

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : DB : NEW DELHI  
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA Nos.6315 & 6314/Del/2012  
Assessment Years: 2007-08 & 2009-10

ACIT,  
Income Tax Office,  
Station Road,  
Kashipur.

Vs Sujatha Bio-tech,  
B-4, Industrial Area,  
Bazpur Road,  
Kashipur.

PAN: ABFFS3999A

(Appellant)

(Respondent)

Assessee by	:	Shri Saurabh Gupta, CA
Revenue by	:	Smt. Poonam Sharma, Sr. DR
Date of Hearing	:	21.03.2022
Date of Pronouncement	:	27.04.2022

ORDER

PER R.K. PANDA, AM:

ITA No.6315/Del/2012 filed by the Revenue is directed against the order dated 11.10.2012 of the CIT(A)-II, Dehradun, for AY 2007-08. ITA No.6314/Del/2012 filed by the Revenue is directed against the order dated 12<sup>th</sup> October, 2012 of the CIT(A)-II, Dehradun, for AY 200910. Since identical issues have been raised by the Revenue in both these appeals, therefore, these were heard together and are being disposed of by this common order.

ITA No.6315/Del/2012 (AY 2007-08).

2. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of manufacturing of herbal Velvette shampoo of various types and Nivaran-90 cough syrup. It filed its return of income on 21<sup>st</sup> May, 2007 declaring total income at Rs.4,98,48,417/-. The assessment u/s 143(3) was completed on 31.12.2009 determining the total income of the assessee at Rs.5,99,33,417/-. The assessee filed an application u/s 264 of the IT Act before the CIT, who passed an order on 14<sup>th</sup> May, 2010 u/s 263 restoring the issue to the file of the AO for denovo assessment. The application u/s 264 was later rejected by the CIT. Subsequently, the AO issued notice u/s 143(2) in response to which the Id. AR of the assessee appeared before the AO from time to time and filed the requisite details.

3. During the course of assessment proceedings, the AO noted that the assessee has claimed deduction u/s 80IC of the Act and arrived at nil net income. He noted that the assessee firm deals in the manufacturing of two products namely, Velvette Herbal shampoo and Nivaran-90 cough syrup. He further noted that a survey u/s 133A was conducted at the premises of the assessee on 18<sup>th</sup> July, 2007 so as to ascertain the correctness of the claim of exemption u/s 80IC of the Act as made by the assessee. During the said survey, the assessee was required to prove the composition and constitution of the machinery as noticed during the survey. The examination revealed that the old

machinery valued at Rs.74,71,382/- had been used in the manufacturing operation. It was further noticed that the percentage of the old machinery used was more than 20% of the total cost of machinery. The assessee stated that the old machinery valued at Rs.74,71,382/- was never used by the assessee in this business. The assessee, during the course of assessment proceedings, filed a chart showing the manufacturing operation and in terms of the chart the AO noted that the old machinery does not find any usage or application at any place in respect of products which were manufactured during the period under review. It was explained by the assessee that the machinery which was utilised for the manufacturing of Nivaran-90 cough syrup sachets and shampoo sachets was not old machinery. It was explained that the manufacturing was carried exclusively out of new machinery whose value was Rs.33,95,881/-. The assessee produced the list of both type of machinery along with bills and vouchers with the manufacturing capacity. It was also submitted that the claim made originally is a sum of Rs.133.96 lakhs in terms of entry against column No.26E of Form No.10CCB and the relevant claim made for depreciation at Rs.17,48,433/- was an inadvertent error. It was submitted that the depreciation disallowed would otherwise be covered by the exemption u/s 80IC of the Act and as such there was no separate benefit to the assessee out of the excess claim of depreciation.

4. The AO analysed the submissions made by the assessee and rejected the claim of deduction u/s 80IC of the Act by observing as under:-

“The assessee has drawn my attention to the survey report whereas per Annexure A1 the unused items of machinery numbering 13 items are listed. It is the case of the assessee that all these machines were mostly electric motors and other electrical appliances which were meant for use in case of need but were never put to use because the need to do so never arose.

