

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

**SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISHRA, ACCOUNTANT MEMBER**

**ITA No. 4546/Del/2017
Assessment Year: 2013-14**

ACIT, Circle 8(2),
New Delhi

vs

Excel Pack Limited, 1004-05-06,
Devika Tower, Nehru Place,
Delhi.

PAN: AABCE 0195J

(Appellant)

(Respondent)

Appellant by Sh. Dheeraj Garg, Sr. DR

Respondent by Sh. R.K. Kapoor, C.A.

Date of Hearing 02.01.2020

Date of Pronouncement 06.01.2020

ORDER

PER K. NARASIMHA CHARY, JM:

Challenging the order dated 20/4/2017 in appeal No. 59/16-17 passed by the learned Commissioner of Income Tax (Appeals)-3 Delhi ("the Ld. CIT(A)"), for the assessment year 2013-14, in the case of Excel pack Ltd, Revenue preferred this appeal on the ground that the Ld. CIT(A) erred in allowing the deduction under section 80IC of the Income Tax Act, 1961 (for short "the Act").

2. Brief facts of the case are that the assessee is engaged in the business of manufacture of Induction Heat Seal Cap Liner material and Induction Wads. For the assessment year 2013-14 it has filed its return of income on 30/9/2013 declaring an income of Rs.2,84,91,000/-and claimed deduction under section 80 IC of the Act to the tune of Rs.1,19,73,540/-. Learned Assessing Officer, however, held that the products manufactured by the assessee fall under schedule 13 (at serial No. 19) which is a negative list and, therefore, profitderived from the manufacture of these products is not eligible for deduction under section 80 IC of the Act.

3. Assessee preferred appeal before the Ld. CIT(A). Ld. CIT(A), as a matter of fact, found that the products manufactured by the assessee do not fall under tariff No. 4811.20, 4811.31 and rather the products fall under the tariff 7607-20-90 of CETA and while referring to the circular No. 28/89 dated 26/9/1989 and 141/2/2003 dated 6/10/2003 issued by the Government of India, Ministry of Finance (Department of Revenue), New Delhi allowed deduction under section 80 IC of the Act to the assessee. Revenue is therefore in this appeal.

4. At the outset, Ld. AR submitted that the Ld. CIT(A) followed the Board Circulars for granting relief to the assessee. He further submitted that under similar set of facts for the assessment years 2010-11 and 2012-13 a coordinate Bench of this Tribunal dealt with this issue in assessee's own case in ITA No. 5994/Del/2014 and 6550/Del/2015 and by order dated 18/02/2019 Tribunal returned a finding that inasmuch as the industrial unit was set up on 26/10/2006, and the initial assessment year in which deduction under section 80 IC of the Act was claim, was

assessment year 2007-08 from each year onwards such a claim was allowed to the assessee, and, therefore, while following the decision of the Hon'ble Apex Court High Court in the case of International Tractors Limited²⁹⁷ CTR 119 Tribunal returned a finding that the assessee is entitled to the deduction in section 80 IC of the Act and the classification of aluminium foil laminated on both sides with plastic films would be under Chapter Headings 7607 instead of Chapter Headings 3920.

5. Facts submitted by the Ld. AR are not in dispute and Ld. DR does not controvert the same. A copy of the order dated 18/02/2019 in ITA No. 15 and 94/del/2014 and the 6550/del/2015 for assessment years 2010-11 and 2012-13 is produced. We have perused the same.

6. Facts being identical, we find that the issues involved in this matter are directly and substantially covered in assessee's own case in earlier years and while respectfully following the same we hold that the assessee is entitled to deduction under section 80 IC of the Act and the addition to the tune of Rs.1,19,73,540/-by disallowance of the same, is directed to be deleted. Grounds of appeal are answered accordingly.

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

Order pronounced in the Open Court on 6th January, 2020.

Sd/-
(ANADEE NATH MISHRA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 06/01/2020

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