

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

Before Sh. A. D. Jain, Vice-President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 289/Del/2019 : Asstt. Year : 2014-15

Adit Infratel Pvt. Ltd., A-45/27, DLF City, Phase-1, Gurgaon, Haryana-122002` (APPELLANT)	Vs	Income Tax Officer, Ward-1(3), New Delhi-110002 (RESPONDENT)
PAN No. AABCL6812B		

**Assessee by : Ms. Manisha Lahoti, CA
Revenue by : Sh. Sanjay Kumar, Sr. DR**

Date of Hearing: 07.12.2021	Date of Pronouncement: 08.02.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-I, New Delhi dated 30.11.2018.

2. Following grounds have been raised by the assessee:

"1. The action of the lower authorities in not allowing the deduction claimed by the appellant u/s 80IC at Rs.1,73,93,280/- in unjust, illegal, arbitrary, illusory, unwarranted and deserves to be deleted.

2. The action of the Id. CIT(A) in not following preceding orders under the same facts and confirming the addition of Rs.1,73,83,280/- is unjust, illegal, arbitrary, illusory, unwarranted and the addition deserves to be deleted.

3. That the action of the lower authorities in holding that the assessee is not eligible to claim deduction u/s 80IC due to non-compliance of the conditions of that section is unjust, illegal, arbitrary, illusory, unwarranted and the addition deserves to be deleted."

3. The assessee company is carrying on activity of processing of cell phone batteries, chargers and other accessories. The assessee filed return of income declaring total income of Rs.1,70,000/- and book profit of Rs.1,73,82,8791- on 20.08.2014. Subsequently, in the assessment order, Assessing Officer disallowed the deduction u/s 80IC of Rs.1,73,93,280/-.

4. Aggrieved with the assessment order, the assessee has filed appeal before the Id. CIT(A).

5. During the year 2012-13, the Id. CIT(A) adjudicated the issue in favour of the assessee and the revenue is in appeal before the Tribunal.

6. The appellant has argued that the action of AO in not allowing its claim u/s 80IC in spite of order of Id. CIT(A) in A.Y. 2012-13 in its favour is unjust, illegal and arbitrary. During the Assessment proceedings for A.Y. 2012-13 and A.Y. 2013-14, the assessee was denied deduction u/s 80IC. The revenue held that for claiming deduction u/s 80IC of the Income Tax Act, 1961 the article/things or operation should be covered in fourteenth schedule and should not be listed In the thirteenth schedule. All components used for manufacturing of the Mobile phone battery are procured from outside and the assessee is merely assembling (Soldering, Fixing, Joining, Pasting and Wrapping) them to give a final shape. The article stated to be manufactured by the assessee is an article of plastic covered under item No. 20 of the Thirteenth schedule and thus not eligible for deduction u/s 80IC. Sister concern of the assessee is also engaged in manufacturing of die same product since Feb 2006, at the same premise end claiming similar deduction.

7. The Id. CIT(A) confirmed the addition made by the Assessing Officer on the grounds that the matter has been pending before the Tribunal for the A.Y. 2012-13 and no finality has been achieved yet.

8. We find that the case of the assessee for the A.Y. 2012-13 stands adjudicated by the Co-ordinate Bench of the Tribunal in ITA No. 735/Del/2016 dated 22.11.2018. The operative part of the order is as under:

"7. We have carefully considered the rival contentions, perused the paper book furnished before us and the orders of the lower authorities. The whole issue has been decided by the learned commissioner of income tax appeal vide page number 24 - 35 of his order as under:-

"I have considered the submission of the appellant and observation of the Assessing Officer. The appellant is carrying out manufacturing activity on a rented premise taken from Sh. Papinder Singh. As per this agreement w.e.f. 01.06.2011, Sh. Papinder Singh rented out the premises situated at Khasra No.853/854, Hadbast No. 950, Opposite Jogindra Co-operative Bank, Village Dangiyar, Kasauli Road, Sector Parwanoo which consists of ground floor on a monthly rent of Rs.48,000/- for a period of 10 years with 5% annual increase in the rent. On perusal of the Form 10CCB, it is seen that date of commencement of production by the undertaking is mentioned at 31.03.2010. In the same form initial assessment year from which the deduction is claim and mentioned at AY 2010-11. The appellant has claimed that Khasra No. 1/873 under Hadbast No. 950 are covered for exemption under Section 80 IC. The sector 2 Kasauli should be read as urbanization of the old villages across the country and is now part of sector 2 and the legal

