

आयकर अपीलीय अधिकरण
मुंबई पीठ "जे"
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एमबालगणेश., लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
आअसं. 4903/मुं/2011 (नि.व. 2004-05)
ITA NO.4903/MUM/2011 (A.Y.2004-05)

Procter & Gamble Hygiene and Health Care Ltd.
P&G Plaza, Cardinal Gracias Road,
Chakala, Andheri (East),
Mumbai – 400 099

PAN: AAACP-6332-M

..... अपीलार्थी /Appellant

बनाम Vs.

Commissioner of Income Tax, Cir.8,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020 .

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Yogesh Thar

प्रतिवादी द्वारा/Respondent by : Ms.Vatsalya Saxena and

Shri Tejinder Pal Singh Anand

सुनवाई की तिथि/ Date of hearing : 11/02/2022

घोषणा की तिथि/ Date of pronouncement : 09/05/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals) -17, Mumbai [in short 'the CIT(A)'] , dated 28/02/2011 for the assessment year 2004-05.

2. The solitary ground raised by the assessee in the present appeal is:

"1. The CIT(A) erred in confirming the action of the AO in not allowing claim u/s. 80-IB of the Act in respect of Whisper E- Line at 100% as claimed by the Appellant and restricting the same to 30%, on the alleged ground that the new

line was only an extension of the existing industrial undertaking and further that this year represents the 7th year of claim for such unit also.”

3. The brief facts of the case relevant to the issue raised in appeal are: The assessee is inter-alia engaged in manufacturing of sanitary napkins under the brand “Whisper”. The assessee had set up a unit for manufacturing of Whisper at Kundaim Industrial Estate, Goa a declared Industrially Backward State specified in the Eightieth Schedule. The assessee has been claiming deduction u/s. 80 IB(4) of the Income Tax Act, 1961 [in short ‘the Act’] in respect of sanitary napkins manufactured under the brand “Whisper” from the said industrial unit. After having claimed deduction @ 100% for the first five years, the assessee in the relevant assessment year is in 7th year of manufacturing in the aforesaid industrial undertaking and hence, claimed deduction u/s 80IB @ 30% on the profits and gains of existing product “Whisper”. During the period relevant to the assessment year under appeal, the assessee installed a new machine at the existing premises at Kundaim for manufacturing new range of sanitary napkins “Whisper E-line”. The manufacturing of new range of Sanitary napkins started in the month of February 2004. The assessee claimed deduction u/s. 80 IB(4) of the Act in respect of the new brand @100%. In so far as the assessee’s eligibility to claim deduction u/s. 80 IB(4) of the Act on the new brand Whisper E-line, the Revenue is not in dispute. The Assessing Officer disputed the rate of deduction The Assessing Officer based on the field enquiry report concluded that there is no separate unit for Whisper E-line products and sale of new product is carried out from the same undertaking at Kundaim. Consequently, the Assessing Officer restricted the deduction u/s.80 IB(4) of the Act in respect of new product @ 30% i.e. at par with the existing product. Aggrieved by the assessment order dated 31/12/2009 passed u/s. 143(3) r.w.s. 263 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) vide impugned order upheld the findings of Assessing Officer and dismissed the appeal of assessee. Hence, the present appeal.

4. Shri Yogesh Thar appearing on behalf of the assessee submitted that the assessee had set up a separate Industrial Undertaking for manufacturing of sanitary napkins under the brand 'Whisper E-line' which is much better in quality than the existing sanitary napkins marketed under the brand 'Whisper'. The assessee had installed a new machine and a separate line of manufacturing has been set up for manufacture of this new product. Since, the assessee has set up a separate industrial undertaking for manufacturing new products, the assessee qualifies for 100% deduction u/s. 80 IB(4) of the Act on the profits derived from said undertaking. The Id. Authorized Representative for the assessee contended that new product Whisper E-line introduced by the assessee does not substitute the existing product which is sold under the brand 'Whisper – Regular'. Both the products have their own market and cater to different segment of customers. The Id. Authorized Representative for the assessee referred to sales chart at page 247 of the paper book to show that sales of 'Whisper Regular' and 'Whisper E-line Ultra' have increased over the period of time and the sale of 'Whisper E-line Ultra' is not taking over the market share of 'Whisper-Regular'.

