

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2055/M/2018  
Assessment Year: 2012-13  
&  
ITA No.4204/M/2018  
Assessment Year: 2013-14**

ACIT 33(1), Room No.711, 7 <sup>th</sup> Floor, Bldg. No.C-12, Pratyakshkar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400051	Vs.	M/s. ALF Engineering Company, H.No.227, 231 Sector -7, Integrated Industrial Estate Sedcut, Haridwar, Hardwar- 249403 <b>PAN: AAFA2372B</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri Manoj Sinha, D.R.

Date of Hearing : 06 . 09 . 2022  
Date of Pronouncement : 20 . 09 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

For the sake of brevity aforesaid interconnected appeals bearing common question of law and facts to be decided by the Bench are taken up for disposal by way of composite order.

The appellant, ACIT 33(1), Mumbai (hereinafter referred to as 'the Revenue') by filing the present appeals, sought to set aside

the impugned order dated 22.12.2017 & 20.03.2018 passed by Commissioner of Income Tax (Appeals)-45, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment years 2012-13 & 2013-14 respectively on identically worded grounds except the difference in figures of additions/disallowances inter alia that :-

*"(i) On the facts and in circumstances of the case the Ld, CIT(A) erred in allowing the claim of the assessee u/s 80IC of the IT ACT 1961 amounting to Rs.4,26,23,728/- & Rs.6,17,32,665/- for A.Y. 2012-13 & 2013-14 respectively without appreciating the facts that as per the provision of section 80IC(4) deduction cannot be allowed to such units plants which have been started by splitting of existing activities.*

*(ii) On facts of the case and in law, the Ld. CIT(A) erred in not considering the fact that during the year under consideration there is no substantial expansion in the plant and machinery and no new manufacturing unit came into existence.*

*(iii) The appellant prays that the order of the Ld, CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.*

*(iv) The appellant craves leave to amend or alter any ground or add a new ground. Which may be necessary."*

2. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee is into the business of manufacturing of automotive chasis, spare parts & fabricators and has shown income from business/profession and income from other sources during the year under assessment. Assessee claimed deduction under section 80IC of the Income Tax Act, 1961 (for short ' the Act') to the tune of Rs.4,26,23,728/- & Rs.6,17,32,665/- for A.Y. 2012-13 & 2013-14 respectively. Assessing Officer (AO) following the order passed in A.Y. 2007-08, 2009-10, 2010-11 & 2011-12 wherein assessee's claim for deduction under section 80IC of the Act has been rejected as the assessee did not comply with all the conditions laid down and thereby rejected the deduction

claimed by the assessee by framing the assessment under section 143(3) of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has reversed the order passed by the AO by allowing the deductions claimed by the assessee under section 80IC of the Act by partly allowing the appeal.

4. Feeling aggrieved the Revenue has come up before the Tribunal by way of filing present appeals.

5. Despite issuance and service of the notice to the assessee company none appeared on behalf of it, so the Bench proceeded to decide these appeals on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

6. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

7. At the very outset, the Ld. D.R. for the Revenue brought to the notice of the Bench that assessment order passed by the AO and appeal order passed by the Ld. CIT(A) in assessee's own case for A.Y. 2007-08, 2009-10, 2010-11 & 2011-12 has already been set aside by the Tribunal in appeal bearing Nos.2452 & 6241/M/2012, ITA No.4923/M/2013 and 5705/M/2014. This fact has also been brought on record by the assessee vide letter dated 17.05.2022, 22.06.2022, 28.07.2022 and 06.09.2022 available on the file.

8. We have perused the order passed by the co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2007-08, 2009-10, 2010-11 & 2011-12 wherein issue in question has been set aside to the AO to decide afresh by returning following findings:

*“2.4. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the Ld. respective counsel, if kept in juxtaposition and analyzed, we note that the Assessing Officer has disallowed the claimed deduction u/s 80IC of the Act on the ground that the assessee has split up the already existing business by expanding manufacturing facilities in Zaheerabad to Haridwar (Utrakhand). It is the assessee's contention that it has set up a new plant to manufacture chasis for Mahindra and Mahindra in Haridwar, which is altogether a new plant. This fact has not been examined by the Ld. CIT(A). If the claim of the assessee is found to be; correct then assessee's claim is entitled to deduction u/s 80IC of the Act can be said to be justified, therefore, the Id. Assessing Officer is directed to examine the claim of the assessee and decided in accordance with law. However, since there are contradiction in the version of the CIT(A) as well as the assessee, therefore, the assessee is directed to furnish all the documents to substantiate its claim. The stand of the Revenue is that the assessee purchased second hand machinery from its sister concern which is more than 20% in contravention to sub-section 4(ii) of section 80IC of the Act and, therefore, the assessee is not eligible for deduction. Considering the totality of facts, we note that the Ld. Commissioner of Income Tax (Appeal) simply granted relief to the assessee ignoring the observation made in the assessment order and even herself/himself did not examine the factual matrix in proper perspective and merely granted relief which is based upon the claim of the assessee. It was the duty of the Ld. Commissioner of Income Tax (Appeal) either to contradict the observation made in the assessment order or to reach to a conclusion by examining the facts of its own. The observation made in the impugned orders is not based upon any evidence, and even no remand report was sought from the Id. Assessing Officer which is violation of rule 46A of the Rules. Even before under section, the Ld counsel for the assessee fairly explained that no question was asked by the Assessing Officer with respect to the bill (Page - 43). It is also noted that the Ld. Commissioner of Income Tax (Appeal) simply followed the earlier year without considering the facts of the other years and there was no comment whether there was substantial expansion made by the assessee. Before us, the Id. CIT(DR) invited our attention to Page-2 of the impugned order by claiming that there is wrong finding with respect to split in assessment year 2007-08, It was also contended that the first condition for claiming deduction u/s 80IC is that it should not form splitting of existing business. Therefore, we are of the view*

*that this issue needs to be reconsidered with respect to claim of the assessee that dyes or new machinery were purchased from its sister concern. The assessee is directed to produce the necessary evidence to substantiate its claim. The Ld. Assessing Officer is also to examine whether the assessee is complied with the conditions provided in section 80IC(8)(ix) and other conditions stipulated in the section. The Ld Assessing Officer is also directed to examine as to how the parts, if any, were taken from the assessee from Haridwar unit to Mumbai, Nasik and Zaheerabad unit. The assessee is directed to explain the factual matrix. The Ld. Assessing Officer is directed to examine the facts afresh and decided in accordance with law. Needless to mention here that the assessee be provided due opportunity of being heard. The assessee is at liberty to furnish necessary evidence, if any, in support of its claim. Thus, the appeals of the Revenue are allowed for statistical purposes.”*

9. Since the issue before the Bench in the present appeal is identical, fresh order needs to be passed by the AO by applying his own mind in terms of the order passed by the Tribunal in assessee's own case for A.Y. 2007-08 to 2011-12. Consequently, both the appeals of the Revenue are set aside to the AO to decide afresh after providing opportunity of being heard to the parties. Consequently, both the appeals filed by the Revenue are allowed for statistical purposes.

**Order pronounced in the open court on 20.09.2022.**

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 20.09.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai

The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.