The assessee has further submitted that the machinery at the licensed manufacturing premises at B-4, Industrial Estate, Kashipur, Udham Singh Nagar (Uttarakhand) are listed vide Annexure A which comprises of 28 different machines having 43 items in all. These were items of machinery that were utilized for the purpose of manufacturing sachets containing cough syrup and shampoo. A perusal of this list reveals that of these 22 of the 26 items were all brand new and that only some part of the other four items had reported previous usage. The items stated be used ones are Reactor machine (a Mixing vessel) and cooker candy (for manufacture of candies). No manufacturing of candy was done during the year and so these machines remained unused. The packing machines at Sr. No.21 and 22 were used for Nirvan Liquid Cough syrup. It is further pointed out that the assessee firm did have junk machinery which were all stored in the adjoining premises of the Bajaj factory. It is submitted that Bajaj factory had no electricity connection or license for manufacturing and was totally in-operational and further that the premises was always utilized for storage of junk. This statement is testified by the classification in the Survey Report. Before me, a reconciliation statement of the total machinery comprising 26 items alongwith their valuation has been filed. These items are stated to have been physically verified at the time of survey and are extracted on pages 5 and 6 of the survey report. The aggregate cost of these items is reported as Rs.29,49,976/- plus Rs.4,55,410.80 /- = Rs.34,05,386.80/-. The assessee submits that only these machines have been utilized for the purpose of manufacturing cough syrup and shampoo and that during the subject year no other item has been manufactured. The excise records would bear testimony to the fact that no other item has been cleared out of the bonded warehouse except cough syrup and shampoo. It has also submitted that the entirety of the manufactured items are cleared through excise Gate Passes and that monthly returns have regularly been filed with the Excise Department for such acts. The Id. Counsel of the assessee also submits that the Trade Tax Department and the Excise Department have accepted the monthly, quarterly and annual returns as filed by the assessee and that there is no dispute with regard to the assessment by those Departments for the subject year. It is also urged by the assessee that in respect of the claim

u/s 80 1C of the Act, it is only the machinery that » has been actually utilized for the purpose of manufacture of the product produced during the year which would be relevant and which has to be reckoned. My attention has specifically been invited to Explanation-2 to sub-section (3) of Section 80IA to state that usage of old machinery alongwith new ones is permitted under the Act subject to the conditions that the old machinery does not exceed the value of the total machinery by 20%. It is stated that by and large the old machinery has not been used for the purpose of manufacture and, therefore, the claim u/s 80 1C made by the assessee is both correct and proper. It is also further stated that junk machinery is not required to be taken into account for the purpose of computing value of machinery for computing rebate under section 80 1C of the Act. The sub-section itself provides for reckoning only the value of the machinery used in the manufacturing operations during the year. The assessee has produced before me copies of the bills and vouchers for all the new items of machinery which were purchased for the purpose of effecting the manufacturing operations during the year of cough syrup and shampoo.

It is however noticed that the assessee is in possession of machinery worth Rs.1.16 crores which includes the machinery valued at Rs. 34,05,386.80/- which is stated to have been used during the year for the manufacture of the two items as stated. The aspect of excluding items of machinery from the reckoning for the purposes of section 80IC rebate which have not taken part in the manufacturing operations is not quite feasible. The presumption is that whatsoever machinery was there with the assessee such had been utilized for the purpose of manufacture during the year which is also supported by the Form 10CCB filed by the assessee which the assessee now claims to be an inadvertent error. It is further seen that these documents have been produced at the fag end of the year and it is impossible to verify the veracity of bills of machines filed and it is also difficult to make third party inquiries. The- assessee had almost twenty months from the date of passing of order u/s 263 when it could have filed documents properly in support of the claim. The Inspector of this Circle was also authorized to make an on the spot inquiry of the unit. He has reported that only herbal cough syrup is being manufactured. His detailed report is placed on record. In the circumstances no deduction can be given for the value of old and junk machinery as claimed by the assessee. The claim of deduction u/s 80IC of the Act as sought for by the assessee, is therefore, rejected.”