4.1 The Id. Authorized Representative for the assessee fairly admitted that the new Industrial Unit set up for manufacture of 'Whisper E-line' product has been established within the existing manufacturing facility at Kundaim Industrial Unit, Goa and share some common facilities with the existing unit. The Id. Authorized Representative for the assessee asserted that the assessee has set up new machine with latest technology for manufacture of Whisper E-line. However, there are certain peripheral plant and machine which were already in use by existing Industrial Unit and the same were commonly used for new undertaking as well. However, the total value of such machines is less than the threshold limit of 20% as mandated u/s. 80-IB(2), Explanation -2 of the Act. The written down value of existing plant and machinery is only to the extent of 13.48% of the total value of machinery &

plant used in new industrial undertaking. The Id. Authorized Representative for the assessee referred to the chart showing percentage of common Plant and Machinery used by Whisper E-line at page 254 of the paper book. The Id. Authorized Representative for the assessee further contended that the assessee has not violated any of the conditions mentioned in section 80 IB (2) of the Act, mandatory to be complied for being eligible to claim deduction u/s. 80 IB of the Act. The new Industrial Unit is not formed by splitting up or reconstruction of existing Industrial Unit. The market of the new product is different, the product manufacturing line is separately set up and even the raw material required for manufacturing Whisper E-line is different from the raw material used in manufacturing Whisper Regular.

4.2 The Id. Authorized Representative for the assessee contended that the assessee has employed twenty three workers during the relevant period for manufacturing of Whisper E-line. In support of his contention the Id. Authorized Representative for the assessee referred to the Audit Report u/s. 80 IB at page 99 of the paper book. The Id. Authorized Representative for the assessee further referred to the Audit Report u/s. 80IB in respect of existing Industrial Unit manufacturing Whisper Regular at page 110 of the paper book. The Id. Authorized Representative for the assessee pointed that for existing product 19 workers were employed in the manufacturing process.

4.3 The Id. Authorized Representative for the assessee contended that the Assessing Officer has restricted deduction u/s. 80 IB(4) @ 30% on the new Industrial Unit merely on the basis of enquiry report which was carried out for the assessment year 2005-06. The Id. Authorized Representative for the assessee referred to the enquiry report at page 209 of the paper book. During the course of enquiry the statement of Mr. Shubhrangsu Dutta, Manager Operations was recorded u/s. 131 of the Act. A specific query (Question No.7) was made to him; whether Whisper E-line and the existing manufacturing units, are separate manufacturing units, manufacture

separate variety of sanitary napkins, installed separately and identifiable. He answered the question in affirmative and specifically pointed that all the five units are separate and independent units, can be easily identifiable and manufactures different varieties of sanitary napkins. The Id. Authorized Representative for the assessee further referred to question No.10 of the statement, wherein it was asked to him about the difference between Whisper Regular and Whisper E-line products. In reply to question No.10 he explained that these products are different as the raw material used in manufacturing the same are different. For manufacture of Whisper Regular wood pulp is the raw material, wherea, for Whisper E-line absorbent gel is used as raw material. In reply to question No.11 he explained the ;manufacturing processes of the different products and in reply to question No.12, wherein a specific query was raised about the number of workers employed in each of the units. He categorically answered that Operators for each line are separate and do not work for other lines, whereas supporting staff for other resources like warehousing, maintenance and store are common for all units.

