आयकरअपीलीयअधिकरण "बी" न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI S.S.VISWANETHRA RAVI, JM
AND DR. DIPAK P. RIPOTE, AM

आयकरअपीलसं. / ITA No.922/PUN/2017
निर्धारणवर्ष / Assessment Year: 2011-12

The Assistant Commissioner of Income Tax, Circle-7, Pune.	Vs	Tata Toyo Radiator Ltd., Plot No.1, S.No.235 & 245, Village Hinjewadi, Tal. Mulshi, Pune – 411057. PAN: AAACT 5566 F
Appellant/ Assessee		Respondent /Revenue

Cross Objection No.38/PUN/2019
निर्धारणवर्ष / Assessment Year: 2011-12

Tata Toyo Radiator Ltd., Plot No.1, S.No.235 & 245, Village Hinjewadi, Tal. Mulshi, Pune – 411057. PAN: AAACT 5566 F	Vs	The Assistant Commissioner of Income Tax, Circle-7, Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri R.Murlidhar – AR
Revenue by	Shri Sardarsing Meena – DR
Date of hearing	30/03/2022
Date of pronouncement	10/06/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This Cross Objection appeal filed by the Revenue and Assessee is directed against the order of ld.Commissioner of Income Tax(Appeals)-5, Pune, Appeal No.PN/CIT(A)-5,DCIT, Circle-7, Pune/247/2015-16 for the A.Y. 2011-12 dated 15.11.2016.The Revenue raised the following grounds of appeal:

> *"1. Whether, on the facts and circumstance of the case and in law the learned CIT(Appeals) erred in deleting the addition made on account of disallowance of administrative services charged to TACO amounting to Rs.7,37,35,000?*
>
> *2. Whether, on the facts and circumstance of the case and in law the learned CIT(Appeals) erred in deleting the addition made u/s 80IC amounting to Rs.2,88,48,000/-?"*

2. In the Cross Objection Appeal the Assessee raised following Cross Objections:

> *"Claim of Allowability of Education Cess:*
>
> 1. *The Respondent prays that the liability for education cess on income tax paid for the year ought to be allowed as tax-deductible expenses while computing its taxable income.*
>
> *General:*
> 2. *The Respondent craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever all or any of the foregoing additional grounds of appeal at or before the hearing of the appeal"*

3. Brief facts of the case are that the assessee company is engaged in the business of manufacturing of Aluminum Radiators, Intercoolers, heater cores etc. The Assessing Officer(AO) disallowed Administrative service charges paid to TACO of Rs.7,37,35,000/-. Assessing officer also disallowed assessee's claim of 80IC for Pantnagar Plant.

4. Aggrieved by the order of the AO, the assessee filed appeal before the Commissioner of Income Tax (appeal). The ld.CIT(A) partially allowed appeal of the assessee .

5. Aggrieved by the same both Assessee and Department have filed Cross objection /appeal before this Tribunal.

6. The Ld.Authorised Representative(ld.AR) for the assessee explained at the outset that the issue of payment made to TACO has already been decided in assessee's own case by ITAT Pune for earlier years. The Ld.AR submitted that the Ld.CIT(A) has followed the decision of ITAT Pune in assessee's own case for earlier years. The Ld.AR further submitted that Hon'ble Bombay

High Court has confirmed the said order of the ITAT in ITA No.343 of 2017 & 354 of 2017. The Ld.AR filed copies of the said order.

7. Ld.DR fairly accepted that the issue is covered in favour of the assessee.

ITA No.922/PUN/2017 for A.Y.2011-12 of the Revenue:

Ground No. 1:

8. We have heard both the parties and perused the case file. It is observed that the ITAT Pune bench has held in Assessee's own case as under :

