

**THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH, NEW DELHI
Before Sh. C. N. Prasad, Judicial Member
and
SHRI M. BALAGANESH, Accountant Member
(Through Video Conferencing)**

ITA No.39/DDN/2022
(Assessment Year: 2005-06)

M/s. Sharda Exports, C/o. Sh. Jitendra Kumar Gupta, 219, Railway Road, Meerut (Appellant) PAN: AAYFS1694N	Vs. ITO, Ward-1(3)(3), Haridawar (Respondent)
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ITA No.43/DDN/2022
(Assessment Year: 2005-06)

DCIT, Central Circle, Dehradun (Appellant) PAN: AAYFS1694N	Vs. M/s. Sharda Exports, C/o. Sh. Jitendra Kumar Gupta, 219, Railway Road, Meerut (Respondent)
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Assessee by :	Shri Raj Kumar, CA
Revenue by:	Shri Amar Singh Rana, Sr. DR

Date of Hearing	21/08/2023
Date of pronouncement	15/09/2023

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.39/DDN/2022 and 43/DDN/2022 for AY 2005-06, arises out of the of the Id CIT(A)-4, Kanpur [hereinafter referred to as `CIT(A), in short] in Appeal No. CIT(A)-IV/KNP/10732/2019-20 dated 27.04.2022 against the order of assessment passed u/s 147/143(3) of the Income-tax Act, 1961 (hereinafter referred to as `the Act') dated 03.01.2020 by the Income Tax Officer, Hardwar (hereinafter referred to as `Id. AO').

2. The assessee has raised the following grounds of appeal:-

"1. That under the facts and circumstances, in this case, two notices issued u/s.148, 1 Dtd.17.08.2010 and 2nd Dtd. 29.03.2012 "and asstt. being framed by treating both the notices live simultaneously and impugned asstt. being framed considering both these notices, is illegal and unsustainable in law, also, as, after issuance of 1st notice, the 2n notice cannot be issued without withdrawing the 1s notice, in any case only one of the notices can survive and the asstt. should had been framed only on the basis of such single survived notice u/s.148.

2. That under the facts and circumstances, initiation of proceedings u/s.147/148 are mechanical, without application of mind, illegal, without jurisdiction, un- warranted and un-sustainable in law as well as on merits.

3. That the approval of higher authorities u/s.151 being mechanical and without application of mind, hence, invalid in law so much so as to not capable of providing valid jurisdiction for initiating proceedings u/s. 147

4. That the impugned asstt. order is unsustainable in law for not disposing off all the objections, as per law and by passing a proper speaking order on all the objections taken, as held by Hon'ble Supreme Court in GKN Drive Shaft Pvt. Ltd. 259 ITR 18 SC.

5. That both the lower authorities erred in law and facts of the case in denying the deduction u/s 80-IC of the IT Act, 1961 on Duty Draw Back income of Rs.2,72,99,426/- claimed @100%.

6. That the appellant may take any other Ground or Grounds at the time of hearing of Appeal with the kind permission of the Learned Income Tax Appellate Tribunal (ITAT), Dehradun."

3. The revenue has raised the following grounds of appeal:-

"1. That the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 12,96,73,815/-made on account of deduction claimed u/s 80IC of the Act by the assessee for the period under consideration.

2. That the order of the Ld. CIT(A) being erroneous in law and on facts that, it has failed to fully appreciate the energy analysis done by the AO in order to examine the authenticity of manufacturing activities carried out by the assessee during the year under consideration as it business premises at Haridwar.

3. *That the Ld. CIT(A) has erred in taking cognizance of the verification report dated 23.07.2009 of the Income Tax Inspector in allowing the appeal of the assessee for the year despite it being marred with the several inconsistencies.*

4. *That the Ld. CIT(A) failed to appreciate the fact that, the Hon'ble ITAT judgement in the assessee's case for the AY 2009-10 is being contested by the revenue before the Hon'ble High Court and thus shouldn't have taken cognizance of the same in allowing the assessee's appeal for the year under consideration.*

5. *That the Ld. CIT(A) has erred in placing reliance on the assessment order dt. 28.05.2007 passed by the Sales Tax authorities in the assessee's case for the AY 2005-06 as well as assessment order dated 29.12.2017 by the Income Tax Authorities in the assessee's case for the AY 2010-11, as the same have not examined as to whether the assessee has actually carried out the manufacturing activities at its Haridwar facility during the concerned period of time."*

4. Though the Assessee as well as revenue has raised several grounds of appeal both on legal issues as well as on merits of claim of deduction u/s 80IC of the Act, we feel that the preliminary issue to be decided in the instant appeals would be whether the reopening has been rightly initiated by the Id AO u/s 147 of the Act. Hence, we proceed to adjudicate the said issue first as it goes to the root of the matter.