documents still continue to carry the old recorded address. The appellant has submitted that land record of the property where factory is situated falls under the notified area and the AO has misunderstood the same. The appellant has stated that the lease deed entered into with the landlord gives complete address and has been mentioned the correct address of the factory and the address given in the lease deed is Khasra No.853/854, Hadbast No. 950, Kasauli Road, Opposite Jogindra Central Co-operative Bank, Sector -2, Parwanoo, Distt. Solan and this area comes under the notification of Central Excise vide notification no. 50/2000. Therefore, the observation of the AO that the factory premises do not fall in the notified area is not correct. It is also submitted by the appellant that address given in the two lease agreements is the same as in the first agreement Khasra No.853/54 is mentioned and in the second agreement it is mentioned as 853/854. Both the addresses mentioned in the above cited lease deeds is one and the same. Therefore, it is held that the manufacturing activity of the appellant falls under the notified area issued by the Central Excise Department.

Vide para 10 of the assessment order, the AO has mentioned that the appellant company has been established to claim deduction under Section 80 IC of the Act for manufacturing the same product as being manufactured by the present promoter of the company in his individual capacity. In this regard the appellant has submitted that present Director joined the company in November, 2010 and the company was originally incorporated in July, 2009 and have applied for and obtained 80IC registration prior to joining of the present Director. Therefore, the conclusion of the AO is not factually correct and

irrelevant to the issue, so far as the claim of deduction under section 80 IC is concerned.

Vide para 11.2 of the assessment order, the AO has mentioned that appellant has made two agreements for hiring the premises and in the first agreement the rent payment was shown at Rs. 11,000/- pm and in the second agreement the rent payment was shown at Rs. 48,000/- pm. The appellant has explained that because of additional requirement of space on expansion of manufacturing activities second lease agreement was entered into with the landlord and entire ground floor and first floor were taken on lease. While in earlier agreement the appellant had taken only second floor. The appellant has explained that because of expansion of the manufacturing activities fresh lease agreement was entered into and higher amount of rental was paid in comparison to the earlier agreement. The AR of the appellant stated that all these facts were explained to the AO at the time of assessment. However, he had completely ignored those facts? In para 12 of the Assessment order, the AO has mentioned that lease agreement started from 01.03.2010 and the appellant has started dispatching of goods on 31.03.2010. The AO has held that entire process cannot be done in the period of one month. To this the appellant has submitted that the manufacturing activities were carried out in assessment year 2010-11 and the AO has no jurisdiction to cast aspersion on the earlier year proceeding without knowing the facts. The appellant has further stated that it had started production in March, 2010 and the first sale was made on 31.03.2010 itself. In support of this contention, the appellant had submitted following documents before the AO to prove the manufacturing and sale of the batteries.

- (i) Proof of raw material purchased*
- (ii) Proof of sale of finished product on 31.03.2010*
- (iii) Customs invoice of machinery and raw material*
- (iv) Border check post received for inward movement of machinery and raw material alongwith proof of outward sales*

During the course of appellant proceedings the appellant submitted a paper book containing pages from 1 to 67 through which the appellant has explained that manufacturing activity in the case of appellant had commenced in the month of March, 2010. The appellant has further submitted that all these documents submitted before the AO but he has completely ignored those evidences. The appellant has also submitted that manufacturing of battery from different material is a highly technical job and it needs great deal of accuracy at each process. At the time of assessment proceedings the appellant had submitted a complete list of machine installed and used by the appellant. Such machines can be put to use as soon as they arrived at the premises and they do not need elaborate process of installation.

In view of these facts, the observation of the AO that one month time is not enough to complete the production process was not justified and the same were made without understanding the manufacturing process.

The appellant has further stated that appellant company has been registered with Central Excise Department, Pollution Control Board, VAT Department, Industries Department, Indian Customs, Electricity Board, Village Panchayat and others. All these registration process establish that appellant company had started production in the month of March, 2010. In support of its contention, the appellant has filed relevant documents in

the form of paper book from page 1-67 before me as well as before the AO which is placed on the record.

Vide para 12.1 of the assessment order, the AO has made observations about the sales effected by the appellant. In this regard the appellant has submitted that it has made sale of Rs.89,100/- for AY 2010-11, Rs. 4,06,400/- for AY 2011-12 and Rs.5,23,17,137/- for AY 2012-13. The appellant has also explained that the increase in sale in AY 2012-13. The appellant has also explained that the increase in sale in Assessment Year 2012-13 has happened because Sh. Pankaj Sachdeva has joined the company from 20.11.2010 and has taken over controlling interest. It is because of his efforts, experience in this line of business which led to the increased in turnover. It is also explained by the appellant that Sh. Pankaj Sachdeva was running a proprietary concern in the name of Adit Infotech in Parwanoo, New Delhi and out of total purchases made by the appellate company, purchases from the Adit Infotech has been made of Rs.59,568/- only for which no adverse inference can be drawn in the case of appellate company. The appellant has also submitted that Sh. Pankaj Sachdeva one of the Director of the appellate Company had ordered new plant and machinery in the name of Adit Infotech when those machines were arrived in Parwanoo, they were immediately sold to the appellate company. The gross block of Plant and Machinery as on 01.04.2011 was Rs.14,54,781/-. During the year there was a further addition to the Plant and Machinery of Rs.24,68,618/- and out of this, the plant and machinery purchased from Adit Infotech was of Rs.6,38,462/-. All these facts prove that the appellant has set up a plant and machinery on the premises taken on rent in the notified area and has started production of Mobile batteries, charger and

other accessories. During the course of appellate proceedings the AR of the appellant explained the manufacturing process of mobile batteries which is reproducing as under: -

The process involves, at the first stage, proper testing of the cells by way of 100% test of the open voltage of the cell, along with the internal resistance with the help of cell testers. After this, random 2% lot is selected for further testing to ensure that capacity of the cells, as measured in milli ampere hours (mAh), is correct as stated by the manufacturers.

On the other side, the PCM is also put through a 100% test for ensuring that it carries the necessary protections that are required of it, with a function test to ensure that it will be able to perform as needed in a mobile phone. A PCB tester is used to conduct this test on 100% lot.

The PCB is then sent for welding a nickel strip on the terminals, to make it ready for the battery. This is done with the help of a resistance spot welding machine.

After the PCM welding with the strip, it is sent to the next welding position to weld the nickel strip on the cell terminals.

Thereafter, another QC check is conducted to ensure that during welding, no component of the PCB has failed, or the cell has failed, which does happen in a very rare case (mainly below 0.02%).

Then, after this, the welded cells are sent to the injection molding section to encapsulate the PCB with the cell to give it a proper finish, apart from the exact shape as required in a mobile phone. The material used here is polyamide granule, which is a low temperature hotmelt, specifically made for high

end electronic equipment which should not be exposed to high temperatures.

On completion of the injection molding, the battery is first checked for physical appearance, and then sent for testing again, as at times, in rare cases (maybe only 1 in 25000) there is a chance of the welding connection opening up which would cause the battery to be dead when used.

This is then sent to the final stage of putting a bottom plastic piece for insulation to avoid short circuits from the bottom side.

As the cell body itself is Aluminum, a risk of short circuit is always there from the exterior, hence a label, usually made from paper or vinyl is then wrapped around the finished battery, to avoid this and also to give it shape, and a brand with model number, technical specification, etc.

This is then finally sent to the FQC section to check all parameters of the battery technically, before being sent for packaging and shipping out from the factory.

The process involved is a complete manufacturing process and appellant is engaged in the manufacturing process of mobile batteries, chargers and other accessories. The company is situated in the notified area and for that appellant has filed all relevant paper before me as well as before the AO in the paper book consisting page 1-67. All these evidences prove that appellant has carried out manufacturing process and fulfill the conditions as prescribed u/s 80IC of the Act. Therefore the appellant is entitled for deduction u/s 80 IC of the Act. The AO was not justified in disallowing the claim of the appellant on

the ground that appellant is simply engaged in the assembling of batteries and the factory of the appellant was not situated in a notified area. Therefore the disallowance of the claim of deduction U/s 80 IC of the Income Tax Act, 1961 of Rs.69,20,378/- made by the AO is deleted.