> Quote, *" Admittedly, the issue arising before us is identical to the issue before the Tribunal in Tata Johnson Controls Automotive Ltd. Vs. DCIT (supra) and following the same parity of reasoning, we hold that the said expenditure is to be allowed in entirety in the hands of assessee being paid in accordance with the terms of the Agreement agreed upon between the parties and for the purpose of carrying on the business of assessee more efficiently. It may be pointed out herein that the assessee had initially entered into an Agreement with TACO in 1997 and the said expenditure had been allowed in the hands of assessee from year to year. However, the assessee renewed the Agreement in 2006 and the expenditure for the first time was not allowed in the hands of assessee in assessment year 2006-07. We find no merit in the orders of authorities below in this regard and accordingly, we modify the order of CIT(A) and direct the Assessing Officer to allow the expenditure in entirety in the hands of assessee. It may be pointed out herein only that the issue vide grounds of appeal No.1 and 2 raised by the assessee in assessment year 2006-07 and grounds of appeal No.1 and 2 raised by the Revenue are similarly raised by both the parties in assessment years 2007-08 to 2009-10. Accordingly, we allow the claim of assessee vis-à-vis the said expenditure in all the years i.e. assessment years 2006-07 to 2009-10. The grounds of appeal No.1 and 2 raised by the assessee in all the appeals are thus, allowed and the grounds of appeal No.1 and 2 raised by the Revenue in all the appeals is thus, dismissed."* Unquote.

9. The said order of the ITAT Pune has been upheld by Hon'ble Bombay High Court in appeal ITA No.342, 343, 354, 358 of 2017 vide order dated 30/4/2019.

10. The Ld.Departmental Representative(ld.DR) of the Revenue has not pointed out any distinguishing factor. We have observed that facts of the case

are identical. Therefore, respectfully following the Order of Hon'ble Bombay High Court (supra) and ITAT Pune in assessee's own case, the appeal of the revenue regarding Administrative service charges is dismissed. Thus, Ground Number 1 of the revenue is dismissed.

Ground No.2:

11. With reference to Ground No.2 of the revenue, the Ld.DR submitted a written submission. Submission of the Ld.DR is reproduced here as under :

> **Quote "**
> *2.0 During the year under consideration which is the first year for the Pantnagar Plant the appellant claimed deduction u/s 80IC of the Act.* ***During the course of assessment proceedings the AO vide Notice u/s 142(1) dated 20.03.2015 asked the assessee to substantiate its claim u/s 80IC with necessary proofs which is clear from point No. 1 of assessee's submission before the AO dated 26.03.2015 and 31.03.2015 [copies placed at Page 37 and 38 of appellant's paperbook].*** *The AO has observed that on verification of fixed asset schedule it is seen that there was miniscule addition to the fixed asset during the year under consideration, that was not sufficient for starting manufacturing. Thus, the AO has observed that at Pantnagar Plant the company did not have sufficient infrastructure in the form of plant and machinery during the year under consideration to claim itself as manufacturing undertaking. He observed that the Pantnagar Plant was receiving different parts / goods from the different sites of the company and claimed that it involved in just assembling those parts at Pantnagar unit. Thus, considering the overall facts of the case during the year, the AO observed that the appellant had not proved with sufficient evidences that the undertaking was involved in the manufacturing activities as required under provisions of section 80IC of IT Act. He has thus, held that in the absence of proper apparatus of Plant and Machinery, the activity of assembling the parts claimed during the year did not constitute to be a manufacturing activity and thus, he rejected the claim of deduction u/s 80IC of the IT Act. The findings of the AO are discussed in Para 8 of the Assessment Order.*
>
> *3.0 The Ld. CIT(A) has dealt with the issue of deduction u/s 80IC in para 6 of the order. She has discussed the Ao's findings on the issue in Para 6.1 [Page 34 & 35] of the Order.*
>
> *the real issue which facts of the case suggest "whether any manufacturing activities were at all taken up during the year or the activity of assembling taken up by the appellant as claimed, during the year were of the nature of the manufacturing, so as to make the appellant eligible to claim deduction u/s 80IC during the year" was diverted to a limited academic discussion that the activity of assembling which results into a new product is tantamount to manufacturing, without taking the facts of the case into consideration.*

> *6.1 Therefore, to analyse the issue whether the assessee has actually taken up manufacturing activities of assembling / manufacturing of ECS during the year under consideration, the facts of the case needs to be taken into consideration. It is seen from the index of the appellant's paperbook that documents placed at Pages 632 to 672 are relevant documents on this issue. These documents were filed by the appellant before the Ld. CIT(A) as clear from the note placed by the appellant below the index which is reproduced as follows:* ***"Certified that the page nos. 1 to 55, 555 to 597 and 630 to 672 were filed before / available with the Commissioner of Income Tax(Appeals)- 5, Pune".*** *This note also clarifies that the said submissions were not filed during the course of assessment proceedings before the AO.* **" Unquote**.