4.4 The Id. Authorized Representative for the assessee asserted that the document on record would clearly show that the assessee had set up a new and separate industrial undertaking for manufacturing a new line of product. The Id. Authorized Representative for the assessee prayed for reversing the findings of CIT(A) and allowing the appeal of assessee. The Id. Authorized Representative for the assessee in support of his contentions placed reliance on the following decisions:

- (i) *Ramco Cements Ltd. vs. JCIT in TC(A) No.570 of 2004 by Hon'ble Madras High Court.*
- (ii) *Gujarat Alkalies and Chemicals Ltd. vs. CIT, 350 ITR 94 (Guj)*
- (iii) *JCIT vs. Associated Capsules Pvt. Ltd. , 114 ITD 189 (Mum)*

5. Per contra, Ms. Vatsalya Saxena representing the Department vehemently supported the impugned order .The Id. Departmental Representative submitted that

a field enquiry was made by the Department. During the course of enquiry Asstt. Director of Income Tax (Investigation) visited the Plant and the statements of various persons were recorded u/s. 131 of the Act. During the course of enquiry it transpired that the machinery install for production of Whisper E-line is part of the existing Industrial Unit at Kundiam Industrial Estate, Goa. In fact, there is no product by the name Whisper E-line, it is the name of the manufacturing machine used for manufacturing of Whisper Ultra napkins. Though the machines are identifiable separately but there are other machines which are required for production of Whisper napkins, like electric air compression, air conditioning system, etc. These machines are common for all manufacturing facility. The Id. Departmental Representative pointed that there is no separate electric main board for the supply of electricity to the alleged new Industrial Unit. There is a common Excise and Sales Tax Number for the purported new product. The Id. Departmental Representative further referred to depreciation chart at page 90 and 94 of the paper book for the Financial Year ended 31/03/2004. The Id. Departmental Representative pointed that a perusal of the chart would show that the assets mentioned in the table are common. The Id. Departmental Representative further referred to the table at page 93 of the paper book to contend that the assessee is having common resources and the allocation of expenses is on the basis of sales turnover. The manufacturing process is carried out by substantial use of old plant and machinery. Thus, manufacturing of new product is 100% dependent on old unit. The assessee has failed to produce any documentary evidence to substantiate that both the products i.e. existing product and the new product has separate line of production. The assessee has not placed on record any documentary evidence to substantiate that a separate pay roll is maintained for staff and labour for the two products. The Id. Departmental Representative referred to para 31 from the judgment in the case of *Gujarat Alkalis & Chemicals Ltd. vs. CIT* (supra) to contend that if new unit is dependent to certain extent on the existing unit that by itself would be sufficient to

deny the benefit of exemption. The Id. Departmental Representative further submitted that the claim i.e. deduction @ 100% u/s. 80 IB of the Act in respect of alleged new Industrial Undertaking is unjustified. The assessee has merely expanded the production by installing new machine, the Assessing Officer has rightly allowed deduction u/s. 80 IB of the Act to the extent of 30% on the profits & gains derived from new product. The deduction under section 80IB is available to industrial undertaking and not to new product.

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also considered various documents placed on record in the form of paper book and the judgments on which reliance has been placed in support of the submissions made. The issue before us is in narrow in compass ie. Whether the facility for manufacturing of new product Whisper E-line is an Industrial Unit eligible for deduction @ 100% or 30% (being part of existing industrial undertaking) u/s. 80 IB(4) of the Act. The conditions mandatory to be complied for claiming deduction u/s. 80 IB are listed in sub-section (2) to Section 80IB of the Act. The relevant extract of the same is reproduced herein below for ready reference:

Section 80 IB

"1)

2) *This section applies to any industrial undertaking which fulfils all the following conditions, namely :*

(i) it is not formed by splitting up , or the reconstruction , of a business already in existence :

Provided *that this condition shall not apply in respect of an industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;*

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

(iii) it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India :

Provided that the condition in this clause shall, in relation to a small scale industrial undertaking or an industrial undertaking referred to in sub-section (4) shall apply as if the words "not being any article or thing specified in the list in the Eleventh Schedule" had been omitted.

Explanation 1.—For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely :

- (a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;*
- (b) such machinery or plant is imported into India from any country outside India; and*
- (c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.*

Explanation 2. Where in the case of an industrial undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with;

(iv) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power."