In this regard reliance is placed on the following judicial pronouncement:

(i) Commissioner of Income-tax -XI vs. Tej Pal Singh Kohli [2015] 56 taxmann.com 162 (Delhi)

Section 80-IC of the Income-tax Act, 1961 - Deductions - Special provisions in respect of certain undertakings or enterprises in certain special category States (Schedule XIV) - Assessment year 2009-10 - Assessee, engaged in manufacturing of electronic goods, claimed deduction under section 80-IC - Assessing Officer disallowed said claim on ground that no manufacturing activities were being carried out and business involved only trading under brand name of parent company and LCD monitor claimed to be manufactured by assessee was not covered under Schedule XIV - Whether where LCD monitors manufactured by assessee was covered under Schedule XIV and Assessing Officer proceeded on basis of doubts as to genuineness of claim rather than some concrete material, disallowance of deduction under section 80-IC was not justified - Held, yes [Para 9][In favour of assessee]

FACTS

The assessee, engaged in the manufacturing of electronic goods, claimed deduction under section 80-IC.

The Assessing Officer disallowed the claim of deduction under section 80-IC holding that assessee was engaged in the business of manufacture of electronic goods in the industrial area of Himachal Pradesh and business involved only trading under the brand name of the parent company and no adequate plant or machinery or infrastructure to carry out the manufacturing activities and, therefore, the LCD monitor claimed to be manufactured by the assessee was not covered under Schedule XIV.

On appeal, the Commissioner (Appeals) deleted the disallowance holding that selling the product in the brand name was no bar to claim the benefit on account of manufacturing activity of assembling components. On revenue's appeal, the Tribunal upheld the order of the Commissioner (Appeals).

On appeal:

HELD

The contentions raised by the revenue in this third appeal which are nothing but reiteration of what have already been agitated and correctly rejected by the two appellate authorities below. Aside from the reasons cited by the Tribunal affirming the conclusions reached by the Commissioner (Appeals), the LCD monitor would not fall within the description of items at SI. No. 13 in part (c) of XIV Schedule is also not correct. The LCD monitors do subscribe to the description of information and communication technology devices and, therefore, would attract, provided other statutory conditions are fulfilled, the benefit of exemption under section 80-IC. Assessing Officer had proceeded more on the basis of doubts entertained by him as to the genuineness of the claim rather than some concrete

material. If he had any reasons to disbelieve the correctness of the claim about the manufacturing activity (on the basis of considerations such as wages paid, electricity bills generated, the nature of the plant and machinery etc.), the least that could have been done by him was to have the manufacturing unit to the assessee inspected. For such purposes, he only had to take recourse to his statutory powers under the law. Without having undertaken any such exercise, as observed by the authorities below or rejecting the accuracy of the books of account, adverse conclusions on facts as reached could not have been drawn. [Para 9]

ii. Commissioner of Income-tax-IV vs. Faith Biotech (P.) Ltd. [2015] 54 taxmann.com 212 (Delhi)

Section 80-IC of the Income-tax Act, 1961 - Deductions - Profits and gains of undertakings in certain special category states (Manufacture) - Assessment years 2006-07, 2008-09 and 2009-10 - Product produced and sold by respondent- assessee was air purification system - For manufacturing said product, assessee had purchased parts like base motors, filters, UV lights etc. but final product produced was entirely different from its constituents or parts - Whether even though assessee carrying out assembling and manufacturing of air purifiers by using simple tools and testing equipments, it would be entitled to induction under section 80-IC - Held, yes [Para 5] [In favour of assessee]

FACTS

The assessee, engaged in business of manufacture of healthcare and surgical items, had set up a manufacturing unit for manufacture of air purification systems. It procured various

parts/components of air purification system from different vendors and assembled the same at the facility. The assessee claimed deduction under section 80-IC.

The Assessing Officer denied deduction holding that the aforesaid activities would not qualify as 'manufacturing activity,' as the assessee was merely a assembler and did not have requisite tools or machinery.

On appeal, the Commissioner (Appeals) allowed the assessee's claim.

The Tribunal upheld the order of the Commissioner (Appeals).

On revenue's appeal to the High Court:

HELD

The finding of the appellate authorities including the Tribunal is that the product produced and sold by the assessee was air purification system. For manufacturing the said product, the assessee had purchased parts like base motors, filters, UV lights, etc., but the final product produced was entirely different from its constituents or parts. The product manufactured or produced, i.e., the air purifier or air purification system, was completely a new and an entirely different commodity having distinct name, character and use. The assessee had filed a flow chart of the manufacturing process. The manufacturing unit stood registered with District Industries Centre, Roorkee, Pollution Control Department, Commercial Tax Department, Uttaranchal, etc. [Para 4]

The Assessing Officer did not dispute or question the purchase of the parts used for manufacturing as well as the sale

consideration received by the assessee from sale of the air purifiers but did doubt the purchase of the tools and implements required to undertake the manufacturing activities. It is not the case of the revenue that the air purifiers were not actually manufactured or sold to third parties and there was bogus purchase of parts or transaction for sale of the manufactured goods. The stand of the assessee was that it had used simple tools and testing equipments like frequency tester, multi meter, VV intensity meter, wires, CFM flow meter, ozone intensity monitor, nuts and bolts, hand drill, screw driver set, plier cutting set, etc., to carry out assembling and manufacturing of the air purifiers. [Para 5]

In view of the aforesaid factual findings, there is no substantial question of law for consideration. The appeals are thus, dismissed (para 6)

(iii) Resistoflex Dynamics (P.) Ltd. vs. Deputy Commissioner of Income- tax [2014] 48 taxmann.com 122 (Delhi - Trib.)

Section 80-IC of the Income-tax Act, 1961 - Deductions - Special provisions in respect of certain undertakings or enterprises in certain special category States (Manufacturing activity) - Assessment year 2009-10 - Assessee was engaged in manufacturing of 'air springs assembly and other metal parts' which were supplied to Indian Railways in its 'P' Unit - Assessee filed its return claiming deduction under section 80-IC - Similar claim of assessee had been allowed in earlier assessment years - However, for relevant assessment year, the Assessing Officer rejected assessee's claim taking a view that assessee was not engaged in manufacturing activity - Whether since assessee had been granted deduction under section 80-IC in earlier

years, in absence of any change in facts and circumstances, revenue could not suddenly take up ground that assessee was not doing any manufacturing and therefore, was not entitled for deduction - Held, yes - Whether even otherwise, since description of manufacturing process amply proved that imported material as well as local materials were used in manufacturing process which resulted in a final product quite distinct from components used and had distinct usage too, assessee's claim for deduction was to be allowed - Held, yes [In favour of assessee]

FACTS

The assessee was engaged in manufacturing of 'air springs assembly and other metal parts' which were supplied to Indian Railways in its 'P' unit.

The assessee filed its return claiming deduction under section 80-IC. The said deduction had been claimed in earlier assessment years as well.

The revenue authorities had allowed assessee's claim in earlier year. However, during relevant assessment year, the Assessing Officer took a view that assessee was not engaged in manufacturing activity and, therefore, its claim for deduction could not be accepted.

The Commissioner (Appeals) confirmed the order of the Assessing Officer.

On second appeal:

HELD

The assessee had been granted deduction under section 80-IC in earlier years and that two in assessment under section 143(3). Now in the 3rd year the Revenue cannot suddenly take up the ground that the assessee was not doing any manufacturing and therefore, was not entitled for deduction under section 80-IC. [Para 10]

Apart from above, on the merits also assessee has cogent case that assessee was manufacturing air spring assembly and supplying it to Indian Railways and it was not merely trading as alleged by the Revenue. (Para 11]

The deduction under section 80-IC is granted particularly to undertaking/enterprise referred to in either clause (a) or clause (b) of sub-section (2), to claim relief under section 80-IC, the said undertaking/enterprise must manufacture or produce an article or thing. What the terms to manufacture or produce any article or thing' signifies has not been specifically defined in the Act. [Para 13]

The essence of manufacturing is that what is made shall be a different thing from that out of which it is made despite the original material not losing its identity completely. Manufacturing process postulates some change in the shape of new things with a distinct name, character or use. [Para 14]

It is apparent from records that the assessee is engaged in manufacture and production of an article or thing named air spring assembly. The assessee imports (a) air spring component (fitted in the top plate) and (b) emergency air spring component (fitted in the emergency spring and calibrated with the bottom plate). These items are imported from Germany. Rest all other goods/ raw materials required in

the manufacturing process are procured from India and employed by the assessee in the manufacturing process at its P unit. [Para 15]

The description of manufacturing process amply proved that the imported material as well as local materials were used in a manufacturing process which resulted in a final product which was quite distinct from the components used, and had distinct usage too. [Para 16]

In view of aforesaid, the orders of the authorities below are set aside and it is held that the assessee was engaged in manufacturing of air spring assembly and is hence eligible for deduction under section 80- IC for the manufacturing activity undertaking at its 'P' unit. [Para 17]

In the result, the appeal filed by the assessee is allowed. [Para-18]

(iv) Income-tax Officer vs. Indo Swedish Instrument [2015] 57 taxmann.com 227 (Delhi - Trib.)

Section 80-IC of the Income-tax Act, 1961 - Deductions - Special provisions in respect of certain undertakings or enterprises in certain special category States (Commencement of business) - Assessment year 2008-09 - Assessee, engaged in business of manufacture of multifunction transducer, claimed deduction under section 80-IC - Assessing Officer restricted deduction to 50 per cent on an ad hoc estimation on ground of non submission of any proof of installation of machinery, etc. - On appeal, Commissioner (Appeals) granted relief for entire deduction based on findings that Deputy Director of Industries had issued a certificate of allocation of a registration number

for small scale enterprise for manufacturing transducers and meter showed date of commencement of commercial production - Whether where assessee had produced positive proof that it was a manufacturing/assembling unit, it was entitled to

The facts of the above cited judicial pronouncements are identical with the facts of appellant's case. Therefore, the ratio of the above cited judgments is squarely applicable in the case of appellant. Hence, disallowance of deduction made by the AO on the ground that there was no manufacturing activity carried out by the appellant and the factory was not situated in a notified area, was not justified and the same is deleted. The AO is directed to allow deduction u/s 80 IC of the Act of Rs.69,20,378/- as appellant is engaged in the manufacturing of mobile batteries in the notified area."

8. we agree with the finding of the learned commissioner of income tax appeals for the reason that assessee has set up a manufacturing unit for cell phone batteries chargers and other accessories before the sunset date on 31/03/2010. Precisely the assessee started operation in the financial year 2010 - 11. The allegation of the learned assessing officer is that as assessee is manufacturing these items which are falling under classification number 20 number of 13th schedule of list of articles or things for the state of Himachal Pradesh as „plastics and articles thereof“, the claim of the assessee is not eligible. The assessee has submitted the excise classification that what is the plastic and articles thereof and what are the products manufactured by the assessee. According to that the mere products Manufacturer by the assessee are not articles of plastic. Further the place where the assessee has eligible industrial undertaking was also proved to be notified area for

setting up of the industry which is eligible for exemption. The assessee has also shown the relevant rent agreements by which assessee is in possession of the relevant land area. To establish the date of the commencement the assessee has shown that the date of commencement of the unit is 31/3/2010, on the date on which the first sale bill was prepared. Same was also confirmed by the sales tax records and excise records of the assessee. The assessee has also shown the details of the machinery for the purpose of manufacturing of the specified item. Such details are also furnished along with copies of bills et cetera. The amount of purchases from the related party are also very minuscule that is only of Rs.59568/-. Even otherwise this is not the first year of the claim of the assessee but second-year of the Holiday period of 10 years.

In view of this we confirm the finding of the learned CIT appeal in deleting the disallowance of deduction under section 80 IC of the act of Rs.6920378/-. In the result ground number 1-3 of the appeal of the revenue is dismissed."

9. Since, the matter stands adjudicated in favour of the assessee for the A.Y. 2012-13, in the absence of any material change in the facts of the case and legal proposition, we hereby hold that the assessee is eligible for deduction u/s 80IC.

10. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 08/02/2022.

Sd/-

(A. D. Jain)
Vice President

Dated: 08/02/2022

Subodh Kumar, Sr. PS

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member