12. The Ld.AR filed an elaborate chart along with pictures explaining the manufacturing process. It is as under :

> *"Perform leak test operation for radiator including visual check for no damage and forward the same for next manufacturing process.*
>
> *Install top channel RH(With green color product sticker) & LH (With blue color product sticker) to the radiator with member side support RH & LH by tightening 4nos (2nos for each side) M10X1.5X20L hex bolt assy with tightening torque of 18+2 NM. And from top with pre-welded M6 bolt by tightening 1 each of M6 hex nut, spring washer and plain washer with tightening torque of 6.4 + 1.5NM."*

13. We have heard both the parties. Perused the documents filed by them. Ld.DR specifically took us through the Audit Report filed u/s 80IC under Rule 18BBB which was in the paper book of the assessee from Page number 632 to 637. He submitted that the coloumn number 26(d)&(e) was left blank which is about the value of the Machinery or plant used. We have perused the said Audit report, observed that the coloumn related to machinery was blank, coloumn 28 regarding related party transaction was just blank, if it was not applicable then they should have mentioned so. The Ld.DR submitted that assessee has not submitted evidence of installation of machinery before AO. Per contra the ld.AR submitted that the said issue was not raised by the assessing Officer in the assessment order. But it is observed that the assessee has filed in its paper book from page number 645 to 652 copies of the documents filed before District Industrial centre , having stamp of District

Industrial Centre. In the said document the Assessee had mentioned value of the machinery. The assessee submitted that these papers were filed before the ld.CIT(A). The Revenue has not raised any ground of violation of rule 46A. The Ld.AR argued that the Assessing Officer has never challenged the installation of machinery, but the AO has not allowed the deduction only on the ground that the Assessee is merely doing assembly and not manufacturing. Ld.DR could not rebut this fact. It is a fact that in the assessment order the assessee has not challenged the installation of machinery. The Audit Report filed under Rule 18BBB was before the Assessing Officer and he has not pointed out any discrepancies in the Audit report. The ld.CIT(A) has allowed the appeal of the assessee stating that assembly would constitute manufacturing if new product is formed & the clientele are different relying on various judicial pronouncement. The ld.CIT(A) has given the finding that both these conditions are fulfilled by the assessee. On perusal of the submission of the assessee we agree with the findings of the ld.CIT(A). It is observed that Hon'ble Bombay High Court in the case of Tata Motors & Locomotive company Ltd 68ITR 25 has held that assembly of imported CKD parts into finished products constitute assembly. Therefore, we uphold the findings of the Ld.CIT(A) regarding assessee's eligibility for deduction u/s.80IC. Accordingly, the Ground No.2 of the Revenue is dismissed.

14. Thus, appeal of the Revenue is dismissed.

C.O. No.38/PUN/2019 for A.Y. 2011-12 of the Assessee:

15. The ld.Authorised Representative(ld.AR) of the Assessee has not pressed the grounds raised in the cross appeal regarding education cess, therefore, grounds of appeal in Cross Objection appeal of the assessee is dismissed as not pressed.

16. The Cross Objection appeal of the assessee is dismissed as withdrawn.

17. To sum up, the appeal of the Revenue in ITA No.922/PUN/2017 is dismissed and the Cross Objection Appeal of the Assessee in C.O. No.38/PUN/2019 is dismissed as withdrawn.

Order pronounced in the open Court on 10th June, 2022.

Sd/-	**Sd/-**
(S.S.VISWANETHRA RAVI)	**(DR. DIPAK P. RIPOTE)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 10th June, 2022/ *SGR**

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) concerned, Pune.
4. The Pr. CIT concerned, Pune.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, "**बी**" बेंच, पुणे / DR, ITAT, "**B**" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.