5. We have heard the rival submissions and perused the materials available on record. The Assessee is a partnership firm and had filed its return of income for AY 2005-06 on 25.07.2005 declaring Nil income. The Assessee is engaged in the business of manufacturing and exports of hand-made, hand-tufted and hand woven carpets and its factory is located at Plot No. 11, Sector-4, Sidcul Industrial Estate, Ranipur, Hardwar. The Assessee commenced its production on 18.10.2004. Accordingly, this is first year of operation of Assessee firm. The total turnover of the Assessee firm for the AY 2005-06 is Rs. 30,11,37,925/- with a profit of Rs. 15,69,73,241/- including duty draw back claim of Rs. 2,72,99,429/-. The Assessee firm claimed

deduction u/s 80IC of the Act @100% of its profits and accordingly, filed Nil income in the return of income. The original assessment was completed u/s 143(3) of the Act on 08.06.2007 accepting the returned income. In the said assessment order, there is elaborate discussion with regard to entire activities carried out by the Assessee firm together with the details that were called for by the Id AO and the replies filed by the Assessee thereon. The details of various expenses debited in trading and profit and loss account and details of loan taken by the Assessee were subject matter of examination by the Id AO along with documentary evidences. The Id AO also observed that the Assessee had invested in new plant and machinery for its factory location. The Assessee furnished the details of purchase of raw material along with copy of suppliers bill, details of all expenses debited in the profit and loss account, details of sales and all other income heads credited in profit and loss account, employee wise details of establishment, details of payment of bonus on subsequent dates in the next financial year, party wise details of job work charges, party wise details of clearing and forwarding expenses, person wise details of foreign tour expenses, party wise details of commission paid, details of party wise purchase over Rs. 1000000, confirmation from partners with regard to balance lying in their capital and current account of the firm, copy of the ledger accounts of all the items appearing on liabilities and assets side of balance sheet along with the confirmation of sundry creditors having balance of Rs. 1 lac or more as on 31.03.2005 and confirmation of loans and advances having balance of Rs. 1 lakh or more as on 31.03.2005. The Assessee also furnished details of source of revenue of the partners to make contribution in the Assessee firm. A categorical finding was given by the Id AO at page 2 last para of his order that on perusal of the details filed, the partners are having sufficient funds to invest in the firm and they are assessed

individually to income tax. Further, the Id AO observed that the Assessee had taken secured loan amounting to Rs. 1,65,96,659/- from Standard Chartered Bank and ICICI Bank which was also verified with documentary evidences. No discrepancies were noticed on the various expenses debited in the trading account and profit and loss account of the AO. The Id AO also observed that the entire turnover of the Assessee is export turnover and there is no domestic sale. All the entire exports were being done from the Assessee's factory at Hardwar and for which the Assessee has filed the copies of all the Export Sales Bills and the documentary proof for the dispatches being done from Hardwar in the form of shipping bills, bills of lading and Inland Containers Depot, Surajpur, bills and documents for transporting containers of the goods from Haridwar to Surajpur for the purpose of exports and copy of monthly Sales Tax Returns filed with the Sales Tax Authorities of Haridwar. The Id AO also observed that Assessee firm was allotted industrial plot measuring 13600 Sq Mtrs at Sector 4, Plot -11, Sidcul Integrated Industrial Estate, Ranipur, Haridwar by State Industrial Development Corporation Ltd, Uttarakhand, Dehradun at a cost of Rs. 81,57,157/- and on which the Assessee firm constructed the factory building at a cost of Rs. 1,42,07,835/-. A valuation report from an approved valuer was also filed before the Id AO, which in fact is also acknowledged by the Id AO at page 3 of his assessment order. Further, the Id AO also observed in page 3, the Assessee has received export incentives in the form of Duty Draw Bank claim amounting to Rs. 2,72,99,429/- from Govt of India and being satisfied with the eligibility conditions for claiming deduction u/s 80IC of the Act, the Id AO gave a categorical finding that the Assessee firm had fulfilled all the conditions laid down in section 80IC(2)(b)(ii) of the Act and the claim suffers from no deficiency. Accordingly, the Id

AO granted deduction u/s 80IC of the Act and accepted the Nil income declared by the Assessee.

6. Later this assessment was sought to be reopened by the revenue. For this assessment, the Id AO issued first notice u/s 148 of the Act later on 17.08.2010. This notice is enclosed at page 5 of the PB. The reasons for reopening the assessment was to deny deduction u/s 80IC of the Act on the duty draw back claim amounting to Rs. 2,72,99,429/- as not eligible for deduction u/s 80IC of the Act. The Assessee filed objections to the said reasons recorded which were not disposed of by the Id AO by passing a speaking order.

7. Later, a second notice u/s 148 of the Act was issued by the Id AO on 29.03.2012 which is enclosed at page 18 of the PB. The reasons recorded for the second reopening is to deny the deduction u/s 80IC of the Act in its entirety on the ground that the Assessee had not carried out any manufacturing activity at all. The second reopening was based on survey operation conducted on 23.03.2012. The reasons recorded mentioning that during the course of survey it revealed that certain activities such as latexing, tufting, packing, finishing and passing were performed at Partapur, Meerut through Assessee and related concerns and so concluded that activities are not performed at Haridwar. It was also alleged that there was an old firm which carried out manufacturing activities at Haridwar premises and claimed deduction u/s 80IC of the Act and that said firm got dissolved on 01.04.2009 and the new firm is carrying the business at the same premises without any manufacturing activities. Accordingly, the Id AO had concluded that Assessee was entitled for deduction u/s 80IC of the Act for the reasons recorded.

8. The Id DR argued that against the first 148 notice dated 17.08.2010, the Assessee filed writ petition before the Hon'ble

Uttarakhand High Court and interim order was passed staying the reopening proceedings. Against the second 148 notice, the Assessee filed writ petition before the Uttarakhand High Court and the Hon'ble High Court vide order dated 04.01.2013 stayed the second 148 notice. On 19.07.2019, the Hon'ble High Court dismissed the writ petition of the Assessee and its interim order passed staying the proceedings, got vacated by a single judge of the High Court. The Assessee went on further appeal before the Division Bench of the High Court and the Division Bench vide its order dated 07.11.2019 directed the AO to consider all the objections of the Assessee and to pass order. With regard to this Division Bench order dated 07.11.2019 of Hon'ble Uttarakhand High Court the Id AR submitted that in para 5 of the said order it has been categorically stated that the AO was to pass the reassessment order strictly in accordance with the law uninfluenced by any observation made by the Single Judge of Uttarakhand in his order. Moreover the Id AR also argued that the validity of the reopening u/s 148 of the Act was never decided by the Division Bench. Accordingly, he submitted that the arguments advanced by the Id DR that AO was directed by the High Court only to pass the order on merit and the assumption of jurisdiction u/s 147 of the Act has been held to be valid by High Court, is factually incorrect. In this background of the case, let us now examine whether the Id AO validly assumed jurisdiction u/s 147 of the Act.

9. At the outset, we find that both the notices issued u/s 148 of the Act dated 17.08.2010 and 29.03.2012 were issued beyond four years from the end of the financial year relevant to assessment year 2005-06. Hence, the applicability of the proviso to section 147 of the Act would certainly come into operation wherein, the Id AO is bound to disclose the fact that there was a failure on the part of the

Assessee to make full and true disclosure of all material facts that are relevant for the purpose of assessment. On perusal of the reasons recorded in page 6 (for first notice u/s 148) and page 19 to 24 (for second 148 notice), nowhere the AO had even whispered about the failure on the part of the Assessee to disclose fully and truly all material facts that are relevant for the purpose of assessment. Hence, as per proviso to section 147 of the Act, the re-assessment deserves to be quashed. Reliance in this regard has been rightly placed by the Id AO on the decision of the Hon'ble Jurisdictional High Court in the case of Haryana Acrylic Manufacturing Company Vs. CIT reported in 308 ITR 38 and CIT Vs. Suren International Pvt. Ltd reported in 357 ITR 24 (Delhi).

10. We find that the Id AO had adjudicated the reasons recorded for both the notices issued u/s 148 of the Act in a single reassessment order and completely denied the deduction u/s 80IC of the Act. Admittedly, for the first notice u/s 148 dated 17.08.2010, neither the same was withdrawn by the Id AO nor any reassessment was framed for the same by the Id AO. Hence, this has lead to a situation that without withdrawal of the first notice, the Id AO had issued second 148 notice and framed the assessment clubbing both together. It is trite law that without withdrawal of first 148 notice, the Id AO is debarred from issuing second 148 notice. This issue is no longer *Res Integra* in view of the decision of the Hon'ble Jurisdictional High Court in the case Kamdhenu Enterprises Pvt. Ltd Vs. ITO reported in 146 taxmann.com 417 (Delhi) and decision of the Hon'ble Rajasthan High court in the case of CIT Vs. Ram Kishan Leena reported in 295 ITR 525. In both these cases, it was held that during the subsistence of reassessment proceeding, another reassessment notice could not be issued for the same assessment year and thus, second notice is required to be quashed. Hence, the denial of

deduction u/s 80IC of the Act which was subject matter of reasons recorded in the second 148 notice cannot survive in the eyes of law. However, with regard to first 148 notice wherein, it was sought to withdraw 80IC deduction only in respect of duty draw back claim, we have held that said reassessment is bad in law on the ground that the failure on the part of the Assessee to make fully and truly disclosure of all material facts that are relevant for the purpose of assessment has not been mentioned by the Id AO in the reasons recorded. Hence, first 148 notice dated 17.08.2010 also deserves to be quashed.

11. Since, reassessment is quashed for invalid assumption of jurisdiction, with the above reasons, the other facets or legal arguments advanced by the Id AR and on the merits need not be gone into and they are left open.

12. In the result, the appeal of the Assessee is allowed and the appeal of the revenue is dismissed.

Order pronounced in the open court on 15/09/2023.

-Sd/-
(C. N. Prasad)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 15/09/2023
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi