

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH
VIRTUAL HEARING AT KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य

एवं

डॉ. मनीष बोरड, लेखा सदस्य

के समक्ष

Before

Shri Sanjay Garg, Judicial Member

&

Dr. Manish Borad, Accountant Member

I.T.A. Nos.85 & 86/Pat/2017

Assessment Years: 2012-13 & 2013-14

Rakesh Kumar
(PAN: AFTPK5594D)

.....

Appellant

Vs.

DCIT/ACIT, Circle-4, Patna

..... **Respondent**

Appearances by:

Shri S. M. Surana, Advocate, Shri Sunil Surana, FCA & Shri Narayan Pd. Jain, Advocate appeared for Appellant

Smt. Rinku Singh, CIT, DR appeared for Respondent

Date of hearing : 20.05.2024

Date of pronouncing the order : 23.07.2024

ORDER

Per Dr. Manish Borad, Accountant Member:

Both these appeals filed by the assessee pertaining to the Assessment Year (in short "AY") 2012-13 & 2013-14 are directed against the separate orders passed u/s 250 of the Income Tax Act, 1961 in short the "Act") by Id. Commissioner of Income-tax (Appeal)-2, Patna [in short Ld. "CIT(A)"] both dated 03.03.2017 arising out of the assessment orders framed u/s 143(3) of the Act by DCIT/ACIT, circle-4, Patna dated 31.03.2015 and 06.03.2016. Since facts are mostly

identical and grounds are common we dispose of both the appeals by this consolidated order for the sake of convenience .

2. Common issue raised in both these appeals is against the finding of the Ld. CIT(A) confirming the action of the Ld. AO denying deduction u/s. 80IC of the Act at Rs.2,25,52,311.89 and Rs.3,24,36,007/- for AYs 2012-13 and 2013-14 respectively. Since the issue is common, we will take up AY 2012-13 as the lead case and the result of the same will apply *mutatis mutandis* to the other appeal also.

3. Brief facts of the case are that the assessee is an individual and is engaged in the business of manufacturing, trading and servicing of X-ray machines. For AY 2012-13, return of income furnished on 27.09.2012 showing total income of Rs.13,03,070/- after claiming deduction u/s. 80IC of the Act at Rs.2,25,52,311.89 on account of profit from the industrial unit located at Uttaranchal. Case of the assessee selected for scrutiny under CASS followed by validly serving notices u/s. 143(2) and 143(1) of the Act. During the course of assessment proceeding, assessee furnished audited financial statement along with audit report on Form No. 10CCB in support of his deduction claimed u/s. 80IC of the Act. Assessee also submitted details of meter setting certificate indicating the location and address of industrial undertaking and Small Scale Industries certificate issued by GM, DIC, Dehradun, Uttarakhand. Ld. AO, however, was not satisfied with the claim of deduction u/s. 80IC of the Act on account of various reasons which included that assessee is merely assembling the goods and not carrying out any manufacturing activity of making x-ray and ultra sound machines, that the assessee does not have sufficient plant and machinery to justify the manufacturing activity, that the Uttaranchal is not an industrial backward state, that no new

and distinct object has come into existence, that with the tools and equipment of Rs.85,582/- the assessee having carried out manufacturing activity of cost of production of Rs.2,61,97,483/- is doubtful, that no details of raw material used in the business has been given etc. Ld. AO accordingly, denied the claim of deduction u/s. 80IC of the Act and assessed the income at Rs.2,38,55,381/-.

4. Aggrieved, assessee preferred appeal before the Ld. CIT(A) and made detailed submission along with referring to plethora of decisions citing that assembling activity fell under the category of manufacturing activity as after assembling of the various components a new item is manufactured. Complete manufacturing process was explained. He also submitted that Uttaranchal is industrially backward area and the claim of the assessee for AY 2010-11 has been allowed and even for subsequent AY 2015-16 the claim of the deduction u/s. 80IC of the Act of the assessee has been allowed. Reference was also made to the electricity bills and quantitative details of the goods produced. Ld. CIT(A) was not convinced and he confirmed the view of the AO observing as follows:

“I have considered the facts of the case, written submission of the AR, remand report of the AO, appellant's rejoinder to remand report and case laws cited. The AO disallowed the claim of deduction u/s 80IC primarily on the ground that no manufacturing/ production activities were carried out and hence no new products were produced. The appellant claimed manufacturing of X-ray and ultra sonography machines which are highly sophisticated electronic devices which cannot be manufactured/produced without highly advanced technology, machine tools and extremely competent manpower. An ultra Sonography machine consists of following components:

- 1. Central Processing Unit (CPU)*
- 2. Transducer Pulse Controls*
- 3. Display*
- 4. Keyboard/Cursor*
- 5. Disk Storage*
- 6. Printers.*

An x-ray machine consists of following components:

1. Operating Console
2. High Frequency Generator
3. X-ray Tube
4. Collimator and Grid
5. Bucky

From the flow chart submitted by the appellant at assessment stage, it seems that the appellant claims to buy various components from market and then those components are used to manufacture x-ray machine and ultrasonography machine. However, the manufacturing account and profit and loss account of the assessee give very different picture. The assessee has shown sales of Rs.5, 10,49,366/- and has earned net profit of Rs.2,25,52,311/- which gives net profit rate of 44.11% which highly abnormal because of the fact that there is very tough competition in this line of business. To generate a turnover of Rs.5,10,49,366/- and to earn a net profit of Rs.2,25,52,311/-, the assessee has used following fixed assets:

Particulars	WDV+ new addition	Depreciation for the year
Electricals & equipments	17,013	2,552
Furniture & fixture	44,742	4,474
Tools & equipments	91,252	13,263
Computer	24,604 (new)	14,762
Printer	5,000 (new)	840

From above chart, it is evident that to manufacture/produce ultrasonography and X-ray machines which resulted In sale of Rs.5,10,49,366/- & net profit of Rs.2,25,52,311/-, the assessee used old tool and equipment of WDV of Rs.85,582/- and new equipment of Rs.5,670/-. Another important thing is that the assessee is manufacturer of highly sophisticated electronic devices but it has purchased computer and printer for the first time in the FY 2011-12 although the assessee is claiming deduction u/s 80IB from FY 2009-10 onwards. It implies that the assessee was doing manufacturing of this magnitude even without possessing a basic computer and printer in the office.

The examination of manufacturing account reveals other intriguing features. The assessee has shown electricity expenses of Rs.44,367/- which is an average monthly electricity bill of Rs.3,697/- . This much of electricity consumption is even not sufficient for a family of 4 persons. There is salary expenses of Rs.1, 72,460 / - debited in profit and loss

account which means the monthly salary expenses was of Rs.14,371/- which rules out employment/ deployment of any highly qualified hardware/software engineers because the amount of Rs.14,371/- is even not enough to hire one watchman and one office staff. On the other hand, the assessee has claimed labour charges of Rs.12,36,556/- in manufacturing account which defies logic as to how labourers can manufacture highly sophisticated ultrasonography and X-ray machine. In the written submission the assessee stated that the assessee had employed qualified engineer who is diploma in electrical engineering, the name of engineer is M Hussain. It has been further stated that Mr. Hussain is permanent employee and getting good amount of salary. This submission of the assessee is not convincing. The assessee is claiming manufacturing of highly sophisticated medical equipments and a diploma holder is not qualified to provide leadership role in this case. A diploma in electrical engineering is a 3 years course after class -X and a diploma holder is eligible for admission' in 2nd year of degree course which means the diploma degree is at par with 1st year of B. Tech. Also payment of good salary is not supported by evidences because the total salary expenses of the assessee are only Rs.14,371/- per month and obviously it included salary of Mr. Hussain also.

From above analysis of accounts of the assessee, the manufacturing activities of the assessee can be summarized as under .

Turnover	Net Profit	WDV of Plant & machinery	Salary expenses per month	Electricity expenses per month
Rs.5,10,49,366	Rs.2,25,52,311	Rs.91,252	Rs.14,371	Rs.3,697

Clearly above result is extremely unrealistic and wisdom. So it was essential to examine the purchase of raw materials, transportation of raw materials to factory, actual manufacturing of machines, deployments of resources, skills, transportation of finished products from factory site to buyers of the product to find out the genuineness of the claim of the assessee that ultrasonography and x-ray machines were actually manufactured in the factory but no evidences were filed before the AO. At the appellate stage, the assessee filed written submission which contained copy of few bills. The submission of the assessee was forwarded to the AO for investigation and remand report. The AO has stated in the remand report that in spite of several opportunities, the assessee failed to produce any evidences. The AO, in particular, asked the assessee to produce all evidences of purchase of raw materials and evidences of delivery / transportation of ultrasound and X-ray machine from factory premises to the buyers but no evidences were filed during remand proceeding. In the rejoinder to remand report the AR of the assessee justified non compliance during the remand proceeding stating that all the evidences were available in

assessment record and paper book. In the paper book copy of 18 purchase bills were filed but no evidences of transportation/ delivery of machine from factory to buyers were filed. The AO was fully justified in asking the assessee to produce all bills/vouchers with respect to 'purchase of raw materials and evidences in support of transportation of ultrasonography and X-ray machine from factory premises to buyers in light of the facts that manufacturing & profit & loss account do not support the claim of manufacturing of these machines. The photo copy of 18 purchase bills appearing on page no. 21 to 38 of paper book are for purchase of Rs.41,85,838/- only whereas total purchase of raw material claimed in manufacturing account is at Rs.1,93,97,721/-. The assessee was required to produce original bills for raw material purchase of Rs.1,93,97,721/- before the AO during remand proceeding. The assessee's total non compliance during the remand proceeding further supports the findings that no manufacturing/ production was actually carried out.

From above it is crystal clear that the assessee failed to

- 1. Prove that raw materials were purchased and same were brought in the factory*
- 2. Ultrasonography and X-ray machines were produced/manufactured by him in his factory premises at Dehradun as the assessee did not have requisite plant & machinery, did not deploy any competent engineer/technicians and as stated, has not shown consumption of electricity adequate to even run a small household.*
- 3. And after production, delivery/transportation of machines from factory premises to customers / buyers took place*

Since the manufacturing/production of ultrasound and X-ray machines could not be established the AO was fully justified in disallowing the claim of deduction u/ s BOIC of the act."

- 5. Aggrieved, assessee is now in appeal before this Tribunal.*
- 6. Ld. Counsel for the assessee submitted that the issue is no longer res integra that assembling of goods is also held to be a manufacturing activity because it gives rise to a new product with a new name in the market and the function is also different. Reliance placed on the judgment of Hon'ble Calcutta High Court in the case of DCIT Vs. M/s. Jeevan Diesels & Electricals, ITA No. 289 of 2016 dated*

02.02.2018. Reference was made to various other decisions for the proposition that manufacturing cannot be given narrow meaning and even assembling is also manufacturing, and the same are as under:

- i) Indian Cine Agencies 308 IYT 98 (SC),
- ii) Vijay Ship Breaking 314 ITR 309 SC,
- iii) Sri Mahesh Chandra Sharma 308 ITR 222 (PH),
- iv) Perfect liners 142 ITR 654 (Madras),
- v) Fateh Granite P Ltd. 314 ITR 32 (Bom),
- vi) Delhi Press Patra Prakashan Ltd. 355 ITR 14 (Delhi) and
- vii) Jeevan Diesel & Electricals Ltd Calcutta ITAT

7. He also submitted that it has also been consistently held that if a deduction has been granted for the initial year then unless there is a change in activity, or any specific condition have not been fulfilled then such deduction cannot be denied in subsequent years. Reliance placed on the judgment of Hon'ble Gujarat High Court in the case of *Saurashtra Cement & Chemicals Industries Ltd. 1234 ITR 669 (Guj.)* and that of Hon'ble Bombay High Court in the case of *Western Outdoor Interactive P. Ltd. 349 ITR 309 (Bom)*.

8. Ld. Counsel for the assessee further submitted with regard to the activity of manufacturing carried out by the assessee. He submitted that audit report required for claiming deduction u/s. 80IC along with the tax auditor report has been duly filed. He submitted that the assessee purchased various parts, assembled them by necessary assembling units which required screwing and soldering as per its specifications and sizes issued by the supervisor, employed for assembling and manufacturing X-ray and Ultrasound Machines. The manufacturing activity carried out is basically a

labour oriented job which is taken care by expert technician. That the Uttaranchal is industrially backward state as notified by Notification dated 03.10.2006. That the electricity sanction letter has been issued and the charges which are applicable for industries have been levied. Sales Tax assessment order accepting the business as manufacturing unit is placed on record. MSME certificate issued by Ministry of Micro, Small & Medium Enterprises and Pollution certificate issued by General Manager, District Industries Centre have been filed to prove that assessee is into manufacturing activity. He further referred to the copy of diagram of the product and flow chart and quantity and rate-wise production and sales (placed at paper book pages 134 to 141). He also referred to the assessment order for AY 2015-16 in which assessee has been granted deduction u/s 80IC of the Act. He also submitted that the unit run by the assessee is located at Dehrakhas in the District of Dehradun and notification No. S.O.1661 E dated 03.10.2006 is placed at paper book pages 171 to 175 to prove that the unit of the assessee is located in a backward industrial area and is eligible for deduction u/s. 80IC of the Act.

9. On the other hand, Ld. DR vehemently argued supporting the orders of the lower authorities and again referred to the items of Balance Sheet and P&L Account stating that the assessee has earned a huge net profit of approx. 42.86 lakh which is highly abnormal and that too with minimal fixed asset of Rs.1,47,320/- and the electricity expenses of Rs.44,317/-. He also submitted that assessee is only assembling the goods and which is more in the nature of trading activity and not a manufacturing unit.


10. We have heard the rival contentions and perused the records placed before us. The claim of deduction u/s. 80IC of the Act denied by the Ld. CIT(A) is under challenge before us. Assessee is running an industrial unit at Uttaranchal claiming to be a manufacturer of X-ray and Ultrasound Machine. Deduction u/s. 80IC of the Act of Rs.2,25,52,312/- and Rs.3,24,36,007/- have been made for AYs 2012-13 and 2013-14 respectively. Ld. CIT(A) has denied the benefit mainly on account of the observations that the assessee is only assembling of goods and not manufacturing as the assessee has no proper fixed assets to justify the manufacturing activity by which the assessee has earned net profit of 44.11% which is highly abnormal because there is a very rare as that is very tough competition in this line of business. Ld. CIT(A) also observed that the assessee has claimed to be manufacturer of highly sophisticated electronic items but it has purchased computer and printer for the first time in FY 2011-12 and that the assessee has incurred minimum expenses for electricity which is insufficient even for family of four persons. Ld. CIT() has also observed that the assessee failed to file any evidence of transportation for the delivery of machines from factory to buyers and prove that raw materials were purchases and was brought in the factory and also that the assessee has not employed any engineer or technician.

11. We note that Ld. CIT(A) seems to have a very good technical knowledge and he has also referred to the components of Ultrasonography machines which includes a central processing unit, Transducer Pulse Controls, Display, Keyboard/Cursor, Disk Storage, Printers. Further, we note that the Ld. CIT(A) has also appreciated that even a chart has been submitted by the assessee which provides that the assessee purchased various

components from market and then these components are used to manufacture X-ray Machine and Ultrasonography machines.

12. It is an admitted fact that assessee has purchased various ingredients/parts which are required to make X-ray machine and ultrasound machine. The books of account are audited u/s. 44AB of the Act. Audit report on Form 10CCB has duly been furnished which provides all details about the manufacturing activity and claim of deduction. It is also an admitted fact that assessee's claim of deduction u/s. 80IB (latter on 80IC) has been allowed for AY 2010-11 and also the claim has been allowed in the subsequent year for AY 2015-16. The audited P&L Account provides details of opening stock of raw material, purchase of raw material and various expenses of which labour charges is a major component which has been incurred at Rs.12,36,556/-. Purchase of raw material during the year along with the opening stock and other manufacturing expenses is amounting to Rs.2.62 Cr. Assessee has also maintained quantitative details of raw material as well as finished goods. The flow chart placed at page 140 of the paper book shows that once raw material are purchased there is a physical check followed by body check for assembling, spare and component fitting and then the software is installed followed by probe fitting and testing, then they are packed for dispatch and before transporting there is a final testing at site with the concerned department. The assessee has also maintained quality, quantitative details and the same is

appearing at annexure B of Form 3CD and is extracted below for necessary reference :

M/S I G E M S PRODUCTS			
Khasara No.-646 Industrial Area Dhhra Khas, Patel Nagar Deharadun			
Annexure "B"			
Details of Quantity & Rate wise Production & Sales			
Opening Stock of Finished Goods			
Name of Item	Qty	Rate	Value
X-Ray Set	37	6,083.93	2,25,105.21
X-Ray Set	36	13,311.39	4,79,209.91
X-Ray Machine	5	39,053.56	1,95,267.80
USG Machine	5	3,22,000.00	16,10,000.00
Total	83		25,09,583.00
Production			
Name of Item	Qty	Rate	Value
X-Ray Set	0	-	-
X-Ray Set	0	-	-
X-Ray Machine	3	30,211.30	90,633.91
USG Machine	84	3,10,795.82	2,61,06,849.22
Total	87		2,61,97,483.13
Sale			
Name of Item	Qty	Rate	Value
X-Ray Set	36	14,000.00	5,04,000.00
X-Ray Set	22	21,000.00	4,62,000.00
X-Ray Machine	6	70,000.00	4,20,000.00
USG Machine	88	5,64,356.44	4,96,63,366.72
Total	152		5,10,49,366.72
Closing Stock of Finished Goods			
Name of Item	Qty	Rate	Value
X-Ray Set	1	6,083.93	6,083.93
X-Ray Set	14	13,311.39	1,86,357.64
X-Ray Machine	2	30,211.30	60,422.61
USG Machine	1	3,10,795.82	3,10,795.82
Total	18		5,63,660.00
For I G E M S PRODUCTS			
 Autorised Signatory			

13. We also observe that the assessee is registered with the District Industrial Centre, no pollution certificate has been issued, electricity charges has paid as per industrial rate, unit of the assessee is located in a duly notified backward industrial area which is eligible for deduction u/s. 80IC of the Act and copy of such notification is placed at paper book pages 171 to 175. The assessee also employed an engineer and considering the fact that assessee is mainly in assembly of goods, sufficient amount of labour charges have been debited. The observations of the Ld. CIT(A) are merely in the nature of general

doubt about the nature of activity carried out by the assessee but no concrete evidence nor any infirmity is brought on record to rebut the fact that the assessee has fulfilled all the conditions necessary for claiming deduction u/s. 80IC of the Act. Ld. CIT(A) has admitted that assessee is assembling the goods i.e. X-ray machine and ultrasound machine but has doubted the quantum of profit, amount of expenditure and smallness of its assets. But the assessee has sufficiently demonstrated with the evidence and details to prove that the assessee is engaged in assembling of goods and after assembling various parts which are purchased as raw material, the same are assembled under the guidance of an expert and carried out by labour force and after assembling these goods the new product in the name of X-ray machine/ultrasound machine is manufactured. Certainly, carrying out the assembling activity gives rise to new product. Genuineness of the expenses has not been doubted at any stage.

14. Now the moot question left before us is that under the given facts where the assessee has maintained books of account duly audited u/s. 44AB of the Act, furnished From 10CCB, placed evidence to prove that a manufacturing activity is carried out in a backward industrial area and that goods are assembled to manufacture goods is that whether such assembly of goods so as to make a new product is to be treated as a manufacturing activity. The same needs to be examined in the light of the settled judicial precedence. Though the assessee has referred to plethora of decision, we first take note of the judgment of Hon'ble Punjab & Haryana High Court in the case of *CIT Vs. Shri Mahesh Chandra Sharma [2009] 308 ITR 222 (P&H)* where also similar issue was under consideration and the assessee was engaged in manufacture of motorcycle unit and also the assessee used the raw

material as rim, tyre, tube, bearing, drum, spoke, nipple and collar so as to manufacture a motor cycle wheel and in carrying out such activity assessee has earned profit and claimed deduction u/s. 80IC of the Act. Hon'ble Court dismissed the appeal of the revenue and held as follows:

“8. Having noted the process which is involved we have to examine whether the activity carried out by the assessee amounts to manufacture and if yes, then what does it manufacture. From the process noted above, it is seen that the assessee brings together the various raw materials, components and by carrying intermittent processes, assembles them together so that they can work as one equipment which is termed as a motorcycle wheel. The final product which is achieved is a result of an assembling process. The final product is distinct in character and use than each of the components used. This is for the reason that none of the components or the raw material used can partake the character of or be a substitute for the functioning or the commercial value attributable to the final product.

9. The moot question is whether assembling of different components, which gives rise to an article which is totally different from the parts, amounts to 'manufacture' or not? This proposition has been directly answered by the Hon'ble Bombay High Court in the case of Tata Locomotives & Enggg. Co. Limited, 68ITR 325. The following extract of the head note of the judgment is worthy of notice.

"The word "manufacture" has a wider and also a narrower connotation. In the wider sense it simply means to make, or fabricate or bring into existence an article or a product either by physical labour or by power, and the word "manufacturer" in ordinary parlance would mean a person who makes fabricates or brings into existence a product or an article by physical labour or power. The other shade of meaning, which is the narrower meaning, implies transforming raw materials into a commercial commodity or a finished product which has an entity by itself, but this does not necessarily mean that the materials with which the commodity is so manufactured must lose their identity. Thus, both the words "manufacture" and "produce" apply to the bringing into existence of something which is different from its components. Whether one takes into account the wider or narrower meaning of the word "manufacture", assembling of automotive bus or truck chassis from

imported parts in a 'knocked down' condition, would give rise to an article which is totally different from the parts and would amount to manufacture. This is so even though the component parts from which the automotive chassis is made, retain their individual identity in the whole article which is thus manufactured or produced."

10. We may also gainfully refer to the decisions of the Apex Court in the case of *Gramophone company (I) Limited v.*

Collector of Customs, (2000) 1 SCC 549 and UOI v. Delhi Cloth & General Mills Co.Limited, (1963) (SUPP) SCR 586 wherein the expression 'manufacture' has been understood to mean transformation of the goods into a new commodity commercially distinct and separate having its own character, use and name whether it be the result of one or several processes.

11. Considered in this light, factually speaking in the instant case the various parts assembled by the assessee using its machinery results in achieving of a final product. The parts or components utilized by the assessee in its assembling process undergo a transformation and result into a product namely motorcycle wheel, which is distinct and separate commodity in character, name and use than each of the parts or components. Therefore, on the basis of the principles referred to above, in the instant case, it is safe to deduce that the process of assembling carried out by the assessee is to be understood as amounting to 'manufacture' or production of an article. Therefore, the profits derived from each activity is eligible for the claim of benefit under [section 80IA](#) of the Act."

6. It is clear that the assessee assembles wheel from the raw material/components which are Rim, Tyre, Tube, Bearing, Drum, Spoke, Nipple and Coller, by the process which has been discussed in the extracted part of judgment of the Tribunal. 'Wheel' is certainly a different item from the components which are used in the process.

7. Learned counsel for the revenue relied upon judgment of the Hon'ble Supreme Court in *Commr. of Income-tax, Orissa v. M/s. N. C. Budharaja and Company, (1993) 204 ITR 412, para 7, to submit that unless the commodity subjected to process of manufacture can be regarded as new and distinct commodity and can no longer be regarded as original commodity, no manufacture was involved. In the present case, the product in question was 'wheel' and continued to be wheel and the*

original commodity continued to be as it was and thus, no manufacture was involved.

8. *We are unable to accept the submission made on behalf of the revenue.*

9. *The question whether an activity involves manufacture, has been gone into in several judgments of the Hon'ble Supreme Court including [Union of India v. Delhi Cloth and General Mills](#), AIR 1963 SC 791, para 14, Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) v. M/s. PIO Food Packers, AIR 1980 SC 1227, Empire Industries Limited v. Union of India, AIR 1986 SC 662 and M/s Ujagar Prints etc. v. Union of India and others ,AIR 1989 SC 516.*

10. *In absence of any definition in the Act, the word 'manufacture' used in [section 80-IB](#) has to be given ordinary meaning.*

11. *In N.C.Budhiraja (supra), the Hon'ble Supreme Court considered earlier judgment in M/s PIO Food Packers (supra), particularly the observation that where commodity retained substantial identity, no manufacturing was involved. In the said judgment, the question involved was whether manufacturing was involved in construction of a dam so as to avail of benefit under [section 80HH\(1\)](#) of the Act. It was held that the word 'article' or 'thing' mentioned in [section 80HH](#) could not cover dam, bridge, building, road, canal and so on. Construction of dam was, thus, held not to be manufacture. Though the dam comprised of various articles, it was observed that end product could not be held to be an article or thing. Dam was constructed and not manufactured.*

12. *Commonly accepted meaning given to the word 'manufacture' as held in the judgments of the Hon'ble Supreme Court is when a new and different article emerges having distinctive name, character or use. In the present case, the Tribunal applying the tests laid down in the judgments of the Hon'ble Supreme Court, held that distinct article with distinctive name, character and use emerged. The tests laid down in the judgments of the Hon'ble Supreme Court have to be applied from case to case. The Tribunal has arrived at a finding of fact in the present case.*

13. *Question raised by the revenue cannot, thus, be held to be substantial question of law.*

14. *The appeal is dismissed.”*

15. We further note that Hon'ble High Court of Calcutta in the case of *M/s. Jeevan Diesels & Electricals* (supra) has also held that the assembly activity is also to be recorded as a manufacturing activity because it also gives rise to new product which has a new name in the market and a new function. Hon'ble Apex Court in the case of *Indian Cine Agencies* (supra) has dealt with the issue of activity for conversion of jumbo rolls of photographic films into small flats and rolls in desired sizes and has held this activity of assembly as a manufacturing activity and has also held that manufacture includes any process or manner of promotion or making an article and also any article, promotion or produce by a manufacturer. Hon'ble Court thus decide in favour of the assessee holding that conversion of jumbo roll for photographic films into small flats and rolls in desired sizes is a manufacturing activity and assessee is eligible for deduction u/s. 32AB, 80HH and 80-I of the Act. Going through the above decision of Hon'ble Court it has been consistently held that assembling activity gives rise to a new product is manufacturing activity.

16. As far as the judgments relied on by the Ld. AO for the propositions that assessee is not a manufacturer are not applicable on the facts of the instant appeal. In the case *Gem India Manufacturing Company* 249 ITR 307, the issue in this case was of cutting and polishing of uncut raw diamonds, it was held that raw diamonds remained diamonds even after cutting and polishing (ii) In *Buhari Sons Pvt. Ltd.* 144 ITR 12, the issue in this case was altogether different as to whether Hotel is an industrial undertaking (iii) In before coordinate Bench Pune ITAT the issue of pasteurization of the milk was involved and in that context the Hon'ble ITAT held that even after pasteurization milk remains milk and no new article has come into being. (iv) In *Lucky Minmat Pvt Ltd.* 245 ITR 830 cited by the AO has

been considered by Rajasthan High Court in 211 CTR 169 in the case of Arihant Tiles and Marbles.

17. We observe that the Hon'ble Karnataka High Court in *Mysore Mineral Ltd. 250 ITR 725* treated the conversion of slabs into sizes as industry and this judgment was approved by Hon'ble Supreme Court in *Sesa Goa Ltd. 271 ITR 331* after considering the judgement in *Lucky Minmat* which was on the same facts as in the later judgement of Hon'ble Supreme Court.

18. Thus, respectfully following the judgment of the Hon'ble Courts referred supra, we are inclined to hold that the assessee is engaged in the manufacturing activity and has duly fulfilled relevant conditions for claiming deduction u/s. 80IC of the Act for the years under consideration and the same should be allowed. As far as the second argument of the assessee that once deduction granted in the earlier year it cannot be disallowed in subsequent year the same also deserves merits in the light of the judgment of Hon'ble Gujarat High Court in the case of *Saurashtra Cement & Chemicals Industries Ltd. (Supra)* and *Western Outdoor Interactive P. Ltd. (supra)* since the assessee has not changed the activity for which he first allowed deduction in the initial year for AY 2010-11 and then for AY 2011-12 and also in subsequent year. In the light of the above observation, finding of the Ld. CIT(A) is set aside and grounds of appeal raised by the assessee in support of allowing deduction u/s. 80IC of the Act for AY 2012-13 is hereby allowed.

19. Since we have allowed the appeal for AY 2012-13 in favour of the assessee, our decision will apply *mutatis mutandis* in respect of the appeal for AY 2013-14 also, therefore, the same is also allowed in

favour of the assessee and deduction u/s. 80IC of the Act claimed by assessee for AY 2013-14 is also found to be correct.

20. In the result, both the appeals of the assessee for AYs 2012-13 and 2013-14 are allowed.

Order is pronounced in the open court on 23rd July, 2024.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Manish Borad)
Accountant Member

Dated: 23rd July, 2024

J.D. Sr. PS.

Copy of the order forwarded to:

- 1. Appellant – Shri Rakesh Kumar, Flat No. 703, Jagat Trade Centre, Fraser Road, Patna-800001.**
- 2. Respondent – DC/AC, Circle-4, Patna**
- 3. CIT(A)-2, Patna**
4. CIT,
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata