

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

BEFORE SHRI R.C.SHARMA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 6652/MUM/2014
Assessment Year: 2010-11**

The ITO 20(1)(4), Room No. 608, 6 th Floor, Piramal Chamber, Parel, Mumbai- 400012.	Vs.	M/s. Kumar Auto Sales, 1004, Kanchanganga, 9/10 Manish Nagar, J.P.Road, 4 Bunglow, Andheri(W), Mumbai- 400053. PAN:-AAHFK2427N
(Appellant)		(Respondent)

Appellant by : Shri. Morya Pratap
Respondent by : Shri. Nitesh Joshi & Vipul K. Mody

Date of Hearing: 30/05/2016
Date of Pronouncement: 31/05/2016

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against order dt. 28/08/2014 passed by the Ld. CIT(Appeals)-31, Mumbai, for the Asst. year 2010-11.

2. Brief facts of the case are that the assessee, a partnership firm engaged in the business of manufacturing and trading of various types of auto accessories, spare parts, components, tools and equipments, vehicle decorative items etc., filed its return of income declaring the total income as 'NIL' after claiming deduction u/s 80-IC of the Income Tax Act, 1961 (in short 'the Act') to the tune of Rs. 1,76,90,440/- After scrutiny, assessment order u/s 143(2) of the Act,

was passed by the Assessing Officer determining the total income at Rs.1,30,54,010/-.

3. The assessee challenged the assessment order by filing appeal before the Ld.CIT(A) *inter alia* on the ground that the AO has erred in rejecting the appellant's claim under section 80IC of the Act. The CIT(A) following the decision of ITAT Mumbai in assessee's own cases ITO vs. M/s Kumar Auto Sales, ITA No. 7505/MUM/2010 & ITA No. 4762/MUM/2012 for the assessment years 2007-08 and 2009-10 respectively, allowed this ground of appeal. Aggrieved by the impugned order passed by the Ld. CIT(A) the revenue is in appeal before the Tribunal on the following grounds of appeal:-

I. The CIT(A) has erred in law and in circumstance of the case in allowing Rs. 1,76,90,440/- as deduction u/s 80IC of the I.T.Act, 1961 considering the assessee's business activity as manufacturing instead of assembling Luggage carriers, Wheel Caps etc.

II. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the AO be restored.

4. At the very outset, the Ld. Authorised Representative (AR) pointed out that the appeal of the assessee is covered by the decision dated. 27/08/2013 rendered by the ITAT, Mumbai in assessee's own case in ITA No. 7505/M/10 & ITA No. 4762/M/12 for the Asst. year 2007-08 & 2009-10. Since the Tribunal has decided the identical issue in favour of the assessee, the present appeal filed by the revenue is liable to be dismissed. On the other hand, the Ld. Departmental Representative (DR) submitted that the order passed by the Ld. CIT(A) does not suffer from any legal infirmity.

5. We have heard the parties and also perused the material on record in the light of the respective submissions of the parties. We notice that in assessee's own case ITO vs. M/s Kumar Auto Sales for the A.Y. 2007-08 & 2009-10(supra), the common ground of appeal was that the CIT(A) has erred in law and in circumstances of the case and in allowing deduction u/s 80IC of the I.T.Act, considering the assessee's business activity as manufacturing instead of assembling Luggage carriers, wheel caps etc. The Co-ordinate bench following the ratio laid down by the Hon'ble Supreme Court in the case of Computer Graphics vs. CIT Hon'ble Jurisdictional High Court in *CIT vs. Supreme Graphics Creation P. Ltd. [276 ITR 668(Bom)]*, Hon'ble Punjab and Haryana High Court in the case of *CIT vs. Shri. Mahesh Chandra Sharma [308 ITR 222 (P&H)]* has declined to interfere with the order passed by the Ld. CIT(A) and dismissed the revenue's appeal holding as under:-.

"In view of the aforementioned position of law, we are of the opinion that Ld. CIT(A) did not commit any error in holding that the activities of the assessee were in the nature of manufacturing, therefore, the assessee is entitled to get deduction under section 80 IC of the Act. We decline to interfere in the relief granted by the Ld. CIT(A) and the appeals filed by the revenue are dismissed."

6. Respectfully following the decision of the Co-ordinate Bench in assessee's own case for the A.Y. 2007-08 & 2009-10, we hold that the impugned order does not suffer from any legal infirmity to interfere with. The order of the Ld. CIT(A) is in accordance with the settled position of law. We, therefore, uphold the same and dismiss the appeal.

7. In the result appeal of the assessee for the A.Y. 2010-11 is allowed.

Order pronounced in the open court 31st May, 2016.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated: 31/05/2016

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

Pramila