7. The undisputed facts are that the new manufacturing facility set up by the assessee is within the same premises where the assessee is carrying out manufacturing activity of the existing product Whisper Regular. The assessee is also utilizing some of the old machinery which is being utilized by the existing product line. Now, in the backdrop of these facts we will see whether assessee qualifies the conditions as set out in sub-section (2) of Section 80 IB of the Act:

(i) Splitting up or Reconstruction of Existing Business:

It is not the case of Revenue that the new production line has been formed by splitting up or reconstruction of existing business. The observation of the Assessing Officer is that the assessee is not having a separate industrial undertaking for the new product. Therefore, the first condition laid down in section 80IB(2) creates no bar for the assessee in claiming deduction;

(ii) Transfer of Machinery or Plant previously used:

As per the Revenue the assessee is using substantial existing Plant and Machinery for manufacturing of Whisper E-line. In fact, as per Revenue the manufacturing of new product is 100% dependent on old unit. The assessee has fairly admitted that there are some common (previously used) Plant and Machinery viz. air compressor, air conditioning system, etc. which is shared for manufacturing of Whisper E-line product and Whisper Regular, however, the written down value of such used machinery is less than 20% of the total value of Machinery used in industrial undertaking set up for manufacturing Whisper E-line. The assessee furnished a chart showing percentage of common Plant and Machinery used for Whisper E-line at page 254 of the paper book. As per the details submitted by the assessee, the percentage of common Plant and Machinery used for Whisper E-line is 13.48%. Explanation -2 to sub-section(2) specifies the limit of use of old Plant and Machinery to 20%. In fact, the assessee has not disputed the use of old Plant and Machinery however, the written down value of old Plant and Machinery used by the assessee in manufacturing of new line of product is well within the limit provided under the section. Hence, the assessee qualifies second condition laid down in sub-section (2) of section 80IB of the Act.

(iii) Manufacturing or produces any article not being specified in 11th Schedule.

There is no dispute on this condition. There is no averment in the assessment order to this effect.

(iv) Industrial Undertaking manufactures article or things employing 10 or more workers with the aid of power.

The Revenue has raised objection that the assessee has no separate dedicated staff for managing production line of Whisper E-line. To counter the objection raised by the Revenue, the Id. Authorized Representative for the assessee has drawn our attention to the Audit Report u/s. 80 IB of the Act at page 99 of the paper book. A perusal of the report shows that number of workers employed in manufacturing of Whisper E-line is twenty three (23). This fact is further corroborated by the statement of Shubhrangsu Dutta, Manager Operations recorded u/s.131 of the Act on 18/11/2008 during inquiry proceedings. In reply to question No.12, he categorically stated that operators for each line of product are separate and they do not work on other lines. However, he admitted the fact that supporting staff for warehouse, maintenance, store etc. are common for all. The assessee is allocating common expenditure for different resources on the basis of sale to total turnover ratio and in so far as common human resources, expenditure is allocated on the basis of E-line employee count to total employees count. The allocation of expenditure for the relevant period is tabulated at page 93 of the paper book. Another objection of Revenue is that the assessee has not been able to show employees roaster and workshop records. The assessee has furnished these documents before us as additional evidences. *De hors* the additional evidences furnished now, taking into consideration the fact that the Revenue has not rejected the Audit Report U/s 80IB filed by the assessee coupled with the documents already on record, we are satisfied that the assessee has set up a separate Industrial Undertaking for manufacturing of a new product i.e. Whisper E-line Ultra employing more than 10 workers with the aid of power.

8. Thus, the assessee qualifies all the statutory conditions necessary for industrial undertaking to claim deduction u/s.80IB of the Act.

EXPANSION VS. NEW INDUSTRIAL UNDERTAKING:

9. The Assessing Officer has admitted the fact that the assessee has installed new machine for manufacturing/production of Whisper E-line. According to the Assessing Officer it is not a new product but a different range of existing product manufactured at the existing manufacturing facility.

10. On the contrary, stand of the assessee is Whisper E-line is a separate and distinct from the existing product. The distinction has been made on the basis of technology of production, use of raw material and the market new product would cater. As has been pointed earlier the installation of new plant and machinery for manufacturing of Whisper E-line is not in dispute though in the investigation report, the Assistant Director of Income Tax (Inv.) has observed that there is no new separate unit for manufacturing of Whisper E-line napkins; infact there is no product namely Whisper E-Line, but it is the name of the machine which is part of existing unit; it is further observed in the report that the machine is separately identifiable and was physically verified. This report itself is self-contradictory. During the enquiry proceedings, statement of Shri Deepak Ramachandran, Plant Incharge, was recorded u/s 131 of the Act on 18.11.2008. A specific query was made to him asking difference between Sanitary napkins produced till 1997 and napkins produced after 1997 vide question no. 8. In reply to the said question, he explained that till 2004, the assessee was producing sanitary napkins with Zuiko machine. Ultra whisper sanitary napkins were imported and sold in Indian market. After considering the response and need of the customers, Ultra Whisper Napkins were started manufacturing by the assessee. The Id. Authorised Representative of the assessee clarified that Ultra Whisper Sanitary napkins were the new product that was being

manufactured in E-Line machine installed in the period relevant to Assessment Year 2004-05.

The Id. Authorized Representative for the assessee has further drawn our attention to the statement of Shubhrangsu Dutta, Manager Operations (supra). In the said statement he has categorically stated that the assessee has five units which are separate and independent. In his statement he has further clarified that the raw material used for manufacturing Whisper E-line is different from the raw material used for manufacturing Whisper Regular. In Whisper E-line gel technology is used as absorbent whereas in Whisper Regular wood pulp is used as absorbent. As regards manufacturing mechanism, he has explained that Whisper E-line is manufactured by cutting mechanism for absorbent jelly material, whereas, Whisper Regular is manufactured by using grinding mechanism. Thus, the manufacturing process and mechanism explained by the Operation Manager clearly indicates that the ultimate use of both products i.e. Whisper Regular and Whisper E-line even if for the same purpose, there is ample difference in manufacturing process, as also the raw material used as absorbent.

11. The assessee has further drawn our attention to the sales turnover of both products i.e. Whisper Regular and Whisper E-line Ultra for the assessment year 2003-04 to 2006-07. A perusal of the sales chart at page 247 of the paper book shows that Whisper E-line was introduced in the market during the period relevant to assessment year under appeal. Both products i.e. Whisper Regular and Whisper E-line Ultra have separate market share and their sales have grown over the period of time. Hence, from the facts available on record it can be safely concluded that the new product line is not merely expansion of the existing manufacturing facility. A new industrial undertaking has been set up for manufacturing of new product in the premises where the existing industrial undertaking is already in operation with exclusive set of operators and separate manufacturing line.

12. The Hon'ble Madras High Court in the case of *Ramco Cements Ltd. vs. Jt.CIT* (supra) has held that the requirement of section 80IA for claiming deduction is 'profits and gains derived by an Industrial Undertaking' and not 'New Industrial Undertaking'. The Hon'ble High Court further held that there is no expression "expansion" in sub-section(2) to Section 80IA(2) of the Act, if the conditions set out in sub-section (2) are satisfied, the industrial undertaking is eligible for deduction u/s 80IA of the Act. The relevant extract of the judgement reads as under:

16. What the assessing officer has done, in these cases, is that he had taken the industrial undertaking set up by the appellant to be one of reconstruction, coming within clause (i) of sub-section (2).

17. But, there is no denial of the fact that by setting up a new Kiln, the maximum production capacity of the appellant was actually increased from what it was earlier. In other words, the activity undertaken by the appellant can, at best, be termed as one of expansion of an existing facility.

18. Unfortunately for the Revenue, clause (i) of sub-section (2) of section 80 IA does not use the expression "expansion". To deny the benefit to the appellant, under clause (i) of sub-section (2), it should fall either under the category of "splitting up of existing unit" or under the category of "reconstruction of the existing unit". Both in the case of splitting up and in the case of reconstruction, there is no expansion. The expression "expansion", as such, is not used in clause (i).

19. It is not the case of the Revenue that the case of the appellant is covered either by clause (ii) or that the appellant does not satisfy the conditions prescribed in any of the three clauses viz., (iii), (iv) or (v). Therefore, the presumption on the part of the respondent that the benefit under section 80 IA would not apply unless there is a new Undertaking is not traceable to sub-section (2)."

The provisions of section 80IB(2) are *pari materia* to Section 80IA(2) in so far as conditions and use of expression 'Industrial Undertaking' and other eligibility conditions are concerned. Here it would be relevant to mention that the revenue has placed reliance on the decision of Hon'ble Apex Court in the case of *State of Gujarat vs Saurashtra Cement and Chemical Industries* reported as 260 ITR 181 (SC). We find that the aforesaid decision has been considered and distinguished on facts

by the Hon'ble Madras High Court in the aforesaid decision vide para 23. Therefore, the ratio laid down in the judgement of Hon'ble Madras High Court rendered in the case of Ramco Cements Limited (supra) would equally apply in the facts of the present case.

13. The Hon'ble Gujarat High Court in the case of *Gujarat Alkalies & Chemicals Ltd.* (supra) while dealing with the assessee's claim of deduction u/s. 80I, wherein the issue raised by the Revenue was whether the new undertaking is dependent to certain extent on existing undertaking would deprive assessee of benefit u/s. 80I of the Act, the Hon'ble High Court held as under:

*"24. We are not able to understand the logic of the argument that the true test would be as to whether a new industrial undertaking can function independently of the existing industrial undertaking. If this argument of the Revenue is accepted, it will amount to adding a new clause in Section 80-I of the Act. Assuming for the moment that the new unit is not capable of independently producing the goods without taking the assistance of the existing plant and machinery of the old unit is no ground to reject the claim under Section 80-I of the Act. It all depends upon the mechanism and technology. As held by the Supreme Court in Textile Machinery Corporation (supra), such a new industrially recognizable unit of an assessee cannot be said to be reconstruction of his old business since there is no transfer of any assets of the old business to the new undertaking which takes place when there is reconstruction of the old business. For the purpose of Section 80-I of the Act, the industrial units setup must be new in the sense that new plant and machinery are erected for producing either the same commodities or some distinct commodities. In order to deny the benefit of Section 80-I, the new undertaking must be formed by reconstruction of the old business. In the present case, there is no formation of any industrial undertaking out of the existing business since that can take place only when the assets of the old business are transferred substantially to the new undertaking. **Just because the new undertaking is dependent to a certain extent on the existing undertaking should not deprive the new undertaking of the status of integrated unit by itself wherein articles are produced and atleast a minimum of 10 person with the aid of the power and a minimum of 20 persons without the aid of the power have been employed. This aspect has been well-explained by the Supreme Court in Textile Machinery Corporation (supra), laying down the requisite tests for an undertaking to be entitled to the benefit under Section 15C of the Act of 1922 (now Section 80-I of 1961).** The Supreme Court has held that in order to be entitled to the benefit under Section 15C, the following facts have to be established by the assessee, subject always to time-schedule in the section:*

1. Investment of substantial fresh capital in the industrial undertaking set up,

2. *employment of requisite labour therein,*
3. *manufacture or production of articles in the said undertaking,*
4. *earning of profits clearly attributable to the said new undertaking, and*
5. *above all, a separate and distinct identity of the industrial unit set up.*

25. We are of the view that so far as the fifth test is concerned i.e. a separate and distinct identity, only because to a certain extent the new undertaking is dependent on the existing unit, will not deprive the new undertaking the status of a separate and distinct identity. It all depends on the nature of the technology and the mechanism of production. We cannot ignore the fact that new machinery and new plant have been installed at an investment of Rs.7 crore some time in the year 1982-83 i.e. almost three decades back and also the fact that the production has gone from 34000 M.Tonnes to almost 75000 M. Tonnes."

[emphasised by us]

Thus, from the aforesaid judgment it is unambiguously clear that where an assessee establishes an industrial undertaking and even if such industrial undertaking is dependent to a certain extent on existing industrial undertaking, the new industrial undertaking would not be deprived of benefit under section 80-I, if other mandatory conditions are satisfied.

In the instant case, the assessee has been able to show that an industrial undertaking has been set up for manufacturing new line of product, considering the objection raised by Revenue that the new line of manufacturing is dependent on the existing manufacturing facility to a certain extent, such dependence would not be an impediment in claiming deduction u/s.80IB, if the conditions set out in sub-section (2) are satisfied, which the assessee herein qualifies all the conditions.

14. Now coming to the peripheral objections raised by the Revenue viz. there is no separate electricity board, common Sales Tax number, etc. We find that the Tribunal in the case of *JCIT vs. Associated Capsules Ltd.* (supra), wherein the issue was claim of deduction u/s. 80I/80IA of the Act, somewhat similar objections were raised by the Revenue to deny deduction under section 80I /80IA of the Act . In the said case the assessee was engaged in production of empty hard gelatine capsules and their sale to pharmaceutical companies. The assessee had installed a new

undertaking on which relief u/s. 80I and 80 IA was claimed, the same was turned down by the Assessing Officer primarily for the reason that product manufactured by the assessee in all four undertaking including the new undertaking was capsules and that to in the units located in same premises and hence, all four undertakings would constitute one undertaking and not four undertakings as claimed by the assessee. In the First Appellate proceedings, the CIT(A) decided the issue in favour of the assessee holding that each of the undertaking was separate and independent. The Revenue carried the issue in appeal before the Tribunal. The Tribunal upheld the findings of CIT(A). The Tribunal further observed on organizational features, commonality of some of the facilities, etc. as under:-

*“14. Thus what is relevant is whether the unit in question is engaged in the production or manufacture of specified articles or things in its own right. It is not in dispute that the units in question in the assessee-company are engaged in the production of capsules and has also produced the capsules in the year under appeal. The assessee has been denied deduction on the sole ground that all the units are also producing capsules and are therefore, part of the same undertaking. Learned CIT(A), after examining the relevant materials on record, has held that the unit in question is not only a well integrated unit producing capsules on its own but also has separate and distinct identity of its own. He has given detailed reasoning in his appellate order for coming to the conclusion that each unit in the assessee-company is engaged in the production of capsules in its own right. **Organizational features, such as the legal status of the unit or the fact that they are controlled or managed by common management or located in the same premises where existing units are located to derive certain advantages or are producing similar goods as the existing ones are hardly relevant to decide whether a unit is in the nature of undertaking. Likewise, the fact that procurement of raw materials is common or certain post-manufacturing activities are centrally carried out for drawing certain facilities from a common source are not, as rightly pointed out by the learned CIT(A), sufficient enough to hold that each unit is not engaged in manufacturing or producing the articles or things or is not independent or separate from others.** The findings recorded by the learned CIT(A) that the unit in question is separately and independently engaged in the production of capsules on its own have not been shown to be incorrect or based on no material. It is also not in dispute that each undertaking has not only produced the capsules but also derived the profits and gains from them. The Department has also not rebutted the assessee's submission that it has treated each undertaking as separate and independent in its accounts. It is also not the case of the Department that any of the negative tests laid down in section 80-1(2) is attracted in the case before us. We therefore endorse the findings recorded as*

also the order passed by him in this behalf and consequently dismiss Ground No.1 taken by the Department”

[Emphasized by us]

Thus, in the light of aforesaid findings of the Tribunal, the peripheral issue raised by the Revenue are not determinative to hold that a separate industrial undertaking has not been set up by the assessee.

15. Thus, in the light of the facts of the case and the decision discussed above we hold that the new manufacturing facility for manufacturing Whisper E-line is a separate Industrial undertaking eligible for deduction u/s. 80 IB(4) of the Act @ 100%.

16. In the result, appeal by assessee stands allowed.

Order pronounced in the open court on Monday the 9th day of May, 2022.

Sd/-

(M. BALAGANESH)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 09/05/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai