being made to few parties concerned. The product manufactured is- an Industrial Product which has sold through limited

Consignment Sale Agents (CSA) and dealers for better control of sales and not through numerous dealers, distributors etc as in case of consumer/retail product. The appellant further submitted that sales made to M/s H.M. Sales Corporation and M/s. Aman Marketing are concerned, M/s H.M. Sales Corporation is the dealer of the firm, operating in Delhi and M/s Aftan Marketing is the CSA of the firm operating in Uttar Pradesh, although both are owned by Mr. Kusum Sethia. The Appellant also furnished copy of Consignor Sale Agreement, copies of Ledger account of the sales made to the parties etc.

The AR further contended that the appellant vide its reply dated 26.03.2013 submitted three concern i.e. M/s Naman Sales Corporation, Delhi, M/s H. M. Sales Corporation, Delhi and M/s Aman Marketing, Kanpur are the three different proprietorship Shri Kusum Sethia. The appellant further submitted that as regard to M/s Naman

Sales corporation appellant has taken interest bearing unsecured loan in the normal course of business much before the first sale of the appellant firm, hence question of re-routing or accommodation entry does not arise at all. The appellant further submitted that as regard to M/s H.M. Sales Corporation, the appellant has made sales of Rs.4,54,81,348/- and M/s H.M. Sales Corporation has been making payment in its running account during the course of business. In the said running account at the time of year closing, there has been a credit balance of Rs.1,00,00,000/-. The appellant further submitted that appellant has made sales to M/s Aman Marketing of Rs.71,62,000/- during the financial year under consideration and the amount as shown is not the commission, but the sale proceeds received by the appellant.

The AR further contended that the AO has relied on some report of an Inspector who has

visited the alleged manufacturing unit of the appellant at Buranwala, Himachal Pradesh and various information / material gathered by him during the course of assessment proceedings and alleged in his order on the basis of said report that the said premises belongs to Gopal Group of Industries who is in the business of chewing Tobacco, Pan Chatni etc. and after making local enquiries from the neighborhood it is revealed that at this premises there was never any type of manufacturing of Perfumery & Fragrance, Rather products under brand name 'Gopal Zarda' were being Produced and transported from this premises.

The AR further contended that in the light of detail submission along with documentary evidences the AO erred in alleging in his assessment order that the appellant is re-routing his own unaccounted cash without examining and correlating the detail and explanations filed by the

appellant before him during the course of assessment proceedings and without providing copies of the statement recorded, documents and information collected by issuing summon / notice issued under section 131 /133(6) of the Income Tax Act, 1961.

The AR of the appellant in support of its contention has submitted various documents / evidences vide its various replies such as Detail of party-wise sale & purchase, Confirmation from Debtors and Creditors along with Name, Address, PAN, Nature, and outstanding Balance against them, Consignment Sale Agreement of all Consignment Agents of M/s Vasundhara Flavours, Copy of Income tax Return along with Computation of income of Mr. Kusum Kumar Sethia, Sales Tax assessment order passed by Assessing Authority, BBN, Baddi -1, Himachal Pradesh, Sales Tax returns and Stock transfer Challans of finished goods along with Declaration under Form – XXVI –

A issued by Excise and Taxation Department, Himachal Pradesh and GR of Transporter and Bill wise detail of Excise and CST/VAT paid on input purchased which have been duly considered and placed on record.

The AR of the appellant further contended in this respect that AO has neither provided copy of report of the inspector, information and material gathered by him during the course of assessment proceedings which were relied upon by himself nor confronted the same to the appellant on the basis of which adverse view against the appellant was taken which is in violation of principle of natural justice and bad in law. The AR further contended that the appellant has made specific request by filing its letter dated 03.10.2013 before the AO to provide copy of the inspector report along with statement of Kusum Kumar Sethia along with material / evidences collected u/s 131 / 133(6) of

I T Act, 1956 but the AO failed to provide copy of the same till date.

The AR further contended that it is well settled law that Income tax Officer can collect materials to facilitate assessment even by private enquiry. But if he desires to use the material collected, the assessee must be informed of the material and must be given an opportunity to explain it. Non - confrontation of evidence is against the principles of natural justice, hence assessment order is liable to be quashed. The AR also relied on the various judicial precedents. The AO has not built up the case.

7. *In my considered view, the appellant has furnished and also produced relevant documentary evidence to justify its claim of deduction under section 80-IC of the Income tax Act, 1961 before the AO but the same is rejected merely on the basis of an inadvertent mistake*

committed by the Tax Auditor in Form 10CCB without considering the legal position that deduction / benefit allowable to the appellant should not be denied as beneficial legislation should have liberal construction with a view to implementing the intent. On perusal of the documentary evidences. Notification issued by the CBDT (Notification No S.O. 1269(E) dated 04.11.2003 as amended by Notification dated 27.08.2008) and Thirteenth Schedule of the Income tax Act, 1961, it is quite evident that the manufacturing unit is situated under the notified area and manufactured article / thing not being an article / thing not being an article/thing mentioned in the negative list of Thirteenth Schedule, hence the appellant has fulfilled the requisite conditions of section 80-IC of the Act eligible to claim deduction in the said section.

Here it is relevant to mention that as regard to various allegations (point wise) mentioned in the

assessment order and detailed submission along with evidences furnished before the undersigned, dealt in supra, the claim of the appellant cannot be rejected merely on the basis of inadvertent mistake committed by the tax auditor in Form 10CCB.

On a careful perusal of the finding of the A.O. in assessment order and submission along with documents/evidences furnished by the AR in support of its contention as summarized above and also taking into ratio of the decision relied upon by the Appellant, in my considered view the disallowance of claim of deduction u/s 80-IC of the Act without appreciating the documentary evidences such as sales tax and excise records, declaration in Form XXVI - A generated online by the sales tax and excise department when the goods moved in or out from the barrier of Himachal Pradesh, The report of inspector of fire station of Himachal Pradesh who physically verified the unit

and the Central Excise department has granted exemption in the case of manufacturing unit situated at the notified area as per notification issued both for the purpose of Central Excise and Income tax. it is seen that the manufacturing unit of the appellant is situated in the notified area and purchases or raw material and inputs were brought in, manufacturing activities were carried out and sales were effected from the said manufacturing unit of the appellant situated at notified area of Himachal Pradesh. The AO in this case has undertaken an effort to somehow establish his hypothesis to reject the claim of the appellant and has not appreciated facts correctly.

Considering the entire facts & circumstance and ratio of the case laws cited by the appellant which were squarely applicable in the case of the appellant, claim of 80IC deserves to be allowed.

8. *As a result, the appeal is allowed.”*

4. The Ld. D.R. relied upon the Order of the A.O. and referred to various pages of the impugned order and submitted that assessee did not file evidence of transportation of the goods from Delhi to Baddi before the A.O. The Ld. CIT(A) did not give an opportunity to the A.O. to make rebuttal to the additional evidences. There is a difference in name of purchase material. The factory premises of the assessee is not situated in a notified area. The Income Tax Inspector reported that assessee did not manufacture the Perfumes and Fragrances at the premises. The destination of purchases of the plant and machinery is at Delhi only. There is no gas burner and sales are made to the Associated Enterprises only, which creates doubt. There are cash deposits in the account of the purchaser. The Ld. D.R. referred to the conclusion of the A.O. as reproduced above to show that A.O. has rightly made the addition in the matter. The Ld. D.R, therefore, submitted that matter may be remanded to the Ld. CIT(A) for passing the order afresh, by giving opportunity of being heard to the A.O.

5. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that all observations of the A.O. have been met by the assessee before the Ld. CIT(A) through documentary evidences. Learned Counsel for the Assessee submitted that Ld. CIT(A) decided the appeal on several points. However, the Department is challenging the Order of the Ld. CIT(A) only on few grounds. Therefore, appeal of Revenue is not maintainable and is liable to be dismissed. The assessee explained the date of commencement of business because partnership deed was executed on 02.11.2009. Learned Counsel for the Assessee submitted that Head of the Office is situated in Delhi, so, bills were prepared in the name of assessee at Delhi address. All the documentary evidences along with plant and machinery were sent to Baddi unit. The purchases were made against 'C' Form only. The assessee filed various replies before A.O. which were supported by documentary evidences which have not been denied by the authorities below. So no additional evidences were filed before Ld.

CIT(A). The assessee manufactures goods as per Law, for which, assessee is entitled for deduction under section 80IC of the I.T. Act. Learned Counsel for the Assessee submitted that A.O. has denied the benefit of deduction under section 80IC on number of reasons i.e.,

- (i) The unit not being situated in a notified area.
- (ii) The business not being covered under specified business for deduction under section 80IC.
- (iii) There was a report of the Inspector stating that the items produced at the factory premises were different from the ones claimed by the assessee.
- (iv) Non physical verification of products by producing empty and filled packages.
- (v) As claimed by the assessee, the factory was not equipped with proper plant and machinery at the start of production.
- (vi) The sales made by the assessee were to a related concern and were sham.

5.1. The assessee challenged all these issues before the Ld. CIT(A) raising specific grounds against each. The Ld. CIT(A) reproduced all the submissions of the assessee along with material and has given finding in favour of the assessee. The Revenue has raised only few grounds, but, did not challenge the finding of fact recorded by the Ld. CIT(A) even in the revised grounds of appeal. Therefore, appeal of the Revenue may be dismissed. Learned Counsel for the Assessee submitted that even in the case of lessor at the same premises in question, the Department has granted deduction under section 80IC of the I.T. Act, vide Order Dated 27.11.2008 under section 143(3) of the I.T. Act. Copy of the Order is placed on record. Learned Counsel for the Assessee also filed copy of Notification Dated 27.08.2008 to show that factory unit of the assessee falls within the notified area. Therefore, assessee is entitled for deduction under section 80IC of the I.T. Act. Learned Counsel for the Assessee also placed on record the assessment order in the case of assessee (Now M/s. Gopal Consumer World) under section 143(3) Dated 31.03.2016, in which, the A.O. has

discussed the issue of deduction under section 80IC and noted that the Ld. CIT(A) has allowed the claim of assessee for A.Y. 2010-2011, in which, appeal of the Department is pending before the Tribunal and similarly in A.Y. 2012-2013, claim of assessee has been denied by A.O, in which, assessee is in appeal. The A.O. examined the issue of deduction under section 80IC on the same facts in detail and after calling report from the Income Tax Officer, Baddi, which is reproduced in this Order, the claim of assessee for deduction under section 80IC for Perfumery Compound, Pan and Chatni have not been disallowed. Further for items mentioned at Sl.Nos. 4 to 7 which were not manufactured at Baddi unit, the claim of assessee has been denied under section 80IC in sum of Rs.90,50,123/- only. Learned Counsel for the Assessee, therefore, submitted that since claim of assessee under section 80IC have been allowed in A.Y. 2013-2014 in respect of same items for Rs.20.25 crores by the Ld. CIT(A), therefore, claim of assessee has been rightly allowed by the Ld. CIT(A).

6. We have considered the rival submissions and perused the material available on record.

7. Ground No.1 is general in nature and do not call for any adjudication.

8. On Ground No.2, the Department's case is that plant and machinery were purchased between 24.11.2009 to 06.11.2010 whereas the assessee claimed commencement of business on 02.11.2009 in Form 10CCB. The assessee has, however, explained that on 02.11.2009 partnership deed was executed and thereafter, further developments were made by purchasing the plant and machinery and manufacturing activities have been started, the details of which, were noted above. Therefore, there is no illegality in the explanation of assessee that it has started its business activity by executing the partnership deed. Further, this fact has been clarified by the Chartered Accountant before the A.O.

9. On Ground No.3, Revenue challenged that assessee furnished additional evidences before Ld. CIT(A)

and no opportunity have been given to the A.O. Learned Counsel for the Assessee has referred to submissions made before Ld. CIT(A), in which, several replies have been referred, which were filed before A.O, which are supported by documentary evidences. Therefore, no additional evidences have been filed before the Ld. CIT(A) so as to give further opportunity to the A.O. to rebut the claim of assessee. Further the impugned order shows that despite notifying the hearing of the appeal, none appeared from the side of the Department before the Ld. CIT(A). Therefore, no fault could be found with the Ld. CIT(A) in deciding the issue in favour of the assessee.

10. On Ground No.4, the claim of the Revenue was that assessee did not furnish the documentary evidences as well as sample of finished goods with empty pack etc., Learned Counsel for the Assessee referred to page-34 of the Order of the Ld. CIT(A) in which reply of the assessee Dated 22.03.2013 have been referred to, in which the assessee explained that it is producing the empty pack as well as filed part of manufacturing goods before A.O. during

assessment proceedings for the purpose of verification. It was clarified that A.O. has not raised any suspicion or doubt on the genuineness of the said sample of manufactured goods and also failed to confront his dissatisfaction over the claim of assessee of manufacturing all the above items in notified area. The assessee also claimed that it has submitted the goods, produce of his Industrial Perfumes and Fragrances, which is for the purpose of industrial use only before A.O. and the A.O. did not doubt the same. The assessee further referred to Consumer Production Act in the reply to show that there is no violation on the part of the assessee. The Assessee's Counsel has referred to every portion of the reply filed before the Ld. CIT(A) to show that all the items i.e., plant and machinery purchased at Delhi were transported to Baddi which were supported by documentary evidences. Since assessee has Registered Office at Delhi and bills are issued at Delhi address for plant and machinery, there is no illegality in the same. The assessee has filed detailed explanation to show that it has began manufacturing

activity in notified area. Therefore, it was entitled for deduction under section 80IC of the I.T. Act, 1961.

11. On Ground No.5, Revenue challenged that unit of the assessee is not covered by the notified area. The assessee has filed copy of the relevant Notification to prove that its unit falls in notified area of Himachal Pradesh so as to entitle for deduction under section 80IC of the I.T. Act. The same submissions were already made before the Ld. CIT(A), which have not been disputed by the Ld. D.R. through any genuine material on record.

12. Considering the totality of the facts and circumstances in the light of finding of fact recorded by the Ld. CIT(A), it is clear that assessee produced all documentary evidences before the authorities below to show that it has began to manufacture items of Perfumes and Fragrances in the notified area. The same were supported by documentary evidences i.e., Excise Records and Sales Tax assessment etc., The assessee furnished GRs of transportation and bills etc., and C-Form to show that assessee entered into genuine business activity. Further it

may be noted that though A.O. has raised so many objections at assessment stage and Ld. CIT(A) dealt with each and every item, but, Department has filed revised ground only on few items. Thus, the genuineness of the activities of manufacturing conducted by the assessee at Baddi have not been challenged by the Revenue in the revised grounds of appeal. These facts clearly show that assessee has entered into genuine business activities. Even if sales are made to three parties only, there is nothing wrong against the assessee. It may also be noted here that in respect of some items of manufacture, A.O. has allowed the claim of assessee in scrutiny assessment under section 143(3) for A.Y. 2013-2014 vide Order Dated 31.03.2016 after calling a report from Income Tax Officer, Baddi. Therefore, rule of consistency apply to the facts of the case and Department cannot take a different stand against the assessee in different assessment years. It may also be noted here that it has not been clarified, whether report of the Inspector or statement of Shri Kusum Kumar Sethia was supplied to the assessee for rebuttal ? Therefore, such

report and statement cannot be read in evidence against the assessee. It may also be noted here that it is a Departmental Appeal and no documentary evidences have been produced before us to contradict or rebut the finding of fact recorded by the Ld. CIT(A) in favour of the assessee. Therefore, in the absence of any evidence against the assessee on record, it is difficult to take a contrary view as have been taken by the Ld. CIT(A). In view of the above discussion, we do not find any infirmity in the finding of fact recorded by the Ld. CIT(A) to allow the claim of assessee for deduction under section 80IC of the I.T. Act. We, therefore, confirm the Order of the Ld. CIT(A) and dismiss the appeal of the Revenue.

13. In the result, appeal of the Revenue dismissed.

Order pronounced in the open Court.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 05th December, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "B" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.