5. In appeal, the Id.CIT(A) allowed the claim of deduction u/s 80IC of the Act by observing as under:-

“4.1 The findings of the Ld. AO and the averments of the Ld. AR have been considered. The bone of contention is whether the entire plant and machinery shown in the audited accounts has to be considered for the purposes of considering eligibility for rebate u/s 80IC or only that which has been actually used for the business of the assessee. The Ld. AR reiterated the language of section 80IC(4) read with section 80IA(3), Explanation 2, to canvass the point that the operative phrase was “does not exceed twenty percent of the total value of the machinery or plant used in the business.....” It is a matter of record that the plant and machinery actually used for manufacturing comprised less than 20% of used machinery. In view of this fact and the clear language of the relevant statute indicating that the plant and machinery actually used for the purposes of manufacturing should contain not more than 20% of old machinery, the contention of the Appellant is accepted. Strength is also drawn from the case of CIT vs Koprana Chemicals Co. Ltd. reported in 112 ITR 893 (Bom) where a claim u/s 80J (corresponding to section 15-C of the I.T. Act, 1922) was being considered. In this case also the machinery actually used for the purposes of business was determined to decide the case. Thus the Appellant succeeds with respect to these 5 grounds.”

6. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:-

“Whether Ld. CIT (A) has erred in law and on the facts of the case by allowing claim of deduction u/s 80IC of the I.T. Act, 1961 by interpreting the provisions of Explanation 2 to sub-section (3) of section 80IA made applicable to section 80IC by sub-section (4) of section 80IC to mean that for the purpose of determining ratio of 20% of old and previously used machinery employed by the undertaking, the machinery used in manufacturing process alone is to be considered and not the machinery employed in business?”

“Whether Ld. CIT (A) has erred in law and on the facts of the case by allowing the assessee to appropiate and reprobate i.e. to take depreciation u/s 32 on the old and used machinery for having been put to use on the one hand and not considering the value of this old and used machinery for determining the 20% ratio for the purpose of Explanation (2) to sub-section (3) of section 80IA made applicable to section 80IC by sub-section (4) of section 80IC of the I.T. Act, 1961?”

7. We have heard the rival arguments made by both sides, perused the order of the AO and CIT(A) and the paper book filed on behalf of the assessee. We find, the Id.CIT(A), without going through the survey report, where the authorized officer had given that most of the machinery physically verified during the survey were found to be old/second hand and were never used by the assessee allowed the claim of deduction u/s 80IC of the IT Act, 1961. Further, the findings of the AO that some of the machinery were transferred to assessee's business premises from Chennai where machines had been used by the assessee were not considered by Id. CIT(A) before allowing the claim of deduction u/s 80IC which in our opinion is not justified under the facts and circumstances of the case. We further find the assessee did not file any revised form No.10CCB of the audit report before the survey to prove his claim of inadvertent error and value of old machinery and depreciation claimed and this issue was not properly dealt with by the Id.CIT(A). Since the Id.CIT(A) has allowed the claim of the assessee without appreciating the findings of the survey report and the fact that the assessee has failed to prove that the items of old machinery excluded from manufacturing process is not more than 20% for the purpose of deduction u/s 80IC, therefore, such order of the CIT(A), in our opinion is not a speaking order. We, therefore, deem it proper to restore the issue to the file of the CIT(A) with a direction to pass a speaking order considering the findings in the survey report and decide the issue as per fact and law, after giving due

opportunity of being heard to the assessee. We hold and direct accordingly. The ground raised by the Revenue is accordingly allowed for statistical purpose.

ITA No.6314/Del/2012 (A.Y. 2009-10)

8. The ground raised by the Revenue reads as under:-

“Whether Ld. CIT-A was justified in law and on the facts of the case to allow the claim of deduction under section 80IC of the I.T. Act, 1961 for assessment year 2007-08 in spite of the fact that the assessee did not fulfill the conditions laid down in Section 80IC Sub Section (4) and consequently allowing claim of deduction for the assessment year 2009-10”

9. After hearing both the sides, we find, the Id.CIT(A), following his order for AY 2007-08 has allowed the claim of deduction u/s 80IC. We have already decided the issue for AY 2007-08 and the matter has been restored to the file of the CIT(A) with certain directions to decide the issue afresh. Following similar reasonings, the matter is restored to the file of the Id.CIT(A) with similar directions for deciding the issue afresh. The ground raised by the Revenue is accordingly allowed for statistical purposes.

10. In the result, both the appeals filed by the Revenue are allowed for statistical purpose.

Order pronounced in the open court on 27.04.2022.

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 27<sup>th</sup> April, 2022.

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi