

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. SANJAY GARG, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.2178/Del/2019
(Assessment Year : 2015-16)

ACIT Circle – 8(2), New Delhi PAN : AABCE 0195 J (APPELLANT)	Vs.	Excel Pack Ltd., 1004-05-06, Devika Tower-6, Nehru Place New Delhi – 110 019 (RESPONDENT)
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Assessee by	Shri R. K. Kapoor, C.A.
Revenue by	Shri Jagdish Singh, Sr. D.R.

Date of hearing:	06.10.2021
Date of Pronouncement:	11.10.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 11.01.2019 of the Commissioner of Income Tax (Appeals)-3, New Delhi relating to Assessment Year 2015-16.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of induction Heat Seal Cap liner material and Induction Wads. Assessee electronically filed its return of income for A.Y. 2015-16 on 29.09.2015 declaring total income at Rs.4,25,52,140/- after claiming deduction of Rs.1,61,27,898/- u/s 80IC of the Act. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 03.05.2017 and the total income was determined at Rs.5,87,59,960/- *inter alia* by denying the claim of deduction u/s 80IC of the Act and other additions. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). CIT(A) vide order dated 11.01.2019 in Appeal No. 26/17-18 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal before us and has raised the following grounds of appeal:

“1. *The Ld. CIT(A) erred in law and on the facts of the case in deleting the addition of Rs.1,61,27,898/- on account of disallowance u/s 80IC of the Act.*

2. *The appellant craves to leave to add, amend or forego any ground(s) of appeal raised above at any time before or during the hearing of this appeal.”*

4. During the course of assessment proceedings, AO noticed that assessee had claimed deduction of Rs.1,61,27,898/- u/s 80IC of the Act. Assessee was asked to justify the claim to which assessee made detailed submissions and *inter alia* submitted that the claim of deduction for A.Y. 2010-11, 2012-13 & 2013-14 was denied by AO but was thereafter allowed by CIT(A). AO denied the claim of deduction u/s 80IC of the Act for the reason that though

the claim of assessee was allowed by CIT(A) in earlier years but the order of CIT(A) has been challenged by Revenue before ITAT and the decision was awaited. He therefore to keep the issue alive denied the claim of assessee. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). CIT(A) noted that there was no change in the facts in the year under consideration and of earlier years. He thereafter by following the order of his predecessor for A.Y. 2013-14 decided the issue in favour of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal.

5. Before us, Learned DR supported the order of AO.

6. Learned AR on the other hand reiterated the submissions made before the lower authorities and submitted that the Co-ordinate Bench of Tribunal on identical facts in A.Y. 2010-11 decided the issue in favour of the assessee. He further submitted that in assessee's own case for A.Y. 2013-14, the Co-ordinate Bench of Tribunal in ITA No.4546/Del/2017 order dated 06.01.2020, by following the order of Tribunal in assessee's own case for A.Y. 2010-11 & 2012-13 has held that the assessee to be eligible for deduction u/s 80IC of the Act. He further submitted that the issue being identical to that of earlier years is not in dispute as has been noted by the AO in his order. He therefore submitted that the appeal of the Revenue be dismissed.

7. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to allowing the claim of deduction u/s 80IC of the Act by CIT(A). We find that identical issue was decided by the Co-ordinate Bench of Tribunal in assessee's own case by order dated 08.02.2019 in ITA Nos.5994/Del/2014 & 6550/Del/2015 for A.Y. 2010-11 & 2012-13 and the aforesaid order was followed by the Co-ordinate Bench of Tribunal while deciding the assessee's own case for A.Y. 2013-14. The relevant observations of the Tribunal are as under:

“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, profit derived 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.”

8. Before us, no material has been placed on record to demonstrate that the facts in the year under consideration are different from that of earlier years or the order of ITAT for earlier years have been set aside/stayed by higher judicial forum. In such a situation, we find no reason to interfere with the order of CIT(A). **Thus the ground of Revenue is dismissed.**

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 11.10.2021

**Sd/-
(SANJAY GARG)
JUDICIAL MEMBER**

Date:- 11.10.2021

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Copy forwarded to:

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

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI