IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'DB', NEW DELHI

BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.1736/Del/2017
Assessment Year: 2012 -13

ACIT Circle-1, Haldwani	**Vs**	**M/s. Himalayan Autoera (India) Pvt. Ltd. Plot No-61 & 68, Sector-IIDC, IIE, SIDCUL, Pantnagar PAN No.AACCH0708D**
(APPELLANT)		**(RESPONDENT)**

Appellant	Smt. Mayank Prabha Tomar, Sr. DR
Respondent	Sh. Pranav Yadav, Advocate

Date of hearing:	26/08/2022
Date of Pronouncement:	26/08/2022

ORDER

PER N.K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A), Haldwani dated 19.12.2016 pertaining to A.Y.2012-13.

2. The solitary grievance of the revenue read as under :-

1. That the Ld.CIT(A), Haldwani has erred in law and on fact in allowing relief u/s 80IC of the IT Act, against the disallowance of deduction of Rs. 3,14,06,421/-. The Ld. CIT(A) has allowed a relief u/s 80IC of the I.T.Act, 1961 relying upon decision covered by appellate order for AY 2009-10 dated 28-08-2012 of Ld. CIT(A)-II, Dehradun in assessee(s) own case without going into the real essence *of* the term 'manufacturing' activity available to the assessee, as per section 2(29BA) of the I. T. Act, 1961. Since, the assessee has done only job related works in raw materials which were shown as purchase through book entries could not be falls under the ambit of 'manufacturing' activity as per section 2(29BA) of the I. T. Act, 1961. The decision implies that on the basis of process flow chart would automatically be deemed to be that once an object or substance is subjected to job related work had the transformation of the article in order to bring new article into existence and this activity would amount to 'manufacturing' and be eligible for deduction u/s 80IC of the I.T.Act, 1961.

3. Briefly stated that the facts of the case are that the assessee company drives income from manufacturing motor vehicle parts. During the year under consideration the assessee declared total income of Rs.33555245/-and claimed deduction under section 80 IC of the Act amounting to Rs.31406421/-.

4. During the course of the scrutiny assessment proceedings the AO found that all the purchase of raw material and sale of final products are made to only one party namely M/s. Spicer India Ltd. The assessee was asked to justify its claim of deduction u/s. 80 IC of the Act. The assessee filed a detailed reply which did not find any favour with the AO who found that in the previous assessment years deduction claimed by the assessee was denied by the AO. The AO further found that in the previous assessment year the CIT(A) allowed the appeal of the assessee but

since the revenue has preferred second appeal before the Tribunal the claim of deduction was denied.

5. We find that this Tribunal in ITA No.5787/Del/2012 for A.Y. 2009-10 and ITA No.4521/Del/2013 for A.Y. 2010-11 has considered the similar grievance and has decided the appeal in favour of the assessee and against the revenue. The relevant findings of the coordinate Bench read as under :-

8. Undisputedly, the assessee is manufacturing crank shaft. It is also not in dispute that assessee company is registered with Department of Commercial Tax, Government of Uttarakhand as a wholly manufacturing unit as per certificate of registration, available at page 64 of the paper book. It is also not in dispute that the assessee company is registered as a Small Scale Industry Unit

(SSI Unit), as per form no.808, available at page 77 of the paper book, registered with Department of Industry.

9. In the backdrop of the aforesaid undisputed facts, it is difficult to accept the contention raised by the ld. DR that the assessee is not into manufacturing activities and that raw material is coming and going out from the assessee unit only with a different nomenclature. From the process flow chart, available at pages 137 & 138 of the paper book, it is proved on record that comprehensive manufacturing activities are being carried out by the assessee company, which has never been disputed by the AO. It does not matter if the entire sale of the manufactured products as has been made by the assessee company, to its sister concern and it cannot be deprived from claiming deduction u/s 80-IC on this score.

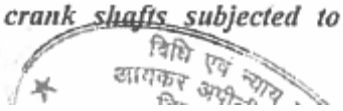
10. Furthermore, it is settled principle of law that for arguments sake, even if the assessee company is assumed to be into jobwork even then it cannot be denied the benefit of section 80-IC of the Act as has been held by Hon'ble Delhi High Court in judgment cited as ***CIT- III vs. Sadhu Forging Limited – 2011 (6) TMI 9 – Delhi High Court*** wherein it is held as under :-

> ***"Deduction u/s 80 IB - AO held that the scrap sale charges and job work/labour charges are to***

be excluded for the purpose of giving effect to deduction under Section 80 IB of the Act - Held that - the activity of forging was "manufacturing" within the ambit of Section 80IB - It was immaterial that the assessee was doing the job of forging also for customers and was charging them on job-work basis or on the basis of labour charges. It will still be qualified as carrying eligible business under Section 80IB - the activities of the assessee in giving heat treatment for which it had earned labour charges and job-work charges, it can thus be said that the appellant had done a process on the raw material which was nothing but a part and parcel of the manufacturing process of the industrial undertaking - These were gains derived from industrial undertakings and so entitled for the purpose of computing deduction under Section 80IB - Decided in the favour of the assessee"

11. Moreover, when the assessee is manufacturing crank shaft the process of manufacturing the same is held to be a manufacturing activity by Hon'ble Madras High Court rendered in a judgment cited as ***CIT vs. Tamil Nadu Heat Treatment and Fetting Services (P.) Ltd. – 1998 (2) TMI 71 – Madras High Court*** wherein it is held as under :-

"We have to take note of the fact that the process of heat treatment to crankshaft, etc., were absolutely essential for rendering it marketable. Automobile parts, as crankshafts, need to be subjected to heat treatment to increase the wear and tear resistance to remove the inordinate stress and increase tensile strength. The raw untreated crank shafts and the like can never be used in an automobile industry. Thus, in the crank shafts subjected to the process of heat



treatment, etc., a qualitative change is effected, to be fit for use in automobiles, although there is no physical change in them. In such state of affairs, it cannot at all be stated that the crank shafts, subjected to heat treatment, etc., cannot at all change the status of new products of different quality for a different quality for a different purpose altogether. In this view of the matter, we are of the view that the activities of the assessee in relation to raw or untreated crank shafts being subjected to heat treatment, etc., is definitely a "manufacturing activity" entitling it to claim "investment allowance" under section 32A of the Income-tax Act. We answer questions Nos. 2 and 3 accordingly. In fine, we hold that the assessee is engaged in manufacturing activities in relation to crankshafts being subjected to heat treatment, etc., for the assessment years 1984-85, 1985-86 and 1986-87 and, consequently, entitled to "investment allowance" under section 32A of the Income-tax Act, 1961. These tax case petitions are, thus, disposed of. There shall, however, be no order as to costs, in the circumstances of the case."

12. So far as question of entertaining additional evidence by ld. CIT (A) as raised by ld. DR for the Revenue, is concerned, apparently no additional evidence has been entertained but the documents which are relied upon by the assessee during assessment proceedings were only brought on record by calling remand report from the AO which is duly referred to by ld. CIT (A) in para 4.2 of the impugned order and the facts contained therein being self explanatory, the ld. CIT (A) has rightly proceeded to decide the issue before him.

13. So, in the given circumstances, we are of the considered view that the ld. CIT (A) has arrived at legal and logical conclusion that the assessee company is engaged in manufacturing activities and is entitled for deduction u/s 80-IC. Hence, Ground no.1 of ITA No.5787/Del/2012 (AY 2009-10) and Ground No.1 of ITA No.4521/Del/2013 (AY 2010-11) are decided against the Revenue.

6. Respectfully following the findings of the coordinate Bench (supra) we decline to interfere with the findings of the CIT(A). The appeal filed by the revenue is dismissed.

7. Decision announced in the open court on 26.08.2022.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA, Sr. Private Secretary
Date:- .08.2022
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI