

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: VIRTUAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य  
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA Nos. 388/Chd/2012  
निर्धारण वर्ष / Assessment Year : 2007-08

Asha Technologies Village Johron, Trilokpur Road Kala Amb, Tehsil Nahan, Dist: Sirmour	बनाम	The Addl. CIT Solan Range Solan
स्थायी लेखा सं. / PAN NO: AA0FA2428E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं. / ITA Nos. 61/Chd/2013  
निर्धारण वर्ष / Assessment Year : 2009-10

Asha Technologies Village Johron, Trilokpur Road Kala Amb, Tehsil Nahan, Dist: Sirmour	बनाम	The ITO, Nahan, Dist: Sirmour
स्थायी लेखा सं. / PAN NO: AA0FA2428E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vishal Mohan, Sr. Advocate with  
Shri Aditya Sood, Advocate  
राजस्व की ओर से/ Revenue by : Shri Sarabjeet Singh, CIT, DR  
सुनवाई की तारीख/Date of Hearing : 30/05/2024  
उदघोषणा की तारीख/Date of Pronouncement : 19/07/2024

**आदेश/Order**

**PER PARESH M. JOSHI, J.M. :**

This is an appeal filed by the Assessee M/s Asha Technologies who are aggrieved by an order dt. 30/01/2012 in Appeal No. IT/315/2009-10/Sml passed by the Ld. CIT(A) under section 250 of the Income Tax Act, 1961. The appeal is filed under section 253 of the Income Tax Act, 1961. The order of Ld. CIT(A) dt. 30/01/2012 in the aforesaid appeal No. IT/315/2009-10/Sml is hereinafter referred to as "impugned order".

**Factual Matrix**

1. The assessee M/s Asha Technologies is a partnership firm. The relevant AY is 2007-08. The corresponding previous year is 2006-07. The assessee firm is engaged in the business of manufacturing activity of telecom parts. **Be it noted that AO in his**

**assessment order dt. 30/12/2009 has recorded that audit report does not say what exactly is the nature of manufacturing activity.**

2. That the assessee filed return of income for A.Y 2007-08 declaring income of Rs. **NIL** after claiming deduction under section **80IC** of the Income Tax Act, amounting to **Rs. 1,48,17,110/-** on 13/11/2007.

3. That the case was selected for **scrutiny** by the Income Tax Officer, Nahan, H.P. as per the guidelines of CBDT for the F.Y 2008-09. Since the deduction claimed under Chapter VIA of the Income Tax Act, exceeded Rs. 25,00,000/-.

4. Accordingly, statutory notices under section 143(2) and 142(1) of the Income Tax Act, were issued to the assessee by the ITO, Nahan on 19/09/2008.

5. That the hearing was fixed for 29/09/2008 vide letter No. 29/09/2008, the assessee authorised Shri Sanjeev Bajaj, an employee of its related concern M/s Asha Telecom Pvt. Ltd., Faridabad to represent the case before the Income Tax Authorities.

6. The case was adjourned sine die, with intimation to the authorized representative. Subsequently, vide letter dated 18.2.2009, the Income Tax Officer, Nahan issued a letter requesting the assessee to furnish Tax Audit Report accompanied with Trading Account, P&L Account, Balance Sheet and relevant annexure. The letter was served upon the assessee's employee Ms. Raksha on 25.02.2009. However, no such details were filed by the assessee. On 11.5.2009, the new incumbent Shri Pardeep Kumar, Income Tax Officer, Nahan, vide letter no. 148, dated 11/05/2009 issued statutory notices u/s 143(2) & 142(1) of the Income Tax Act 1961 to the assessee and the case was fixed for hearing on 20.5.2009. Nobody attended the office of the Income Tax Officer on the said date.

Later on, case of the assessee was selected by the Addl. Commissioner of Income Tax, Range Solan for further scrutiny at his end. Notices u/s 143(2) & 142(1) were **issued** to the assessee on 16.6.2009 fixing the hearing on 30.6.2009. The Addl. Commissioner of Income Tax, Solan also intimated the assessee regarding selection of its case for further scrutiny by him as an Assessing Officer. He also referred to earlier letters issued by the Income Tax Officer, Nahan which were not responded to by the assessee till that date. Again, assessee failed to comply with the requirements of the notices issued by the Addl. Commissioner of Income Tax. Nobody attended the office on the said date of hearing i.e. 30.6.2009, neither any written submissions were filed.

Later on, when the undersigned joined the office of the Addl. Commissioner of Income Tax, Range Solan, statutory notices u/s 142(1) & 143(2) were again issued on 6.8.2009 fixing the case on 13.8.2009. These notices were served upon the assessee's employee Ms. Raksha on 11.8.2009. Earlier, on 4.8.2009, vide letter No.670, the undersigned had issued the assessee a reminder to furnish the details as asked for by the earlier Assessing Officers. The said information was requested to be filed on 11.8.2009. On the said date, Shri Sanjeev Bajaj, A.R, furnished authority letter along with a letter dated 11.8.2009 from the assessee's counsel Sh. Manoj Gupta, C A vide which copies of Audit Report in Form No.3CB & 3CD, Annexure to Form No.3CD, schedule of fixed assets, employees contribution to PF and ESI, Annexure, Part-A & B, Annexure regarding Fringe Benefit tax, Balance Sheet, Manufacturing & Trading Account, P&L Account, Capital Account, list of sundry creditors, list of expenses payable, schedule of fixed assets, list of sundry debtors, list of advance to Suppliers and Notes to Accounts, were filed. The authorized representative was requested to furnish addresses of all the account-holders and also was requested for production of books of accounts on 17.8.2009. The assessee was apprised of these requirements earlier also vide letter dated 6.8.2009 to be furnished and produced on 13.8.2009. Shri Sanjeev Bajaj, Authorised Representative, failed to furnish the relevant information on 13.8.2009 and accordingly, a request was made to comply with the same on 17.8.2009. Shri Manoj Gupta, C.A. and Shri Sanjeev Bajaj, A.R, attended the Office on 17.8.2009 but failed to furnish relevant information nor did they furnish or produce books of accounts. A questionnaire dated 17.8.2009, vide letter No.762, was served on them highlighting the details of non-compliance exhibited so far along with a reminder to furnish complete addresses of account-holders reflected in the books of accounts. Request was again made for providing one set of books of account and also to furnish bank account statements for the financial year 2005-06 & 2006-07 directly obtained from the concerned banks. A show cause notice u/s 271(1) (b) of the Income Tax Act 1961 was also issued vide letter No.763 dated 17.8.2009 for non-furnishing of information. In all these cases, hearing was fixed on 19.8.2009. On this date, the assessee furnished reply, vide letter dated 17.8.2009 of its CA, Sh.Manoj Gupta vide which it furnished some of the addresses of the account holders and also furnished printout of cash book, bank book and ledger for the financial year 2006-07. Photocopies of bank account statements in respect of account No.396 UCO Bank, Kala Amb and A/c. No.197, UCO Bank, Faridabad were

also filed. These bank a/c statements were photocopies of original bank account statements directly obtained by the assessee from the concerned banks.

7. That the present assessment year under consideration was the first year of filing of Income Tax Return by the assessee. As per the audit report filed with income tax return, commercial production commenced w.e.f 4/09/2006 only. Within a period of only seven months of commercial production, assessee declared gross turnover of Rs.7,40,79,384/- on which net profit of Rs. 1,36,38,162/- was shown. In view of these abnormal and astonishing facts, a detailed questionnaire, vide this office letter no. 1198 dated 28.8.2009, after analysis and examination of the books of accounts furnished by the assessee, was issued to the assessee. Vide this questionnaire, assessee was specifically requested to furnish information regarding manufacturing activity and many other relevant information, like:- evidences with regard to ownership of land, certificate issued by the Distt. Industry Center entitling it to be eligible for deduction u/s 80IC of the Income Tax Act 1961, justification for claim of deduction u/s 80IC, to certify that there was no split or reconstruction of existing business, reasons for huge profit in the first year of commercial production, detailed description of manufacturing processes and activities involved, raw materials used, end product manufactured, details of plant & machinery installed etc. etc. Reply was to be filed on 14<sup>th</sup> Sept., 2009, however, no compliance was made. However, a letter dated 11.9.2009 was received from the counsel of the assessee Sh.Manoj Gupta, requesting for adjournment to the last week of October, 2009. The time gap requested for adjournment was too long to be accepted when, on the other hand, assessee did not furnish any information till that date. On 14.9.2009, vide letter No. 1376, again reminder of earlier questionnaire was issued. Followed by letter calling for requirements pertaining to cases where Letters issued u/s 133(6) of the Income Tax Act 1961 were received unserved and request was also made to furnish the information on 21.9.2009. Nobody attended the proceedings; neither any written information was filed. In between, a letter dated 9.10.2009 was also issued to the assessee for furnishing evidence regarding genuineness of existence of those untraceable account holders and genuineness of transactions reflected therein to be furnished on 20.10.2009. Again, no information was filed. On 28.10.2009, vide letter No.2745, a show cause notice u/s 272A along with summons u/s 131 vide letter no.2575, were issued to the working partners. On the same date, a reminder to earlier letters was also issued to the assessee vide letter No.2576. Also information from its related concerns namely M/s. Asha Telecom Pvt. Ltd., Faridabad

was called for from the assessee. The compliance was required on 3<sup>rd</sup> & 5<sup>th</sup> of November 2009 respectively. Nobody attended the office on these dates. On 4.11.2009, Shri Sanjeev Bajaj, A.R, attended the office but failed to produce bills/vouchers and reply to the questionnaire issued on 28.8.2009. This was in spite of the fact that the assessee's counsel himself had requested for adjournment to the last week of Oct., 2009 and whereas hearing took place on 4<sup>th</sup> of Nov , 2009. It means more than one week's extra time was given to the assessee. Assessment proceedings on 4.11.2009 were attended by the A.R, Sh. Sanjeev Bajaj, voluntarily. He was told to attend the office with complete bills/vouchers on 5.11.2009, but nobody attended the office on 5.11.2009.

8. That On 10.11.2009, Shri Sanjeev Bajaj, the A.R. and Shri Amarjit Kashyap, advocate on behalf of Shri Rajinder Behl, Advocate, new counsel for the assessee, attended but again failed to make any compliance. In view of this, a questionnaire dated 10.11.2009 was issued and served upon them. Vide this letter, the assessee was properly and duly apprised of the prevailing status of assessment proceedings till that date. Vide this questionnaire, it was requested to furnish reply to the letter issued u/s 133(6) of the Income Tax Act 1961 to M/s. Asha Telecom Pvt. .Ltd., Faridabad, its sister concern, which the said company had failed to reply in spite of repeated reminders. Also request was made to the assessee to produce books of accounts along with bills/vouchers, bank account statements in r/o above mentioned related company for the Asst. Year 2006-07 to A.Y 2008-09. Books of accounts and bills/ vouchers etc. for A.Y 2008-09 were also called for in the case of the assessee firm also. The assessee was also apprised of the discrepancies noticed in the ledger account of M/s. Ericsson India Pvt. Ltd. Gurgaon, collected u/s 133(6) of the Income Tax Act 1961. Request was also made to furnish confirmation in respect of some of the account-holders. The information was required to be furnished on 17.11.2009. Nobody attended the hearing on 17.11.2009. On 18.11.2009, a letter was received from the assessee through e-mail regarding reconciliation of its accounts with M/s. Ericsson India Pvt. Ltd. Gurgaon. But the information filed was not substantiated with any relevant bills/vouchers and accordingly production thereof was called for, vide letter dated 20.10.2009 received on 23.10. 2009, assessee furnished much awaited information regarding pending addresses of some of the account-holders.

9. Perusal of above facts revealed that there was persistent and absolute non-compliance and non-cooperation on the part of the assessee firm. Finally, on 18.11.2009 Shri Rajjinder Behl, Advocate, and Shri Sanjeev Bajaj, A.R. along with Shri Amarjit Kashyap, advocate, attended this office and **for the first time furnished reply dated 18.11.2009 which was in response to this office questionnaire issued way back on 28.8.2009.** Surprisingly, the information furnished was again incomplete and in many cases no replies were filed. For example, **no information was furnished regarding complete description of products manufactured by the firm, complete description of manufacturing processes involved,, raw material used etc.etc.** The information asked for vide Para 5 of the said questionnaire was not furnished in the manner as called for. Vide para 4, Annexure 3, manufacturing flow chart was furnished, but no documentary evidences in the shape of purchase bills, sales bills, bills/ vouchers of manufacturing expenses, P&L Account expenses were filed. Neither description of manpower employed was filed in the manner as required. Vide Para 5 of the reply, the assessee furnished list of plant & machinery, but complete details were not furnished as required in Annexure-A of the questionnaire. Vide para 7 of the questionnaire, it was requested to furnish details of transactions of the firm or the partners prior to financial year 2006-07 when there was opening balances of Rs.5,00,000/- in the capital account and Rs. 11,00,000/- in the name of M/s. Asha Telecom Pvt. Ltd. as liabilities. **But it did not furnish any information regarding sources of these credits and neither any confirmation from M/s. Asha Telecom Pvt. Ltd. was furnished.** Similarly, Para 8 of the questionnaire remained unanswered. Vide Para 9 of its reply, **it was stated that construction of building started w.e.f. April 2006 and got completed in the last week of August 2006, it meant that during the period of construction activities the firm did not engage in the manufacturing activities and other closely related activities like purchase of raw material and consumables etc.** Reply to query No. 10 was very vague, vide para 11 of the questionnaire, a detailed information was called for from the assessee regarding M/s. Asha Telecom Pvt.. Ltd, but it failed to furnish, the relevant information with the plea, that the same were being prepared and would be submitted on the next date of hearing. Vide Para 13, it was stated that funds were introduced by the partners during the financial year 2005-06 in cash, however, no evidences of sources of cash were furnished. Vide para 24, it was mentioned that **Map of factory building was enclosed as per Annexure-6, which was not found attached.** Vide para 27 of the questionnaire, the assessee firm was requested to furnish inventory of closing

stock along with method of valuation and documentary evidences to substantiate the valuation. In response to this, it furnished Annexure 7 with its reply without quantitative description of closing stock. No documentary evidences to prove the reasonability and genuineness of closing stock were produced. Similarly, vide para 30, it claimed to had annexed photocopies of electricity bills vide Annexure-8, which were not found attached. Photocopies of sales, photocopies of complete papers of sales tax returns, which was later on verified from the sales Tax Department. Vide Para 34 of the questionnaire, the assessee was requested to furnish explanation regarding cash payments to the Suppliers where not even a single payment was made through banking channels. No satisfactory reply was filed. Vide annexure-10 of its reply to question No.36 regarding deployment of manpower; the assessee could submit only names of employees and salary per month. No other information, like their complete permanent and present address, mobile no. and landline number of residence, educational qualifications, since when working with the assessee firm, nature of job assigned and place of posting / work etc. were filed which was the requirement of the questionnaire. The assessee did not produce labour muster roll / employee attendance register. It was also pleaded that information regarding fixed assets, other than plant & machinery, would also be furnished on the next date of hearing, which was never furnished. All these shortcomings, discrepancies and anomalies were duly confronted to counsel of the assessee and other A.Rs. who were present in the course of hearing. Accordingly, a detailed questionnaire vide letter vide letter dated 18.11.2009 no. 2910 was issued and served upon the counsel. The hearing was fixed on 23.11.2009. On the fixed date of hearing, counsel of the assessee, Shri Rajinder Behal, furnished a letter dated 23.11.2009 requesting for further adjournment of at least 10 days for the reasons that Shri Ashok Verma, the GPA holder of the firm, was not well and moreover, for compiling of information more time was required. On his request, the case was fixed for hearing on 3.12.2009, thus giving 10 days time to the assessee. However, nobody attended the office on 3.12.2009, neither any information was furnished.

10. Earlier, on 1.12.2009 vide letter bearing No.3674 & 3673, show cause notice u/s 272A(1)(c) was issued to Smt. Rajni Verma and Smt.Kamlesh Verma, Partners of the assessee firm, calling for explanation on 10,12.2009. Nobody attended the hearing nor did the assessee furnish any information. Summons u/s 131 were again issued to the partners vide this office letter No.3675 dated 3676 dated 10.12.2009. However,

nobody attended the office on 10.12.2009 in response to the summons. Again a reminder was issued to the assessee vide letter bearing No.3761 dated 11.12.2009 for compliance on 15.12.2009.

11. Ultimately, on 7<sup>th</sup> & 8<sup>th</sup> Dec, 2009, survey u/s 133A of the Income Tax Act 1961 was carried out in the business-cum-office premises of the assessee firm at VIII: Johron, Trilokpur Road, Kala Amb, Distt. Sirmour (H.P.) to find out the true facts of the case and also to look into the books of account, bills/vouchers and other documents available in the office premises. The department found and impounded a number of papers/documents, registers, diaries, bills, vouchers, daybooks and ledgers for the financial year 2006-07 to 2009-10. **However, no regular books of accounts in the shape of ledger, cash book, journal, bank book, either computerized or manual were found.** The assessee was requested to attend office for compilation of relevant information from impounded books/ documents/ bills etc. But assessee never responded to the same.

12. On 15.12.2009, Shri Ashok Verma, authorized signatory and husband of partner Smt. Rajni Verma, Shri Sanjeev Bajaj, A.R., Shri Vishal Mohan, advocate and Shri Ashwani K. Lal, advocate attended the office. They furnished two letters dated 12.12.2009 pertaining to assessment proceedings and in response to earlier questionnaires and letters. One letter was regarding survey u/s 133A and one letter regarding furnishing of information in the case of M/s. Asha Telecom Pvt. Ltd. Vide above two letters of the assessee's counsel pertaining to assessment proceedings, vide para 1, it was stated that replies to all the questionnaires were already tendered and as such, it was incorrect to state that the replies were not filed. In this regard, attention is invited to the facts mentioned in paragraphs supra where all the relevant facts have been discussed in length. Therefore, contention of the counsel was factually incorrect. Vide para 2, it expressed its inability to produce the books of account of M/s. Asha Telecom Pvt. Ltd., neither the same were produced by the said company. The assessee firm expressed its inability to provide bank account statements of M/s. Asha Telecom Pvt. Ltd. Vide para 3, it has been stated that the books of accounts of the assessee firm for the A.Y 2008-09 to A.Y 2010-11 were being produced but in fact no such books of account were ever produced. **It was also stated that supporting bills/vouchers were lying in custody with the department. The counsel and the authorized signatory were duly allowed to inspect impounded**

**books etc. and to take copies thereof. But till the date of passing of the assessment order no effort of any nature was made by the assessee to either inspect or to take copies of impounded documents etc for preparing of relevant information.**

13. In the light of above facts, issues and circumstances, it is crystal clear that the assessee has exhibited absolute, deliberate and intended non-compliance and non-cooperation in the finalization of assessment proceedings. There was well thought attempt on the part of the assessee to delay and hamper the investigation process. Had the assessee exhibited due cooperation and compliance, the true facts of the case would have surfaced much earlier and in more crystallized manner.

14. It is pertinent to mention here the provisions of the Income Tax Act regarding maintenance of Books of Accounts and also the provisions of section 80 IC which calls for certain conditions to be fulfilled for being eligible for deduction u/s 80IC. Provisions of Section 44AA is regarding maintenance of accounts by certain persons, carrying on profession or business. Sub Section (2) of this Section reads as under: -

*"Every person carrying on business or profession [(not being a profession referred to in sub section (1))] shall,-*

*(i) if his income from business or profession exceeds [one lakh twenty thousand] rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession exceed or exceeds [ten lakhs] rupees in any one of the three years immediately preceding the previous year; or*

*(ii) where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed [one lakh twenty thousand] rupees, or his total sales, turnover or gross receipts, as the case may be, in business or profession, are or is likely to exceed [ten lakhs] rupees, [during such previous year];*

*keep and maintain such books of account and other documents, as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act."*

*Sub Section (12A) to Section 2 of the Income Tax Act 1961 has provided definition of books of accounts as under-*

*Books or Books of Accounts, include ledgers, day books, cash books, account- books and other books, whether kept in the written form or as printouts of data stored in electro-magnetic data storage device."*

Perusal of above provisions of Section 44AA and 12A (Section 2) of the Income Tax Act 1961 reveals that it is primary responsibility of the assessee to mandatory maintain books of account as spelt out in Section 2(12A) of the Income

Tax Act 1961 so that Assessing Officer is able to compute total income of the assessee in accordance with the provisions of the Act. Maintenance of proper bills & vouchers and other documents is pre-requisite for writing the books of accounts as mentioned in Section 44AA of the Income Tax Act 1961. Without these bills/vouchers and other documents, entries of books of accounts cannot be substantiated, neither writing of the books could be initiated. In the instant case, as discussed supra in detail, the assessee failed to produce bills, vouchers and other documents to substantiate the entries of books of accounts. Therefore, production of cash book, ledger, bank book and journal is not sufficient in itself to fulfill the requirements of the above provisions of the Act.

The closely related provisions in this case are provisions of section 80 IC of the Act. It is a special provision in respect of certain undertakings or enterprises in certain special category States. The provisions of the Section are reproduced as under for ready reference:-

"Sub Section (1) - where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business, referred to in sub section (2), there shall, in accordance with and subject to the provisions of this Section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains, as specified in sub section (3).

Sub Section (2)-this section applies to any undertaking or enterprise -

(a) which has begun or begins to manufacture or produce any article or thing, not being any article or thing specified in the Thirteenth Schedule, or which manufactures, or produces any article or thing, not being any article or thing specified' in; the Thirteenth Schedule and undertakes substantial expansion during the period beginning-

(ii) on the 7<sup>th</sup> day of January, 2003 and ending before the 1<sup>st</sup> day of April, 2012, in any Export Processing Zone or Integrated Infrastructure Development Center or Industrial Growth Center or Industrial Area or Theme Park, as notified by the Board, in accordance with the Scheme framed and notified by the Central Government in this regard, in the State of Himachal Pradesh or the State of Uttranchal.

Sub Section (3) clause (ii)- in the case of any undertaking or enterprise, referred to in sub clause (ii) of clause (a) of Sub Section (2), hundred percent of such profits and gains for five assessment years commencing with the initial assessment year and thereafter, twenty five per cent (or thirty per cent where the assessee is a company) of the profit and gains.

Sub Section (4)- this section applies to any undertaking or enterprise, which fulfills all the following conditions, namely-

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

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

The perusal of relevant provisions of Section 80IC reveals that to become eligible for 80IC deduction, an assessee must satisfy the conditions mentioned in sub section (2) & (4), which are, in other words, qualifying provisions for exemption u/s 80IC of the Income Tax Act 1961. Eligibility of an assessee can be ascertained initially from its books of accounts, bills/ vouchers and other relevant information furnished in the course of the assessment proceedings. Once these are produced or furnished, to prove contrary to assessee's claim would lie on the assessing officer. Since, in the instant case, the assessee failed to produce bills, vouchers and other relevant documents and information to substantiate the contents of cash book, ledger and bank book produced before the Assessing Officer thereby failing to comply with the provisions of Section 44AA and Section 2(12A) of the Income Tax Act 1961.

15. That on 7<sup>th</sup> & 8<sup>th</sup> December 2009, survey u/s 133A of the Income Tax Act 1961 was carried out in the business-cum-office premises of M/s. Asha Technologies, Vill: Johron, Trilokpur Road, Kala Amb (H.P.). During the course of survey operation, a day book pertaining to Asst. Year 2007-08 was found and impounded containing entries of cash receipts and cash payments. These entries of day book were not reflected in the ledger and cash book provided to the Assessing Officer during the course of assessment proceedings. Moreover, purchase bills, sale bills, receipts of cash payments and bills of expenses were also found and impounded. **However, these bills/vouchers and receipts did not include bills & vouchers and receipts of all purchases, expenses and cash payments. The assessee was confronted with the above facts vide this office questionnaire dated 17.12.2009 bearing no.3875, but no such remaining bills/vouchers and receipts were produced for verification.** Vide this questionnaire, the assessee was also asked to furnish details of manufacturing activities, as claimed to be carried out by it, but no such information was furnished. **The assessee was also directed to refer to the., impounded bills/vouchers etc. for preparing information and data as asked for vide last questionnaire issued on 17.12.2009. However, once again assessee failed to comply with the above questionnaire.**

Had the assessee produced and furnished complete bills, vouchers, documents and other relevant information, as called for time to time, the onus to prove it contrary

would have been on the assessing officer. But that did not happen in this case. **Perusal of above facts and circumstances of the case establishes beyond doubt that assessee has miserably failed to discharge the primary and initial onus to prove the genuineness of claim of deduction u/s 80IC of the Income Tax Act 1961.**

**Perusal of audit report filed with the income tax return for the relevant A.Y 2007-08 reveals that assessee is engaged in the business of "Manufacturing." But there is no further description of nature of manufacturing activity to enable to ascertain the exact nature of manufacturing activity. The assessee has filed 10CCB form which is part of audit report, only on 24-12-2009 that too in response to this office reminder. There is no mention of manufacturing activity in this form also. During the course of survey conducted u/s 133A of the Income Tax Act 1961 on 7<sup>th</sup> & 8<sup>th</sup> Dec, 2009 in the business-cum-office premises of the assessee firm, document was impounded, which was annexurized as Annexure D-2. There is Page 152 (Photocopy placed on Assessment File). Which is a set of Form 3CD of the Audit Report for the Asst. Year 2007-08 signed and certified by the Chartered Accountant, Manoj Kumar Gupta & Associates. As per this audit report, the nature of business of the assessee is termed as "Manufacturing of Electronic Parts".**

However, this was noticed for the first time from the information obtained u/s 133(6) from the office of the Member Secretary, Single Window Clearance Agency, Deptt. of Industries, Nahan, an H.P. govt, agency to register industries in this part of the state, that assessee was engaged in the manufacturing of Telecom Parts. Vide letter no. 1678 dated 26-11-2009, the Member Secretary informed that the assessee firm was covered under Code No. NIC 98\*-32204, which referred to the main manufacturing activity carried on by the assessee. As per this letter, the products to be manufactured by the assessee were categorized under Code (ASICCC2000\*-78155). Further clarification from the said Department revealed that the Code NIC-32204 broadly described industrial units pertaining to manufacture of apparatus for line telephony including such apparatus for carrier current line system (including manufacture of telephone set, automatic and non-automatic switchboard and exchanges, Morse or Morse type keys, other telegraphic transmitter, digital electronic exchange apparatus, Morse type recorders, printer-type receiver, picture telegraphic transmitters and receivers etc.). Whereas ASICCC2000\*-78155 meant for **'Telecom Cable Joining Kits'**. Information collected from the Central Excise Division, Shimla revealed that the assessee firm was engaged in the manufacturing of

Telecom Parts under the Excise Tariff Heading 7211.30, Sheet Metal Components, Powder, Stainless Steel, Aluminium, S.S. Fasteners, C.R.C. Sheets, S.S. Sheets, P.V.C. Cable, Corrugated Packing. Polythene and Copper Conduit Cable. The items covered under Telecom Parts Tariff Heading 7211.30' were items like- Flat-Rolled Products of Iron or Non-Alloy Steel of a width of less than 600 mm, not clad, plated or coated.

**Perusal of above facts reveals that the assessee itself does not actually know what exactly to mention in the audit, report to be furnished with the Income tax return and in other -information to be furnished with concerned Govt. Departments. This mistake occurred because of the bona fide factual situation that there was no manufacturing activity at all undertaken by the assessee.**

**16. Looking at the indifferent and non-cooperative attitude of the assessee, it was felt extremely desirable to collect relevant information and documents from the field** and also from different govt. agencies which were involved in granting required certificates and permits to the assessee for setting up the unit in exempted area of Himachal Pradesh. Therefore, provisions of section 133A and section 133(6) of the Income Tax Act 1961 were invoked in this case to unearth true and correct facts and figures of the case.

17. That it is pertinent here to give a brief introduction of a company known as M/s. Ericsson India Pvt. Ltd., DLF Cybercity, Sector-25-A, Gurgaon, Haryana. with registered office at 4<sup>m</sup> Floor, Dhaka House, 18/17, W.E.A., Pusa Lane, Karol Bagh, New Delhi. Perusal of ledger book of the assessee for the Asst. Year 2007-08 reveals that it is making major part of sales, approximately to the tune of 99.5% to M/s.Ericsson India Pvt. Ltd. Gurgaon and remaining nominal share to its related concern namely M/s. Asha Telecom Pvt. Ltd., Faridabad. Vide letter no. EIL/EE-09:3330 Uen dated 16-10-2009 from M/s. Ericsson India Pvt. Ltd., Gurgaon, received in response to letter u/s 133(6) of the Income Tax Act 1961, reveals that this company is engaged in the business of manufacture and marketing of telecommunication equipments and installation, commissioning & technical services in connection with telecom networks viz. Mobile Towers. Further, it was intimated by the above company that goods supplied by the assessee firm were in the nature of Installation Related Material, which were required for installation of Mobile Towers at Customer's Site i.e. customers of Ericsson India Pvt. Ltd.(henceforth known as EIL).Earlier EIL and the assessee firm had entered into an agreement for supply of installation material.

As per the, agreement, the supplier M/s. Asha Technologies Vill: Johron, Trilokpur Road, Kala Amb (H.P), the assessee firm agreed to supply the parts and materials at the prices fixed in the agreement to the EIL.

18. Be it noted that the details of installation products with description of each such material to be supplied as per agreement, are reproduced as and by way of ready reference as **Annexure A (page 1 to 14) (Reference AO order dt. 30/12/2009)**

19. Above chart (Annexure -A) reveals that in the **first column there is mention of "Part Name" which is the name of Set of Articles. And fifth column gives description of items contained in that Set of Articles as mentioned at column no. one. For example in column first, there is Part Name as " Earthing Set 1/2", outdoor". In column no. five there are description of parts like:- Rubber Cover, Hose Clamp, Copper Grip, Copper Cable etc. All these loose parts are put in a carton box to form a Set of Articles named as " Earthing Set 1/2 outdoor".** There are number of such other Set of Articles in the agreement which is used by the EIL for installation of Mobile Towers for its customers at site of erection of Towers. Every Set of Articles has a fixed number and quantity of parts in it but all such parts/ articles are in loose condition, except in few cases where these parts are put together to form a sub-set. These loose parts once put together to form a Set or Kit are then packed in carton boxes or packed in polyfabs for dispatch. The formation of Kit or Set is not a standardized commercial practice or requirement of the open commercial market. **It is a customized requirement of the EIL to suit its practical requirements and for its managerial convenience at the site of installation of Mobile Towers to be assembled or commissioned at the site.**

20. That as per the provisions of the agreement executed between the two parties, these Installation Materials or Set of Articles was collectively referred to as "**Mechanical Site Material.**" Same terminology was given to these items on the sale Invoice and was further represented by a detailed Bill of Quantity (BOQ). **This BOQ would give exact details of items contained in a particular Set of Articles or Kit.** There could be number of BOQs as per the requirement of the EIL Like:- BOQ1, BOQ2, BOQ4, BOQ6 so and so on forth. **Each BOQ would refer to a particular set of items for particular use at the site of installation for the customers of EIL. Therefore, the sale bills issued by the assessee firm would simply give description of material supplied as "Mechanical Site Material BOQ" which would further be followed by an Annexure of**

**Bill of Quantities (BOQ).**A few copies of sale bills of different BOQs are enclosed as **Annexure-B(Page 1 to 3)** for reference AO's order dt. 30.12.2009.

21. For the sake of clarity and reference, list of said BOQs are reproduced in **Annexure-C** (page 1 to 10) (for reference AO's order dt. 30/12/2009).

22. **In common parlance, these Site Materials would refer to loose materials and parts like - Self Bonding PVC Tapes, Rubber Cover, House Clamp, Cable, Cable Lug, Jointing Sleeve, Tie Strap, Insulating Cover, Plastic Feeder Clamps, Adaptor, Threaded Rod, Screw, Nuts, Washer, Marking Label, Ladder, Ladder Joint, Ladder Hook, Pendulum, Wall Bracket, Flexible Conductor, lug, Bolt, Junction, Angle Support, Rivet, Tube Holder, Cable Chute, Modular Box etc. etc. The purchase bills of these materials by the assessee firm also clearly mention the same description of items as is mentioned in the BOQs of sale invoice effected by the assessee. There is no change in the name, its character, use and identity at the end of the purchaser i.e. EIL. These loose parts or materials were firstly arranged and then packed by the assessee in different numbers and quantities in carton boxes or in polyfabs according to the requirements of the BOQs, as mentioned in the Purchased Orders placed with the assessee firm by EIL. Every supply by the assessee firm was to be in accordance to the Purchase Order placed by EIL.**

23. Be it noted photocopies of some of purchase bills and sale bills are enclosed for perusal and reference as Annexure D (page 1-31)( **for reference AO's order dt. 30/12/2009**).

24. That Vide letter No.EIL/EE-09..3827 UEN dated 16.12.2009, M/s. Ericsson India Pvt. Ltd. further confirmed that these loose articles were installation materials used for the purpose of setting up of Mobile Communication Network to be consumed at the Telecom Site owned by Telecom Operators i.e. EIL's Customers. It further stated that invoices issued by the assessee firm did not include any service charges for assembling, testing services of goods supplied by it. The Company (EIL) was responsible for installation of telecom equipments at site.

**Perusal of purchase bills found and impounded during foe course of survey operation revealed that the assessee was making purchases of articles of "Mechanical Site Material", as mentioned above, as such from the suppliers with same name, same use and same identity and characteristics with which the assessee firm had further supplied to M/s. Ericsson India Pvt. Ltd. Gurgaon. A chart**

has been prepared in respect of these purchase bills impounded during the course of survey, which substantiates finding of the Assessing Officer that the items purchased and sold were 'of same name, use and identity. This chart is being reproduced as under for reference. Chart of purchase bills tabulated is annexured as **Annexure- E (for reference AO's order dt. 30/12/2009)** .

The above facts reveals that the assessee firm is simply engaged in the **trading of installation material with the EIL Company**. The assessee firm is not responsible for its assembling, testing, erection and commissioning at the site of installation of Mobile Towers, which is carried out by EIL itself. The site of installation of Mobile Tower exists mostly outside the State of Himachal Pradesh and also outside the specified area notified by the Central Government in Himachal Pradesh for industrial undertakings to claim tax holidays. Therefore, activity of assembling of loose materials supplied by the assessee firm takes place outside the area notified by the Central Government in Himachal Pradesh. Moreover, assembling of loose materials is done by M/s Ericsson India Pvt. Ltd. and not by the assessee firm. Therefore, in this area also assessee firm fails to satisfy the conditions laid down in section 80IC.

The assessee firm also made sales to its sister concern, M/s. Asha Telecom Pvt. Ltd, Faridabad in similar manner. But volume of sales was very nominal.

During the course of survey u/s 133A in the business cum office premises of the assessee firm at village Johron, Trilokpur Road, Kala Amb, Tehsil Nahan, Distt. Sirmour H.P, carried out on 7<sup>th</sup> & 8<sup>th</sup> of December, 2009, the .above findings were established beyond doubt. The above mentioned facts were witnessed by the assessing officer and other officials of the department in person in the business premises of the assessee firm . **It revealed that assessee was simply engaged in the work of re-arranging and re-packing of articles and parts in small numbers and quantities as per the requirements of the purchaser. These articles and parts were being purchased in bulk from third parties but mainly from its related concern, namely M/s.Asha Telecom Pvt. Ltd. 17/3, Mathura Road, Fraiddabad, Haryana. Purchase bills of these goods were also found in the business cum office premises and were impounded in the process. However in most of the cases, bills / vouchers and receipts could not be detected during the course of survey. Neither same were furnished by the assessee after the date of survey. Perusal of these purchase bills Cleary shows that assessee is making purchases of materials as such and then dispatched to EIL after rearranging and repacking.** Therefore, comparative analysis

of purchase bills and BOQs, annexed with sale invoices issued by the assessee, is desirable for an objective conclusion.

It was also noticed during survey that assessee firm had engaged number of workers for re-packing and rearranging of loose articles. Their statements were recorded in which they confirmed that they were engaged **in the work of packing of material**. Many of them were hardly educated and were without any technical and skilled knowledge. Neither were they having any work experience of technical and skilled nature required for manufacturing activity. **Many of them had joined the work a few days back only**. But, in spite of that they were doing work without any problem because of the fact that work of re-arranging and re- packing did not require any technical or skilled work experience or training. As per the statement of Sh. Narender Kumar, work supervisor for production in the business premises of the assessee, same type of activity existed in earlier years also.

Therefore, perusal of above facts and circumstances well establish that assessee was never engaged in the activity of manufacturing of any of the products, which were part of supplies to the EIL.

25. During the course of survey it was pleaded by one of promoters of the assessee firm, namely Sh. Pawan Verma, that the firm was carrying out manufacturing activity in the following areas of business activity:-

1. Production of Plastic Feeder Clamps;
2. Powder Coating;
3. Assembling of Plastic Feeder Clamp
4. Bending, Punching of G.I Sheets
5. Welding of Ladder
6. Fixing of lug at one end of Copper cable;

Head wise analysis of the contention of the assessee on above issues is discussed as below:-

**Production of Plastic Feeder Clamps:-**

**It is pertinent to mention here that there is only one area where the assessee actually carries out manufacturing activity i.e. manufacturing of Plastic Feeder Clamps. Perusal of Purchase Bills and other facts reveals that the assessee is manufacturing Plastic Feeder Clamps used in mobile towers for passing cables through it. However, major chunk of Plastic Feeder Clamps was purchased as such from the**

market. Raw material for Plastic Feeder Clamp is plastic dana which is heated and then put into a Plastic Moulding Machine for end product. Thus satisfying the conditions for manufacturing since some definite new product, distinct and different in name, use and identity is manufactured from plastic dana. Following is the detail of purchase of plastic dana by the assessee for manufacturing of plastic feeder clamps during the year under consideration:

**Purchase of Plastic Dana:-**

Sr. No.	Name of the supplier	Bill No.	Date	Description of the goods	Qty.	Rate per unit/	Total amount
1	Mahavir Industries, MIE Bhadurgarh, Part-A Haryana	1424	11.02.07	SME reprocessed plastic dana	2000 kg.	27 per kg.	56160
2	Mahavir Industries, MIE Bhadurgarh, Part-A Harvar.a	409	29.01.07	SME reprocessed plastic dana	2000 kg.	32 per kg.	66560
3	Mahavir Industries, MIE Bhadurgarh, Part-A Haryana	1398	13.01.07	SME reprocessed plastic dana	1000 kg.	32 per kg.	33280
4	R.B.Enterprises, 17/3, Mathura " Road, Faridabad	901	23.11.06	Plastic Dana 25X60 Bags	1500per -kg.	52 per kg.	81120
5	R.B. Enterprises, 17/3, Mathura Road, Faridabad	898	16.11.06	Plastic Dana 25X20/ Plastic Dana 25X40	500/1000 kg.	114/52 per kg.	113360
6	R.B. Enterprises, 17/3 Mathura Road, Faridabad	965	28.03.07	Plastic Dana 25X10	250 kg	52 per kg.	13520
7	R.B.Enterprises, 17/3, Mathura Road, Faridabad	953	06.03.07	Plastic Dana 30X25	750 kg	30 per kg.	23400
8	R.B.Enterprises, 17/3, Mathura Road, Faridabad	929	17.01.07	Plastic Dana 25X4	100	86	8944
9	R.B.Enterprises, 17/3, Mathura Road, Faridabad	919	31.12.06	Plastic Dana 25X70 Bags	1750	52	94640
10	R.B.Enterprises, 17/3, Mathura Road, Faridabad	917	18.12.06	Plastic Dana 28X80	2000	52	108160
11	R.B.Enterprises, 17/3, Mathura Road, Faridabad	911	03.12.06	Plastic dana 25X60, Plastic Dana 25X2	1500 Kg/ 50 Kg.	52/85	85540
	Total				14400		684684

Perusal of above chart shows that assessee has made purchases of plastic dana of 14400 kg which has been used wholly for manufacturing of plastic feeder clamps since there is no closing stock of plastic dana as on 31-3-2007. During the course of survey an exercise was made to ascertain the actual number of Plastic Feeder Clamps to be manufactured from a specific quantity of plastic dana. This was duly acknowledged by the production supervisor, Sh. Naresh Kumar Bhatia in his statement dated 8/12/2009. This is tabulated as below:-

Sl. No.	Description	Number of items	Weight of 10 pair of PFC
1.	Plastic Feeder Clamp 7/8" to be used for BSNL Towers	10 pairs	0.752 gms.
2.	Plastic Feeder Clamp 7/8" to be used for Bharti Towers	10 pairs	0.436 gms.

The above table shows that weight of 10 pairs of Plastic Feeder Clamp of specification of 7/8" used for BSNL Towers is only 752 gms and specification of 7/8" used for Bharti Towers is 436 gms. The employee, Sh. Sunil Kumar who looks after manufacturing of PFCs, stated that during the year 2009-10, the firm was manufacturing two types of PFCs, one for the mobile towers to be installed by EIL for BSNL and the other, for Bharati, There is no evidence on records to show the full description of plastic Feeder Clamps manufactured by the assessee during the year under consideration. Neither any information was furnished by the assessee during the course of assessment proceedings to work out the above details. In the absence of any information, the relevant detail of PFC production and its costing is worked out on the basis of above tabulated figures.

Perusal of purchase bills of Plastic Feeder Clamps from M/s Kishan Plastics, detailed chart tabulated below, reveals that rate of per piece of plastic feeder clamp is charged at Rs. 2.25 per piece for smaller pieces and Rs. 4.00 per piece for bigger ones. Therefore to have an fair and reasonable analysis of manufacturing of Plastic Feeder Clamps it is presumed that assessee might have manufactured both types of PFC (Plastic Feeder Clamps) at the ratio of 50% of each category. Half of 14400 kg works out to 7200 kg. If weight of 20 pieces (10 pairs) of BSNL PFC works out to 752 gms, then from 7200 kg of plastic dana approximately 1,91,489 pieces i.e. ( 7200x1000x20/752) of PFC of bigger size can be manufactured. Similarly, in r/o PFC for Bharti for smaller size, it works out to 330275 pieces i.e. ( 7200x1000x20/436). Application of rates charged by M/s. Kishan Plastics for small size PFC, @ Rs. 2.25, the amount of costing of smaller PFCs works out to Rs. 7,43,118. And for big piece, @ Rs. 4.00, per piece works out to Rs./- 7,65,956/-. Therefore total cost of PFC of both sizes works out to Rs. 15,09,074/- i.e ( Rs. 743118+765926). The assessee has shown net profit @ 18.41% for the relevant year. Therefore, net profit earned on the manufacture and sale of PFC works out to Rs 2,77,820/- which is eligible for deduction u/s 80IC of the Act. To the extent of Rs 2,77,820/- assessee qualifies for 80 IC exemptions.

Following is the chart of purchase of pre- manufactured Plastic Feeder Clamps by the assessee during the year under consideration. The same do not qualify for deduction u/s 80IC.

No.	Name of the Party	Bill No.	Date	Description of the goods	Qty	Rate per unit	Total Amount
1	Kishan Plastic, 17/3 Mathura Road, Faridabad	251	06.06.06	Feeder Clamp (Plastic),	36000 pc.	2.5 per pc.	93600
2	Kishan Plastic, 17/3 Mathura Road, Faridabad	359	06.11.06	Feeder Clamp (Plastic)	33000 pc.	2.25 per pc.	77220
3	Kishan Plastic, 17/3 Mathura Road, Faridabad	285	24.07.06	feeder Clamp (Plastic)	56400 pc.	2.25 per pc.	131976
4	Kishan Plastic, 17/3 Mathura Road, Faridabad	277	13.07.06	feeder Clamp (Plastic)	50400 pc.	2.25 per pc.	117936
5	Kishan Plastic, 17/3 Mathura Road, Faridabad	268	01.07.06	Feeder Clamp (Plastic)	36000 pc.	2.25 per pc.	84240
6	Kishan Plastic, 17/3 Mathura Road, Faridabad	262	20.06.06	Feeder Clamp (Plastic)	135000 pc.	2.50 per pc.	140400
7	Kishan Plastic, 17/3 Mathura Road Faridabad	296	05.08.06	Feeder Clamp (Plastic)	38000 pc.	2.25 per pc.	88920
8	Kishan Plastic, 17/3 Mathura Road,	292	03.08.06	Cable Chute/Gutka Plastic/Ben d	270/3480/ 1972 pes.	110/1.00/ 3.00 per pc.	40659

	Faridabad			Plastic			
9	Kishan Plastic, 17/3 Mathura Road, Faridabad	355	26.10.06	Feeder Clamp (Plastic)	72000 per pc.	2.25 per pc.	168480
10	Kishan Plastic, 17/3 Mathura Road, Faridabad	331	28.09.06	Feeder Clamp (Plastic)	80400 per pc.	2.25 per pc.	188136
11	Kishan Plastic, 17/3 Mathura Road, Faridabad	393	25.12.06	Feeder Clamp (Plastic)	#####.	2.00 per pc.	124800
12	Kishan Plastic, 17/3 Mathura Road, Faridabad	505	16.03.07	Feeder Clamp (Plastic)	99600 per pc.	2.00 per pc.	207168
13	Kishan Plastic, 17/3 Mathura Road, Faridabad	385	09.12.06	feeder clamps big	17500 per pc.	4.00 per pc.	72800
14	R.B.Enterpri ses, 17/3, Mathura Road, Faridabad	894	06.11.06	Feeder Clamp 500X88, 1000X12/ Plastic Cap Small for Feeder	64800/215 0	2.00/1.00	153868
15	R.B.Enterpri ses, 17/3, Mathura Road, Faridabad	887	26.10.06	Feeder Clamp 1000X84	84000	2.25	196560
16	R.B.Enterpri ses, 17/3, Mathura Road, Faridabad	878	28.09.06	Feeder Clamp 134 Bags X600/CAP Big 2 bags/ CAP smal 4 bag	80400/181 4 /3200 nos	2.25/1.50/1	194294
17	R.B. Enterprises, 17/3, Mathura Road, Faridabad	858	13.07.06	Feeder Clamp 600X20, 1000X20	32000	2.25	74880
18	R.B. Enterprises, 17/3, Mathura Road, Faridabad	857	01.07.06	Feeder Clamp 600X25	15000	2.25	35100
19	R.B. Enterprises, 17/3, Mathura Road, Faridabad	849	20.06.06	Feeder Clamp (Plastic Parts)/ Sheet Banded Component s	54000 nos/1200 kg	2.50/38 per kg.	187824
20	R.B. Enterprises, 17/3 Mathura Road, Faridabad	846	06.06.06	Feeder Clamp (Plastic, Bags 94)	60600	2.5	158000
21	R.B.Enterpri ses, 17/3, Mathura Road, Faridabad	956	13.03.07	Feeder Clamp 7/8" 600X40/ Plastic Dana 25 X 5/ plastic dana 25X4/Pend ulam Cap Big/Caps for leader	24000/125 kg./100kg./ 1050/1000	2/47/86/1.50/ 1	67652
22	R.B. Enterprises, 17/3, Mathura Road, Faridabad	958	15.03.07	Feeder Clamp 7/8" 600X74. 1000X66	110400	2	229632
23	R.B. Enterprises,	940	19.02.07	Feeder Clamp	72000	2	149760

	17/3, Mathura Road, Faridabad			7/8"			
24	R.B. Enterprises, 17/3, Mathura Road, Faridabad	918	25.12.06	Feeder Clamp 7/8" 600X100	60000 pcs	2	124800
25	R.B. Enterprises, 17/3, Mathura Road, Faridabad	916	14.12.06	Feeder Clamp Big	20000	5.5	114400
	Total						3223185

#### **Powder coating & Galvanizing:-**

During the year under consideration, the assessee has carried out activity of powder coating on pre-manufactured G.I. Ladders & its accessories etc. on job work basis through contractor M/s. Ashima Industries, Faridabad and in one case, it has also done galvanizing of ladders, clamps and pendulum on job work basis through M/s. A.V. Forging, 230, Phase-IX, Indl. Area, Mohali. During the course of survey it was noticed that Powder Coating was carried out within the business premises of the assessee firm at Kala Amb. During the course of survey a challan book was found and impounded reflecting the figures of job work carried out by the assessee firm through M/s Ashima Industries. This challan book was never produced by the assessee for verification earlier. The details of contents of Challan bills are tabulated as below:

Sl. No.	Name & Address of Party	Challan No. & Date	Description of items for Job Work	Quantity	Nature of Job Work	Rate per item obtained from Ashima Industries Bills Page No. 1 & 8
1.	Ashima Industries	001 dtd.22.07.2006	Mounting Plate Supporting Iron (C-Channel) Supporting Ironic-Channel)	412 Pcs 41 Pcs	Powder Coating	5.00 5.00
2.	Ashima Industries	002 dtd.24.07.2006	Mounting Plate C-Channel	66 Pcs 459 Pcs	Powder Coating	5.00 5.00
3.	Ashima Industries	003 dtd.25.07.2006	Mounting Plate C-Channel Wall Consol	282 Pcs 228 Pcs 405 Pcs	Powder Coating	5.00 5.00 5.00
4	Ashima Industries	004 dtd.26.07.2006	Mounting Plate Celling Fixing Cabinent Cable Run Fix Jointing Iron-Coupler Plate Supporting Iron(C-Chennel) Cabinent Console Support (L-Clamp big) Angle Support(L-Clamp Small)	46 Pcs 212 Pcs 213 Pcs 273 Pcs 10 Pcs 1460 Pcs 75 Pcs	Powder Coating	5.00 5.00 5.00 5.00 2.00 1.00
5	Ashima Industries	005 Dtd. 27.07.2006	Angle Support(L-Clamp Small) Pendulam	1416Pcs 262 Pcs	Powder Coating	1.00 19.40
6.	Ashima Industries	006 dtd.28.07.2006	Wail Console Supporting Iron(C-Channel) Celling Fixing L-Clamp Big L-Clamp Small	247 Pcs 327 Pcs 601 Pcs 615 Pcs 50 Pcs	Powder Coating	5.00 5.00 2.00 1.00
7.	Ashima	007	Cabinent	199 Pcs	Powder	5.00

	Industries	dtd.29.07.2006	Console Support (L-Clamp Big) Angle Support (L-Clamp Small)	1100Pcs	Coating	2.00 5.00
8.	Ashima Industries	008 dtd.31.07.2006	Pendulum Cabinet Console Support (L-Clamp Big) Angle Support (L-Clamp Small) Celling Fixing Ladder	150 Pcs 80 Pcs 856 Pcs 102 Pcs 18 Pcs	Powder Coating	19.40 1.00 5.00 5.00 97.60
9.	Ashima Industries	009 dtd.2.08.2006	Ladder	14 Pcs	Powder Coating	97.60
10.	Ashima Industries	010 dtd.4.08.2006	Ladder	76 Pcs	Powder Coating	97.60
11.	Ashima Industries	011 dtd.5.08.2006	Ladder	57 Pcs	Powder Coating	97.60
12.	Ashima Industries	012 dtd.7.08.2006	Ladder	19 Pcs	F, wder Coating	97.60
13.	Ashima Industries	013 dtd.9.08.2006	Ladder	139 Pcs	Powder Coating	97.60
14.	Ashima Industries	014 dtd.11.08.2006	Junction L-Clamp (Small)	330 Pcs 432 Pcs	Powder Coating	14.20 1.00
15.	Ashima Industries	015 dtd.14.08.2006	Run Fix Junction Copplar Plate	577 Pcs 170 Pcs 312 Pcs	Powder Coating	5.00 14.20 5.00
16.	Ashima Industries	016 dtd.16.08.2006	Run Fix Cupler Plate (Joint) Supporting Iron	57 Pcs 936 Pcs 810 Pcs	Powder Coating	5.00 5.00 5.00
17	Ashima Industries	017 dtd.17.08.2006	Mounting Plate Supporting Iron Run Fix Wall Console	588 Pcs 378 Pcs 285 Pcs 63 Pcs	Powder Coating	5.00 5.00 5.00 5.00
18.	Ashima Industries	018 dtd. 18.08.2006	Wall Console Supporting Iron Run Fix	27 Pcs 198 Pcs 200 Pcs	Powder Coating	5.00 5.00 5.00
19.	Ashima Industries	019 dtd.19.08.2006	Wall Console Run Fix Supporting Iron	504 Pcs 450 Pcs 324 Pcs	Powder Coating	5.00 5.00 5.00
20.	Ashima Industries	020 dtd.21.08.2006	Wall Console Supporting Iron Coupler Plate Run Fix rolling Ceiling Fixing	144 Pcs 234 Pcs 178 Pcs 258 Pcs 846 Pcs	Powder Coating	5.00 5.00 5.00 5.00 5.00
21	Ashima Industries	021 dtd.22.08.2006	Pendulum Supporting Iron Celling Fixing Run Fix	348 Pcs 225 Pcs 36 Pcs 48 Pcs 80 Pcs	Powder Coating	19.40 5.00 5.00 5.00 5.00

			Wall Console			
22.	Ashima Industries	022 dtd.23.08.2006	Coupler Plate Wall Console Supporting Iron Mounting Plate Run Fix Celling Fixing L-Clamp Small Pendulum	169 Pcs 29 Pcs 63 Pcs 18 Pcs 6 Pcs 360 Pcs 790 Pcs 350 Pcs	Powder Coating	5.00 5.00 5.00 5.00 5.00 1.00 19.40
23	Ashima Industries	023 dtd.24.08.2006	Pendulum	148 Pcs	Powder Coating	19.40
24.	Ashima Industries	024 dtd.25.08.2006	Cabinet Console Suppport (L-Clamp Big) L-Clump Small	100 Pcs 970 Pcs	Powder Coating	2.00 1.00
25.	Ashima Industries	025 dtd.26.08.2006	Pendulum	310 Pcs	Powder Coating	19.40
26.	Ashima Industries	026 dtd.27.08.2006	Pendulum	583 Pcs	Powder Coating	19.40
27.	Ashima Industries	027 dtd.29.08.2006	Ladder	38 Pcs	Powder Coating	97.60
28.	Ashima Industries	028 dtd.31.08.2006	Ladder Pendulum	69 Pcs 80 Pcs	Powder Coating	97.60 19.40
29.	Ashima Industries	029 dtd.01.09.2006	Ladder	39 Pcs	Powder Coating	97.60
30.	Ashima Industries	030 dtd.02.09.2006	Ladder (L-Clamp; Big) (L-Clamp Small)	39 Pcs 125 Pcs 150 Pcs	Powder Coating	97.60 2.00 1.00
31.	Ashima Industries	031 dtd.07.09.2006	Ladder	147 Pes	Powder Coating	97.60
32	Ashima Industries	032 dtd. 08.09.2006	Ladder C-Channel L- Clamp(Small)	238Pcs 536 Pcs 428 Pcs	Powder Coating	97.60 5.00 1.00
33.	Ashima Industries	033 dtd. 11.09.2006	Junction Supporting Iron C-Channel	285 Pcs 270 Pcs 106 Pcs	Powder Coating	14.20 5.00 5.00
34.	Ashima Industries	034 dtd. 14.09.2006	Coppelar Plate C-Channel Run Fix Supporting Iron	980 Pcs 860 Pcs 370 Pcs 190 Pcs	Powder Coating	5.00 5.00 5.00 5.00
35	Ashima Industries	035 dtd. 15.09.2006	L-Clamp (Small) L-Clamp(Big) C-Channel Cuppaler Run Fix Supporting Iron	1730PCS 740 Pcs 400 Pcs 590 Pcs 150 Pcs 325 Pcs	Powder Coating	1.00 2.00 5.00 5.00 5.00 5.00
36.	Ashima Industries	036 dtd. 16.09.2006	L- Clamp(Small) L-Clamp(Big)	1330Pcs 1515Pcs	Powder Coating	1.00 2.00
37.	A.V. Forging, 230, Phase IX. Industrial	037 dtd.22.09.2006	M.S. Ladders, Clamps, Pendulum	3958Kgs	Galvanizing	3000 per qtl. along with material

	Area, Mohali					
38.	Ashima Industries	038 dtd.17.10.2006	Angle Support (L-Clamp) Wall Console	1735Pcs 696 Pcs	Powder Coating	5.00 5.00

The process of Powder Coating or Galvanizing on articles as mentioned in the above table, does not bring out any change in the original product which could be termed as different product and which could be identified as different thing in the commercial market. A ladder remains a ladder and is also sold to EIL as ladder only. Similar is the case with galvanizing. Galvanizing is done outside by third party, However, during the year under consideration, galvanized ladders and accessories were supplied by M/s. Namdhari Industrial Traders of Ludhiana. Only in one case galvanizing has been done on job work basis from M/s. A.V. Forging, 230, Phase-IX, Indl. Area, Mohali. Therefore, these activities of powder coating and galvanizing do not qualify the definition of either manufacturing or processing which could render the product to become a totally new distinct item with changed name and use in the commercial market.

#### **Assembling of Plastic Feeder Clamps:-**

During the course of survey it was noticed that assessee had employed some workers for an activity which it termed as assembling of Feeder Clamps. Feeder Clamp is a set of articles containing Plastic Feeder Clamp as main part, Adapter, Clamp, Threaded Rod, Screw, Nuts, Washer. As already stated above, the EIL has chalked out its own method of getting the material supplied from the assessee firm in a particular manner and style which would suit its practical requirement and also suit its managerial convenience. Hence this set of Feeder Clamps has been formulated. As witnessed during the course of survey, workers were simply putting together Plastic Feeder Clamps and other parts to prepare a set of article. This activity did not require any training or skilled knowledge. It could be done by looking at others doing the same. Even no formal instruction is needed to carry out the work. There were workers with experience of two to three days also were doing this job. No costing etc. is required. No intermittent and systematic processes are involved. A set could be put together in less than three to four minutes of time. And could be dismantled easily without any physical distortion or deterioration of any nature which otherwise takes place in other areas of assembling like assembling of Air Conditioner etc. which fall within the ambit of definition of manufacturing or assembling. In this case it doesn't happen at all. Same parts can be put together again to prepare a set. There is no change in the name, use and characteristics of the parts. Moreover, these parts could be dispatched separately also which was taking place in the business premises of the assessee on the date of survey. Purchase bills and sale bills do not differentiate its name, use and commercial identity. Feeder Clamp remains as Feeder Clamp only at the hands of the purchaser also. Therefore, putting together of Feeder Clamps does not qualify the definition of assembling and manufacturing. This is for the reasons that none of the components or materials used can partake the character of or be a substitute for the functioning or the commercial value attributable to the final product. In this case there is firstly no intermittent processes involved in putting together of parts, there is no separate name use and characteristic different from the original product. There is no different commercial identity of the same in open commercial market. These parts can be supplied to the purchaser without putting together also. Just putting these items together to give a coloring of manufacturing activity or assembling for seeking the benefit of 80 IC, is not sufficient. A bonafide and genuine situation, intent and requirement of commercial market has to be there to substantiate the happening. Therefore, assessee's claim is not based on any correct appreciation of facts. Moreover, there is no evidence provided to the assessing officer to show that this activity was carried out by the assessee during the relevant year also.

#### **Bending, punching of G.I Sheets:-**

During the course of survey it was notice that assessee had purchased pre-cut G.I sheets of size of one meter length x 425mm width. These sheets were bent inward by 25 mm from two sides and three holes were punched. For this activity a Press Machine was being used. The prepared sheet is used to carry telecom cable over the Ladder placed on Mobile Tower. Simply bending and punching hole in a pre-cut G.I sheet is not

manufacturing activity. No new and distinct commodity is coming out. It has no separate commercial identity in the market. It is purchased as sheet and dispatched as sheet in a set of articles. Therefore, on similar grounds, as mentioned in the case of Feeder Clamp, this is neither assembling nor manufacturing which could qualify for deduction u/s 80IC. Moreover, important thing is that this activity did not exist in the year under consideration since there was no Press Machine available with the assessee. This fact can be verified from the list of Plant & Machinery reflected in the schedule of fixed assts. Neither there is any documentary evidence to prove that this work was done on contract basis. No bills/ vouchers of any kind could be found in the office of the assessee on the date of survey. Moreover, there is no any relevant expense debited to manufacturing and P/L account in the said year which could prove that this work was done on contractual basis. As already mentioned, onus to prove these things was on the assessee. But unfortunately assessee never bothered to cooperate with the assessing officer. Hence, claim of the assessee is rejected that this activity is eligible for 80 IC deduction.

#### **Welding of Ladder & accessories:**

One of the parts/ articles in a Set of Articles is Indoor Ladder and Out Door Ladder and its accessories which are used in mobile towers. It was noticed in the survey that assessee was purchasing ladders as such and also in some cases getting them welded at the business premises through contractual job work. The pieces of ladders meant for steps were welded with two sides of the ladder. No separate and different product emerged from this process. Assessee was making purchases of these articles as ladders and selling them as ladders only. The facts can be verified from the chart of purchase bills of material as well as from the chart of Items of Supplies, mentioned in separate annexure above. However, in the year under consideration there is no such evidence to prove that assessee did carry out this activity of welding of ladders and accessories. There is welding set available with the assessee but the same could have been used for the purposes of construction of factory building. Just possession of a machinery does not necessarily mean that related activity was carried out with the help of said machinery, unless other relevant factors are proved. In the instant case, there are no expenses debited in r/o purchase of consumables like soldering/ welding rod etc which are the main inputs. Consumables reflected in the books are only in r/o expenses on gases. There is no evidence to prove that assessee might have carried out this work on job work basis which was happening on the date of survey. But the raw material or consumables were being supplied by the assessee only. Nevertheless, enquires were made in r/o parties which had carried out job work for the assessee in the year under consideration. This job work account included job work carried out by M/s. Ashima Industries for powder coating. It was noticed that in all these cases, except in Ahima Industries, payments were made in cash and squaring up the account at the end of the financial year. Letters u/s 133(6) were issued to them for confirmation but none of the said accounts could be confirmed. The detailed chart of these accounts is tabulated as under with remarks of the assessing officer:-

Sr.No.	Name of Party	Amount paid	Mode of payment	Remarks of A.O.
1	Ram Kripal Fabricator	Rs. 49,000/-	Cash	Letter issued u/s 133(6) received unserved with the remarks of the Post Man that not known
2	Deepak Electro Plating	Rs. 42,5607-	Cash	Letter issued u/s 133(6) received unserved with the remarks of the post man that " No Such Person."
3	Radhika Metal Finishers	Rs.49,580/-	Cash	Letter issued u/s 133(6) received unserved with the remarks of the post man that " Incomplete Address."
4	Aditya Technologires	Rs.41,090/-	Cash	In response to letter u/s 133(6) the party denied to had any transaction or job work done for the assessee.
5	S.R Engineerns	Rs.32, 460/-	Cash	Letter issued u/s 133(6) received unserved with the remarks of the post man that "no such person existing at the given address."
6	Sunny Enterprise	Rs.39,510/-	Cash	In response to letter u/s 133(6) the party denied to had any transaction or job work done for the assessee.

7	Shiva Enterprises	Rs. 38,710/-	Cash	In response to letter under section 133(6) the party denied to had any transaction or job work done for the assessee.
8	Sonu Engineering Works	Rs.49,775/-	Cash	Letter issued u/s 133(6) received unserved with the remarks of the post man that "no such person existing at the given address."

**Above facts were confronted to the assessee for his comments and explanation but it failed to comply with the same in spite of repeated reminders and requests.** Moreover, during the course of survey there were no bills / vouchers of above accounts or cash receipts of payments. The onus of proving the genuineness of these accounts and entries there in could not be discharged by the assessee. Therefore, the plea of the assessee, if any, that it had engaged contractual job work for welding of ladders does not get discharged. Nevertheless, this activity of welding pieces does not qualify the definition of manufacturing or assembling.

#### **Fixing of lug at one end of Copper cable-**

One of the Kits of Articles for supply to EIL is named as " Earthing Set" in which one of the articles in the collection of items is Copper Cable crimped with lug at one end. Assessee claim that fixing of Lug to one end of copper cable tantamounts to assembling or manufacturing is also against the facts as discussed above in the case of assembling. Feeder Clamps. This is the case of stretching the definition of manufacturing or assembling to such an extreme extent that it automatically loses its relevance and meaning. If just fixing a lug to one end of cable is accepted as assembling or manufacturing, then every second action of an undertaking will qualify for deduction u/s 80IC.

Therefore, all the above mentioned activities carried out by the assessee and claimed to be an act of manufacturing or assembling, fail to test the definition of manufacturing and assembling. It is pertinent here to bring forth dictionary meaning of as to what is meant by Manufacturing or Processing. In Black's Law Dictionary (5<sup>th</sup> Edition), the work "manufacture" has been defined as, "the process or operation of making goods or any material produced by hand, by machinery or by other agency; by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine". The process is a manufacturing process when it brings out a complete transformation in the original article so as to produce a commercially different article of commodity. That process itself may consist of several processes. The different processes are integrally connected which result in the production of a commercially different article. If a commercially different article or commodity results after processing then it would be a manufacturing activity. In the instant case none of the above requirements of conditions stands fulfilled by the assessee. There are no any processes of the nature involved which may give such materials new form, qualities, properties or combinations. There is no transformation as such in the original article. Processes involved should be intermittent and also should be integrally connected, whereas no such things are existing in the case of the assessee firm. An act of re-arranging and repacking of articles to suit the customized requirements of the purchaser is not necessarily assembling or manufacturing. In the process, if the assessee, carries out some further acts of putting loose parts together for proper presentation and for the practical convenience of the customer, same will not definitely tantamount to assembling or manufacturing.

26. That AO in assessment order has placed reliance on following case laws:

- i) Mrs. Poonam Arora and Mr. Parveen Kumar Vs. ITO & Ors, Appeal No. 27,28 of 2005, order dt. 14/10/2009 Punjab & Haryana High Court.
- ii) M/s Sterling Foods Vs. State of Karnataka & Anr. 1986(3) SCC 469
- iii) CIT Vs. Relish Foods 1999 ITR (237) 59.
- iv) CIT Vs. Sacs Eagles Chicory 2000(241) ITR 319 (Madras HC) upheld by Hon'ble Supreme Court in 2002 (255) ITR 178.

- v) Indian Hotel Co. Ltd. Vs. ITO 2000 (245) ITR 538
- vi) CIT Vs. Gem India Manufacturing Co. 2001 (249) ITR 307
- vii) Asprin Wall & Co. Ltd. Vs. CIT 2001 (251) ITR 323
- viii) CIT Vs. Shri Mahesh Chnder Sharma 308 ITR 222 (2009) P&H
- ix) Computer Graphics case of Apex Court
- x) Gramophone Co. (India) Ltd. Vs. Collector of Customs (2000) 1 SCC 549
- xi) UOI Vs. DCM (1963) AIR 1963 SC 791
- xii) Dy. Commissioner of Sales Tax (Law) Board of Revenue (Taxes) Vs. M/s P10 Food Packers (1980) 46 STC 63, AIR 1980 SC 1227.
- xiii) Empire Industries Ltd. Vs. UOI (1986) 162 ITR 846
- xiv) Ujjar Prints Vs. UOI (1989) 179 ITR 317

27. That Ld. AO in view of the above judgments has held as follows:

*"Hence, in view of above findings of the Hon'ble Courts, it is beyond doubt that the business activity carried on by the assessee firm M/s. Asha Tecnologies, does not tantamount to manufacturing or assembling. None of the prerequisites or conditions enumerated in above judgments of the Hon'ble Courts, stands fulfilled by the assessee firm. In this case, materials used for so called manufacturing or assembling, retain original identity even after assembling or manufacturing. The commodity is not subjected to intermittent and integrated processes to bring out total transformation of the goods into a new commodity commercially distinct and separate and having its own character, use and name. Moreover, the assessee firm never rendered due cooperation and compliance in finalizing the assessment proceedings. All relevant facts, issues and information etc. were collected by the assessing officer himself under different provisions of the Act. Nevertheless, for the sake of natural justice, same were confronted to the assessee time and again for its comments and explanation duly substantiated with documentary or corroborating evidences. But it failed all the times to comply with the requirements of the provisions of the Act.*

*Therefore in view of the above facts and circumstances, claim of the assessee is rejected that it is engaged in the business of manufacturing or assembling, entitling it to claim deduction u/s 80IC of the Income Tax Act. Accordingly, an income of Rs. 1,48,17110/- as reflected in the income tax return for the year under consideration, is subjected to income tax at the then prevailing tax rates. Penalty u/s 271 (1) (c) of the Income Tax Act is also initiated for filing inaccurate particular of income and for concealing income.*

28. **That the Ld. AO also has given finding on presuming that assessee is engaged in the business of manufacturing activities :**

*"Although it has been well established that the assessee was not engaged in the manufacturing or assembling activities at all, but for the sake of discussion, if it is presumed that the assessee was engaged in the manufacturing activity even then also it fails to substantiate its claim of being a manufacturer. In support of this, following facts are discussed:—*

*As par audit report and also as per the books of accounts of the assessee, firm commenced its commercial sale w.e.f. 4.9.2006. and for the period 4.9.2006 to 30.9.2006, the assessee has reflected total sales to the tune of Rs.2,54,00,200/-. The assessee has shown purchases from April 2006 onwards. The chart of consolidated monthly figures of purchases, manufacturing expenses, P&L Account expenses, production and sales, as per ledger book of the assessee and also figures of production extracted from information obtained from Central Excise Division Shimla, is tabulated as under for reference and for further analysis. Also monthly breakup of head wise figures of manufacturing and P/L expenses are annexured as **Annexure-F (page 1-3) separately for perusal and analysis.***

CONSOLIDATED MONTHLY FIGURES OF EXPENSES OF MANUFACTURING & P/L ACCOUNT

Month	Purchases	Mfg. Expenses	% of mfg. expenses in relation to production	P & L Exp.	% of p/l expenses in relation to production	Production	Sales.
April, 06	21372.00	3000.00		1741.00		-	-
May, 06	64143.00	8311.00		175.00		-	-
June, 06	2383650.00	18129.00		588.00		-	-
July, 06	2253555.00	6331.00		2450.00		-	-
Aug., 06	2425654.00	76441.00	0.36	88874.00	0.4	21166000	-
<b>Sept, 06</b>	<b>Not readable</b>	<b>Not readable</b>	<b>Not readable</b>	<b>Not readable</b>	<b>Not readable</b>	<b>Not readable</b>	<b>Not readable</b>
Oct., 06	9244440.60	439670.00	6.1	36585.00	0.5	7200100	10075017.00
Nov., 06	9022039.00	256583.00	6.2	713663.00	28	4083000	8695881.00
Dec, 06	7800010.00	1716165.00	68.3	717543.00	28.5	2512650	4933502.00
Jan., 07	2585339.00	483628.00	6.7	199004.00	2.7	7118625	3099386.00
Feb., 07	4245711.00	560772.00	35	202283.00	12.8	1580000	8674714.00
March, 07	6720525.00	1307390.00	108	337788.00	28	1200780	13200684.00
<b>Total</b>	<b>56431723.60</b>	<b>5434686.00</b>	<b>9.9</b>	<b>2368283.00</b>	<b>4.3</b>	<b>54769655</b>	<b>74079384.00</b>

Perusal of above chart reveals that there are some very abnormal figures of expenses of manufacturing and P/L account in relation to the amount of production reflected by the assessee. In the month of August, 2006 there is production of Rs. 2,11,68,000/- on which only Rs.76,441/- and Rs. 88,874/- in r/o Mfg. & P/L expenses respectively have been incurred which gives %expenses of 0.36 and 0.4 respectively in relation to production. On the other hand in the month of March, 2007 there is total production of Rs. 12,00,780/- on which Rs.13,07,390/-in r/o Mfg. expenses and Rs. 3,37,788/- in r/o P/L expenses have been incurred which works out to 108 % and 28% of expenses respectively in relation to production. Similar is the position in other months also. It is never possible that in any nature of manufacturing activity there can be this much abnormal variation in the expenses. There is always a range of compatibility between the production and related expenses.

Perusal of Chart of breakup of monthly head wise expenses (Annexure-F) reveals that the amounts of production and purchase are not at all in compatibility with Manufacturing and P&L Account expenses. For example, in the month of April, there is purchase of Rs. 21,372/- under the head 'Central Purchase' but there is no expenditure incurred on transportation. Similar is the position in other months also. In the month of August, the assessee has shown production of Rs.2,11,66,000/- on which manufacturing expenses of Rs.76,441/- have been incurred, which includes Rs.2,550/- on account of cartage inward, Rs.2,690 on consumable stores, Rs. 13,224/ electricity expenses, Wages RS.51,032/- etc. It is not possible to enjoy production of more than Rs.Two Crore with such a petty amount of expenditure incurred on manufacturing. The nominal amount of expenditure incurred on consumables is also evidence that there was no manufacturing activity going on. Consumables shown in ledger book are expenditure incurred by the assessee on gases, which must have been used in the construction of factory building also. There is no expense incurred on consumables other than gas. The only major part of expenditure is wages, which is Rs.51,032/- and reason for this is that assessee has employed number of workers for re-arranging and re-packing of articles. No other relevant expenses of manufacturing activity are reflected in the books. Similarly, in other remaining months also assessee has shown abnormal results of production and sales vis a vis expenses. All these facts and figures go further to strengthen the finding of the assessing officer that no manufacturing activity was taking place.

Any manufacturing activity of such large volume is possible only when there is sufficient supply of power and energy. In the instant case, temporary electricity connection for the purposes of construction of factory building was released to the assessee on 27-7-by the A.E.E Electricity Division Kala Amb. Therefore, naturally till the date of 27.7.2006 when the factory premises of the assessee firm was not even under

construction, there was no possibility of even stacking of raw-material in the premises and what to talk of carrying out of manufacturing activity. Of course, work of land development etc. could have taken place before that period, but construction work could take place only when there is required supply of electricity or there is some alternative arrangement. In this case, as per schedule of fixed assets, there is one portable generator valuing Rs.22,880/- only, purchased from M/s. Wireco, Preet Nagar, Ambala Cantt. on 17.4.2006. To run a generator, one needs to incur expenses on fuel i.e. either petrol or diesel. In the instant case, there is no such expenditure incurred by the assessee till the end of August 2006. There is expenditure of Rs.2,450/- incurred during the month of Sept. 2006 for diesel expenses for the first time. Therefore, presumption of use of generator is not substantiated with any corroboratory evidence. There is no evidence of any other alternative source of electricity or fuel till the date of release of temporary electricity connection. Temporary electricity connection was for connected load of 9.868 KW only. As per the test report of Wiring Contractor, the assesses had applied for power supply for following items-

Sr.No.	Description of items	Quantity	Total Wats
1.	Lamps	Five	500
2.	Tubes	Five	400
3.	Welding Set	One	2000
4.	Socket 15 Amp.	One	1000
5.	Motor	One 5 Bhp	3.73
6.	Motor	One 3 Bhp	2.238
		Total Load	<b>9.968 KW</b>

The temporary connection was specifically released for construction of factory building, which was permanently disconnected on 8.12.2006. The electricity consumption for the month of Oct., 2006 was of 6337 units. The chart of unit consumption and tariff of electricity for temporary connection is tabulated below:-

Upto Month	Units	Energy Bill amount	Date of payment	Receipt No.
10/2006	6377	39,672	26.10.2006	137482
11/2006	1850	11,674	23.11.2006	206064
12/2006	2220	14,118	30.12.2006	208479
1/2007	1540	9,740	23.1.2007	209984

The charges for temporary connection are slightly at higher rates, which were Rs.6 per unit during the relevant period plus other charges, as intimated by the office of the A.E.E. Kala Amb vide its letter no.2214 dated 16-12-2009. In spite of that electricity consumption bill was quite low during this period of time. The above facts reveal that temporary electricity connection was just sufficient enough to cater to the needs of lighting and running of motor for pumping water and for the use of Welding Set for construction of factory building. Therefore, there is no question of carrying out manufacturing activities during this period of time when factory building was under construction.

Permanent Electricity Connection for industrial purposes was released on 04/12/2006 in response to assessee's application No. 5826 dated 19.5 2006 submitted with the A.E.E., Electricity Sub Division, Kala Amb with approved load of 49 KW. As per the report of Wiring Contractor's Test Report, following plant & machinery were installed in the business premises of the firm:-

Sr.No.	Description of plant & machinery & other items	Quantity	Load	Total Load
1.	Molding Machine	One	15 KW	15 KW
2.	Motor Induction	One	10 hp	7.46 KW
3.	Welding Set	Two	5 KW	10 KW
4.	Drilling Machine	One	3 hp	2.23 KW
5.	Motor	One	7.5 hp	5.595 KW
6.	Motor	One	<b>5 hp</b>	3.93 KW

7.	Lamps	20	80 watt each	1.6 KW
8.	Tubes	20	80 watt each	1.6 KW
9.	Fans	10	80 watt each	0.8 KW
10.	Computer Socket	4		0.96 KW
			<b>Total load</b>	<b>48.93 KW</b>

The perusal of facts & figures in the above chart of permanent electricity connection reveals that load of approximately 44.023 KW was required by the assessee for plant & machinery only. The Plastic Moulding Machine only had a load consumption of 15KW. Therefore, there is no question at all to accept the book version of the assessee that it had enjoyed production of crores of rupees till the release of permanent electricity connection. The temporary load of 9 KW was not sufficient enough to cater to the needs of Moulding Machine alone, which required 15 KW load.

Electricity Consumption Bill in respect of Permanent Electricity Connection is also not in compatibility with production enjoyed by the assessee w.e.f. 4.12.2006 onwards. Electricity consumption chart in r/o permanent connection is tabulated below:-

Upto Month	Units	Energy Bill amount	Date of payment	Receipt No.	Outstanding
2/2007	11283	44,303	-	-	44,303
3/2007	7000	26,022	-	-	70,325
4/2007	7000	26,259	-	-	96,584
5/2007	7000	26,085	19.5.2007	093331/1,22,669	-

During the period of temporary electricity connection, the assessee firm has effected production and sales of huge amounts. In the month of August there is production of Rs. 2,11,66,000/-, in September Rs. 99,08,500/-, in October it is 72,00,100/-, in November Rs. 40,83,000/- and for the month of December it is Rs. 25,12,650/-.

The figures of production and turnover enjoyed by the assessee during the period of temporary electricity connection was very high as compared to the same during the period of permanent electricity connection. Whereas electricity expenses recorded during the period of temporary connection was very less as compared to the period of permanent connection. This was in spite of the fact that charges for temporary connection was Rs.6 per unit plus other charges and Rs.2.75 per unit plus other charges for permanent connection. Moreover, during the period of temporary connection, construction of factory building was also going on when extra consumption of electricity was required. There is inherent contradiction in the figures of power consumption vis a vis figures of production reflected during these two different phases. There is no possibility of having carried out manufacturing activity with power back up of only 9 KW of electricity. Even during the period of permanent electricity connection also, as discussed above, power consumption was too low to accept the version of assessee that it was in to manufacturing activity through out the relevant year. Hence, claim of the assessee is absolutely untrue and unreliable and hence rejected

It is important to analyze the facts and implications thereof, regarding plant & machinery installed by the assessee during the year under consideration. Following is the chart of Plant & Machinery reflected by the assessee in schedule of fixed assets, details of which were filed by the counsel of the assessee vide letter dated 18-11-2009.

Sr. No	Name of vender	Date of purchase	Value in Rs.	Invoice No.	Nature of Machine	Comments of Assessing Officer
1	M/s. Ashima Industries	24-4-2006	1,38,320/-	09	Powder coating furnace & powder coating booth	During the course of survey it was noticed that this plant belonged to M/s. Ashima Industries only. The plant is used for baking of articles on

						which power is sprayed.
2	— do -----	19.05.2006	109200	12	Powder coating Plant chemical Tanks (6)	—do— used for acid washing of articles before powder coating.
3	Do	06.06.2006	52,000/-	26	Air compressor with 3 H.P. Motor	—do—
4	Do	19.06.2006	28,880/-	13	Powder coating chemical utilizers	_---- do—
5	M/s. Monu Weld-Tech Industries	06.06.2006	1,31,968/-	-	Welding Machine Assembly	-
6	M/s. Dashmesh Electrical Works	05.06.2006	24,750/-	148	Transformer 200 KVA	-
7	M/s Electronica Mechanic+..... .....	30.06.2006	10,28,269	273	Plastic Injection Moulding Machine	Plastic Feeder Clamps are manufactured from this moulding machine.
8	M/s. Ashima Industries	18.07.2006	80,985/-	38	Powder Coating Gun Filter Set with Fitting	course of survey it was noticed that this plant belonged to M/s. Ashima Industries only
9	M/s. Kool Drop Cooling Towers	24.07.2006	13,000/-	3	Cooling Tower Model Number KD121	
10	M/s. Shiv Shakit Electrical	01.08.2006	5737/-	735	Welding Set	
11	M/s. Ashima Industries.	10.03.2007	37,360/-		Furnace Part Sheet Metal	During the course of survey it was noticed that this plant belonged to M/s. Ashima Industries only
	Total		16,44,469/-			

Above chart reveals that there is no such plant and machinery installed by the assessee which could substantiate the manufacturing activity of the scale and nature as reflected in books of the assessee or as furnished with Distt. Industries Deptt. or with the Central Excise Division. Only one plant i.e. Plastic Injection Moulding Machine satisfies the claim of the assessee which is used for manufacturing of Plastic Feeder Clamps. There is no Press Machine in the above list which is used for bending and punching of holes on G.I Sheets, which has been declared as the main manufacturing activity by the assessee in its replies filed with this office on 18-11-2009 and also filed with the Central Excise Division.

Information was obtained u/s 133(6) of the Act from the Central Excise Division, Shimla. Vide letter No. 14360, dated 9.12.2009 the Asstt. Commissioner, Central Excise submitted photocopies of documents and papers furnished by the assessee while applying for excise exemption certificate. Perusal of this information reveals that the assessee firm had furnished full description of goods and central excise tariff headings of the goods to be manufactured and also furnished description of inputs used in manufacturing of said items. The relevant information is reproduced hereunder: -

Description of goods to be manufactured by the Assessee.

Particulars	Tariff Heading	Description of items falling under the excise tariff heading
Telecom Parts	7211	Flat-rolled products of iron or non alloy steel, of a width of less than 600 mm, not clad, plated or coated.
	7211.30	Hoops
Sheet Metal Components	7210	Flat- rolled products of iron or non alloy steel, of a width of 600mm, or more clad, plated or coated.
		Planted or coated with zinc
	7210.11	Corrugated
	7210.19	Other
	7209	Flat-rolled products of iron or non alloy steel, of a width of 600 mm, or more, cold rolled(cold reduced not clad, plated or coated
	7209.20	Sheets
Powder	3907.3010	Epoxxy resins (as per new tariff w.e.f 28.02.2005)
Copper	7409	Copper plates, sneets (including circles) and strip, of a thickness exceeding 0.15 mm
	7410	Copper foil (whether or not printed or backed with paper, paperboard, plastics or similar backing material) of a thickness (excluding any backing ) not exceeding 0.15 mm.
Stainless Steel	7225	Flat-rolled products of other alloy steel, of a width of 600mm, or more
	7228	Other bars and rods of other alloy steel; angle shapes and sections of other alloys steel; hollow drill bars and rods, of alloy and non alloys steel.
Aluminium	7606	Aluminum plates, sheets(including circles) and strip, of a thickness exceeding 0.2 mm
S.S. Fasteners	Ch 13	Lac, Gums, Resins and other vegetable saps and extracts
	7318	Nails, drawing pins, staples.
	1318	No tariff head
	Ch 15	Animal or vegetable fats and oil and their cleavage products; prepared edible fats animal or vegetable waxes.
	1500	No tariff heading
C.R.C. Sheets	7211	Flat-rolled products of iron or non alloy steel, of a width of less than 600 mm, not clad, plated or coated, (as per new tariff w.e.f.28.2.2005)
	7211 2950	-Strip
S.S. Shets	7219,	Flat-rolled products of stainless steel, of a width of 600 MM or more (as per new tariff w.e.f. 28.2.2005)
		-Other
		—sheets and plates-
	7219.9013	—thickness less than 3 mm
	7318.1500	Other screws & bolts whether or not with their nuts or washers.
LPO Cable	7408	Copper wire
	7408. 19	-of copper alloys - other
Corrugated Packing	4819	Cartons, boxes, cases, bags and other packing containers, of paper, paper board, cellulose wadding or webs of cellulose fibers, box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like.(as per new tariff w.e.f. 28.2.2005)
	4819. 10	-Cartons, boxes and cases, of corrugated paper or paperboard
	4819.1010	—boxes
Polythene	3920	Other plates, sheets, film, foil and strip, of plastics, non cellular and not reinforced, laminated, supported or similarly combined with other materials (as per new tariff w.e.f. 28.2.2005)
		-of polymers of ethylene
	3920.10	—sheets of polyethylene

	3920.1019	— others
Copper	8544	Insulated (including enameled or anodized) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors, optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors, (as per new tariff w.e.f. 28.2.2005) -winding wire
	8544. 19	-other
	8544. 1920	—plastic insulated

Assessee has also furnished the Excise Office the description of the inputs used in above manufacturing activities, which are:- Mild Steel, Stainless Steel, Copper Sheets, Brass Sheets, Copper Pipes, Brass Rods, S.S. Rods, Powder, Welding Rods and Accessories. Perusal of purchase bills of material, or raw material for that matter, reveals that no such material/ raw material were ever purchased by the assessee. Moreover, excise tariff heading is incorrect in r/o S.S. Fasteners which gives description of vegetable oil etc. instead of s.s. fasteners. Most importantly, there is no compatibility with Plant & Machinery installed by the assessee, as tabulated above, and also as listed with the Excise Deptt., tabulated below. The Telecom Parts mentioned in the excise tariff heading are not the items that assessee in dealing in with M/s. EIL. The assessee also furnished value of plant & machinery to the tune of Rs. 1,14,28,006/- to the Central Excise Dept. which never existed or were ever installed by the assessee. This investment amount of Rs. 1,14,28,006 in plant and machinery would have been correct if the assessee really intended to manufacture above listed items. But this has never happened in this case. The detail of plant & machinery furnished with the Central Excise Dept. is reproduced as under: -

Sr. No.	Description of machinery	Make / Model	Details /install	Location of factory	Invoice No.
1.	Cooling Tower	Local Make	Workshed	Vill: Johron	003, dt. 24.7.2006
2.	Welding Set	Local	Workshed	-do-	735, dt. 1.8.2006
3.	Plastic Injection Moulding	Local	Workshed	-do-	273 & 274, dt. 30.6.2006
4.	MIG Welding Machine	Local	-do-	-do-	17, dt. 6.6.2006
5.	Transformer	-do-	-do-	-do-	0148, dt. 6.6.2006

In view of the above facts, it is evident that there are inherent contradictions in the facts and submissions of the assessee which could substantiate the claim of the of being an manufacturing unit.

Further, assessee submitted with the Excise Deptt. the following Manufacturing Flow Chart. Same chart has also been furnished with the assessing officer vide letter dated 18-11-2009.

#### Manufacturing Flow Chart

Raw material procurement
Shearing
Pressing (Bending, Punching, Grinding)

	Powder Coating & Galvanizing
	Inspection
	Packing
	Dispatching

Description of stages of above chart has been further elaborated by the assessee as follows:-

- 1 Procurement of Raw material- The raw material is procured from the approved vender and from open market against the purchase orders.
2. Shearing:- The raw material i.e. sheets (S.S., M.S. etc.) is cut into various shapes and sizes by shearing Machine as per the specified drawings and requirements.
3. Pressing:- The cut raw material is then bend and punched and welded with M.I.G. Welding and A.R.C. Welding and grinded to give it proper shape.
4. Powder Coating & Galvanizing:- The shaped, pressed, welded, grinded material is then phosphated, powder-coated and galvanizing.
5. Inspection:- Finished material is then inspected by the person, who will vouch that the material measures upto the laid standard.
6. Packing:- Finished and inspected material is then meticulously packed in corrugated and other boxes ready to be dispatched.
7. Dispatching:-The goods are then dispatched through various channels of transport to the buyers.

Perusal of above information also reveals that there is no compatibility between the goods to be manufactured, raw material consumed, manufacturing processes involved and plant & machinery installed by the assessee firm. There is no such plant & machinery installed by the assessee during the year under consideration which could carry out the work of Shearing, Pressing, Bending, Punching, Grinding, and Galvanizing. There is only one machinery called as Plastic Injection Molding Machine, which is used for manufacturing of Plastic Feeder Clamps, however, this activity is not mentioned in the Manufacturing Flow Chart. Moreover, most of the goods to be manufactured by the assessee, as mentioned in above chart, have nothing to do with the nature of plant & machinery installed by the assessee. Further, it is pertinent to mention here that assessee has never purchased any such raw material which is to be used as input in the manufacturing activities, as mentioned above in the chart furnished with the Central Excise office. In order to carry out manufacturing activity of the nature as mentioned in its application submitted to the Central Excise Division, Shimla, the assessee firm would require plant & machinery of crores of rupees, which it has rightly mentioned in its application dated 3.5.2007 submitted to the Supdt., Central Excise, Kala Amb. As per this application, the value of plant & machinery is Rs. 1,14,28,006/- contrary to the actual amount of plant & machinery for Rs. 16.44 lacs approximately reflected in the schedule of fixed assets for the year under consideration.

The above facts & figures and circumstances clearly establish that assessee was never in the activity of manufacturing of materials supplied to M/s. Ericsson India Pvt. Ltd, except Plastic Feeder Clamp. Rest of the items were outsourced from open market or from its related concern namely M/s. Asha Telecom Pvt. Ltd which were packed and arranged in small Kits or packing to suit the requirement of the purchaser EIL. Expenses of manufacturing and p/L account do not represent the nature of expenses to be incurred on manufacturing. These expenses are incurred on payment of wage to workers, salary to staff, electricity bills of lighting and for running Plastic moulding

machine and welding machine. These are expenses incurred on the nature of trading activity.

In view of the above facts and analysis of information collected from other agencies and also formulated and tabulated by the assessing officer, the claim of the assessee that it is engaged in the manufacturing of Telecom Parts, does not stand proved from this angle also.

Nevertheless, assessee was again given final opportunity of being heard vide this office questionnaire dated 17-12-2009 bearing No. 3875 after incorporating all relevant facts and issues collected so far by the assessing officer. Vide this questionnaire assessee was requested to furnish information to prove that it was really engaged in the manufacturing of all items or some of the items. For this purpose, assessee was directed to inspect the impound books/ documents/ papers etc. But he failed to comply with the same. Assessee filed its reply to the above questionnaire on 24-12-2009. But it failed to furnish any documentary evidence or information to substantiate its claim of being a manufacturer. Vide para 4 of the reply, assessee has relied upon the judgment of Hon'ble Madras High Court reported in 282 ITR 466 vide which manufacturing of Cable Jointing Kit has been held as manufacturing. It is pertinent to mention here that in the instant case assessee has never mentioned in its replies that it is manufacturing Cable Jointing Kits. Vide reply dated 18-11-2009, the counsel of the assessee has stated that assessee is manufacturing telecom parts and tower installation material. The manufacturing processes involved have been discussed Shearing, Moulding, Welding & Fabrication, Assembling & Powder Coating. Nowhere in the course of assessment proceeding, the assessee has ever furnished exact details of products manufactured, raw material used, machinery and plant engaged. Nowhere the detail description of Cable Jointing Kit has ever been filed. Had the assessee / discharged its primary onus by furnish and producing relevant records, papers, documents etc., the onus would have been on the assessing officer to prove it otherwise.

In the above reported case assessing officer has relied on the findings of the Central Excise authorities that assessee was not engaged in manufacturing activity The assessing officer never made any field enquires or made personal visit to assessee's factory. The Central Excise authorities visited office of the assessee and not the factory premises to witness actual working. Moreover, in the reported case there was relevant machinery and plant installed in the factory premises. There was evidence of raw material used by the assessee. In the case of the present assessee firm, first of all it not on record to prove that it was engaged in the manufacturing of Cable Jointing Kit. The assessee is simply packing and arranging the material in different quantities and number which was received in bulk from the suppliers. In the reported case assessee is not assembling or packing but its manufacturing the kits. In the case of the assessee the assessing officer himself visited the business cum office premises u/s 133A of the IT Act to find out the true facts of the case when there was no compliance and cooperation on the part of the assessee to prove its primary onus. And on the basis of survey only true facts of the case were ascertained which helped in ascertaining the factual reality. The assessing office collected information u/s 133(6)/ 131 of the IT Act to substantiate the findings. In the reported case the assessee is manufacturing Telephone Cable Jointing Kits and not Telecom Parts used for installation of mobile towers. The word telephone has got specific meaning thereby referring to telephone set or its parts whereas word Telecom has wider connotation. On the other hand assessee firm M/s. Asha Technologies is supplying mechanical site material to be used for installation of mobile towers. Plea of the counsel that assessee's product undergoes much more treatment than the required in manufacturing of cable jointing kit, is against the facts of the case. It means that the learned counsel of the assessee has not properly appreciated the facts of the case. In the case of the assessee Mechanical Site Material is collection of number of different loose articles put together in a form of kit. No processing or other treatment of any nature is given to these loose articles. Some of the loose articles and powder coated which has been dealt with in earlier paras. These collections of articles remain as such from the point of supplier to the point of recipient M/s. Ericsson India Pvt. Ltd. It is M/s. EIL which assembles or uses these kits in the erection or installation of mobile towers. And in true context, in such situations, rather M/s. Ericsson India Pvt. Lt. would have been the genuine applicant of 80IC deductions had the company fulfilled other conditions of 80 IC.

Counsel of the assessee has also referred to a case reported in 225 ITR 814 (SC). In the reported case assessee is carrying out business of sale and purchase of chillies. The chillies purchased by the assessee are sorted, graded as per Agmark specifications. Better quality chillies are picked up and sorted out for export and before export they are clipped and stemmed and subjected to fumigation under expert technical hands in order to prevent deterioration and with a view to give better polish and appearance and during that process they are treated with methyl bromide. It is noticed in this case that though goods purchased by the assessee were chillies but it had to undergo a series of activities in order to make it marketable or more marketable, in the case of our assessee, no such series of activities take place. There is no testing of kits, no scope of failure to pass the test, no specialized man power or workers required. It is simple activity of re-packing and re-arranging of articles in a kit form. Therefore, reported case law has no relevance in the present case of the assessee.

The counsel of the assessee has also relied upon some other case laws also but same are of similar implications as discussed above. Therefore, no cognizance of the same has been taken. Moreover, all these issues have already been defined and discussed in great length in above paras. Learned counsel has relied upon various case laws but has failed to furnish or produce the evidence and information w.r.t the assessee firm on the basis of which case laws evolve.

## II Other issues apart from 80IC

### **29. That during the course of assessment proceedings number of discrepancies and abnormalities were detected which have either resulted into concealment of income or introduction of unaccounted cash or resulted into violations of the provisions of the Act. Same are stated as below:**

1. A day book was impounded from business cum office premises of the assessee during survey u/s 133A on 7<sup>th</sup> & 8<sup>th</sup> of December, 2009, which was annexured as A-5. This day book for A.Y. 2007-08 was computerized and ledger and cash books were prepared, copy of which was handed to the assessee for its comments. But it failed to substantiate the same. Explanation furnished by the assessee is not accepted being not tenable and factually not correct. Perusal of Day Book reveals that assessee has introduced total cash to the tune of Rs.4,10,145/- during the year under consideration. This has been put under the heading of "Unsecured Loans" in the computerized Ledger. This amount of Rs.4,10,145/- is being treated as unexplained cash credit since same are not reflected in assessee's regular book of accounts. Penalty u/s 271(1) (c) is being initiated for filing inaccurate particulars of income and also for concealing income.

2. As per impounded ledger, Annexured as A-10, there is ledger account of M/s. Mod Furniture, assessee has shown cash payment of Rs.18,000/- on 21.06.2006, Rs. 13,172/- on 24.06.2006, Rs. 16,032/- on 1.07.2006 and Rs. 6,610/- on 2.07.2006. On the other hand in regular books of account provided, during assessment proceedings, these cash payments are reflected on 15.03.2007, 14.03.2007, 2.02.2007 and on 6.02.2007 respectively. It means cash was paid from undisclosed sources which were later written in the regular books as per the convenience of the assessee, keeping in view the availability of cash in books of accounts. Therefore, this amount of Rs.56,814/- ( 18000+ 16172+ 16032+ 6610) is added back to the income of the assessee being unexplained cash credit since the same are not reflected in assessee's regular books of accounts on those relevant dates. Penalty u/s 271(1) ( c ) is being initiated for filing inaccurate particulars of income and also for concealing income.

3. In the ledger account of M/s. Namdhari Industrial Traders reflected in regular books of accounts of assessee, there are cash payments of Rs.1,23,299/- on different dates like: on 11.11.2006, 15.11.2006, 20.11.2006- Rs. 20,000/-each and on 1.12.2006 Rs. 13,299/-. On the other hand in impounded Day Book these payments are made on

1.11.2006 for Rs. 1,23,299/- at one go. This is unexplained cash credit as well as violation of section 40A(3) of Income Tax Act 1961. Therefore, this amount of Rs 1,23,299/- is added back to the income of the assessee being unexplained cash credit since the same are not reflected in assessee's regular books of accounts on those relevant dates.. Since the above transaction also violated the provisions of section 40 A (3) of the Act, therefore, an amount of Rs.24,659/- (being 20% of Rs. 123299/-) is added back to the income of the assessee as unallowable revenue expenditure. Penalty u/s 271(1) (c) is being initiated for filing inaccurate particulars of income and also for concealing income.

4. Assessee is maintaining two bank accounts one a/c no. 197 with UCO Bank Faridabad and other a/c no. 396 with UCO Bank, Ogli, Nahan. The bank account statements furnished by the assessee during assessment proceedings were photocopies of account statements obtained directly from the banks. Close perusal of these bank account statements reveals that there are number of entries which are tampered with fraudulently by the assessee to misrepresent the facts and figures of bank account statements to the department. Assessee changed the narrations of certain credit & debit entries of bank account by pasting different narrations over those relevant entries to suit its requirements. Assessee also made corresponding changes in the relevant ledger accounts, mainly in the ledge account in the name of M/s. Asha Telecom Pvt. Ltd. detailed description of these bank accounts and other corresponding ledge account is made as under.

Perusal of ledger account of M/s. Asha Telecom Pvt. Ltd, related concern of the assessee, reflected in the books of account of the assessee, reveals that on 9-12-2006 an amount of Rs. 3 lacs was debited to account of M/s. Asha Telecom Pvt. Ltd. by way of cheque entry which was shown to have been withdrawn from UCO Bank a/c no 396. Examination of original bank account statement reveals that this is not a cheque entry but is a Cash entry. Cash of Rs. 3 lacs was withdrawn as self cheque and same was debited to ledger account of M/s. Asha Telecom Pvt. Ltd. Accordingly, entry was tampered with mala fide intention. These entries violate the provisions of section 40A(3) or section 269T of the Act. Similar type of tempering was made in r/o entries of Rs. 12 lacs on 12-12-2009, Rs. 5 lacs, Rs.4 lacs, Rs. 2 lacs, Rs.5 lacs, Rs. 7 lacs on 28-12-2006, Rs. 6,00, 964/- on 24-01-2006, Rs. 3 lacs on 14-2-2006, Rs. 5 lacs on 15-2-2006 and Rs. 4,35,000/- on 21-2-2006. All these entries were otherwise cash withdrawals by way of self cheques. Assessee accordingly manipulated the account of M/s. Asha, Telecom Pvt. Ltd. and bank accounts by debited or crediting cheques to their accounts in normal and regular course of action, these cash withdrawals were being reflected in the Cash Book as cash introduction, but the same were not reflected in these cases because of said forgery. Photocopies of relevant vouchers were obtained from the concerned bank which clearly proved that these were cash withdrawals by way of 'Self cheque. Total amount of these cash payments made to the above company works out to Rs.53,35,000/-. During the relevant year under consideration, 20% of such payment was to be disallowed as revenue expenditure to the assessee u/s 40A(3) of the Act. Therefore, an amount of Rs. 10,67,000/- is added back to the income of the assessee as unallowable revenue expenditure. Penalty u/s 271(1) (c) is being initiated for filing inaccurate particulars of income and also for concealing income.

5. Similarly on 31-7-2006 an amount of Rs. 7 lacs and on 4-8-2006 an amount of Rs. 8 lacs were deposited with bank a/c no. 396 with UCO Bank Ogli in cash. But in the tampered bank account statement this was shown as deposit by way of "T.T Faridabad". In the ledger account of the company M/s. Asha Telecom Pvt. Ltd reflected in the books of accounts of the assessee, it was shown as cheque entry. M/s. Asha Telecom Pvt. Ltd failed to furnish any documentary evidence to prove the source of this cash introduction. Assessee also failed to substantiate the same. **In its reply dated 23-12-2009, the counsel of the assessee accepted that these were unexplained cash credits. Therefore, this amount of Rs. 15 lacs (7+8) is added back to the income of the assessee as unexplained cash credits routed through banking channels. Penalty u/s 271(1) (c) is being initiated for filing inaccurate particulars of income and also for concealing income.**

6. During the course of assessment proceedings enquires were conducted u/s 133(6) to establish the genuineness of the account holders. In following cases, the account holders denied to had any type of transactions with the assessee:-

Sr.No.	Name of account holder	Amount debited	Nature of account	Mode of payment
	Aditya Technologies	Rs. 41,090/-	Job work	Cash
	M.S. Goods Carrier	Rs. 15,350/-	Cartage inward	cash
	Shiva Enterprises	Rs. 36,710/-	Job work	cash
	Krantikari	Rs. 11,100/-	cartage	Cash
	Total	Rs. 104250-00		

Interestingly, in all these cases, payments were made in cash only. These accounts pertained to account of Job Work and Cartage Inward. Onus was on assessee to prove the genuineness of these accounts and transactions reflected therein. But it failed to discharge the same. Moreover, no bills/ vouchers and receipts of cash payments were found in survey also. Therefore, the amount of Rs. 1,04,250/- is added back to the income of the assessee as unexplained revenue expenditure. Penalty u/s 271(1) ( c ) is being initiated for filing inaccurate particulars of income and also for concealing income.

7. Letters issued u/s 133(6) to following account holders were received back unserved with remarks of postman that 'either no such persons are existing at the given address or addresses are incomplete:-

Sr. No	Name of Party	Amount Debited	Nature of account	Mode of payment
	Deepak Electroplating	42560	Job work	Cash
	Sonu Engg. Works	49775	—do—	Cash
	Shree Sai Enterprises	25052	Purchase	Cash
	Radhika MetalFinishers	49580	Job work	cash
	Ram Kripal Fabricator	49058	—do—	Cash
	S.R. Engineers	32460	—do—	<b>Cash</b>
	Sunny Enterprises	39510	—do—	Cash
	<b>Total</b>	<b>287995/-</b>		

These accounts pertained to purchases of raw material and job work. Names of these parties were confronted to the assessee time & again, but it failed to prove the genuineness of existence of these parties as well as genuineness of transactions reflected therein. In all these cases payments were made in cash only. There is not even a single payment through banking channel. Neither any proof of cash payments, like cash receipts etc., have been found in survey or produced by the assessee later. Therefore, these are unexplained revenue expenditures. Onus was on assessee to substantiate the same with any documentary proof which he has failed to discharge. Therefore, the amount of Rs. 2,87,995/- is added back to the income of the assessee as unexplained revenue expenditure. Penalty u/s 271(1) ( c ) is being initiated for filing inaccurate particulars of income and also for concealing income.

8. Letters were issued u/s 133(6) to M/s. Venus Cables, M/s. Vandana Cables and M/s Santosh Cables. All these accounts were claimed to be pertaining to purchase of raw-material, like cable etc. used for supply to Ericsson India Pvt. Ltd. Description of these accounts is tabulated as under:-

Chart of consolidated figures of amounts of purchase and payments:-

Sr. No	Name of party	Total debits	Total Credits	Mode of the payment
1	M/s. Santosh Cables	78,93,236.00	96,68,127.00	Cash
2	M/s. Vandana Cables	437840.00	437840.00	Cash
3	M/s. Venus Cables	555755.00	555755.00	Cash
	Total	88,86,831.00	1,06,61,722/-00	

It is quite interesting and also quite abnormal that there is not even a single payment made by assessee to these parties other than in cash. It is astonishing to notice that in the case of M/s. Santosh Cables where total payment is to the tune of Rs.79 lacs appx are made, all payments are in cash. Letters were issued u/s 133(6) of the Act at the addresses furnished by the assessee, but same were received back unserved with the comments of the post man that no such firms existed at the given addresses. Later, notice 133(6) were again issued at the addresses ascertained from the purchase bills of these parties which were found and impounded during the course of survey. Again these letters were received back unserved with the same comments of the post man.

Earlier, the jurisdictional income tax officer ITO Ward 231(1) Delhi, was issued commission u/s 131(1)(d) of the Income Tax Act 1961 for making necessary enquiries in these cases. As per the report of concerned Income Tax Officer, vide letter no. 182 dated 4-12-2009, it is reported that no such concerns were existing at the given addresses. This fact was also confirmed by Sh. Bhupinder Verma of M/s. Mahalaxmi Cable Industries & M/s. National Polymers of Delhi, who was owner of the said addressed properties. Also in one given address, he was carrying out his own business. As his statement furnished to the ITO, no such concerns ever existed at the given addresses. The surprising element in these accounts is that all payments were made to them in cash for Rs.20000/- or slightly less than Rs.20000/- each. There were huge transactions in all these concerns and particularly in M/s. Santosh Cables, where total purchases was to the tune of Rs. 96,68,127/-. Genuineness of existence of these parties and accordingly genuineness of said transactions failed to be proved. Had these accounts been genuine, the assessee would have definitely produced any documentary evidence. It is not possible that assessee would not be knowing the parties personally when cash payments were being made on regular basis. Fact of the case is this that no such firms actually existed. Therefore, an amount of Rs. 1,06,61,722/- ( 96,68,127+437840+5,55,755) is added back to the income of the assessee as unexplained revenue expenditure. Penalty u/s 271(1) ( c ) is being initiated for filing inaccurate particulars of income and also for concealing income.

9. During the course of survey u/s 133A some documents, day books & papers etc. were impounded. There were some discrepancies in these impound documents etc. which were confronted to the assessee for its explanation but it failed to substantiate the same . The details of these impounded are as under:-

Annexure X-7:-page no 173,172, 171, 170, 169, 168, 167, 166, 165, 164:-

These are receipts of cash payments issued by M/s. Om Logistics Ltd in favour of assessee in r/o transportation charges. These cash payments are not reflected in the regular books of the assessee. The detail is tabulated as under:-

Payment receipt No.	Date of receipt	Consignment note No. & its date	Total Amount	Amount of advance paid in cash as per this receipt.	Balance amount
996802	26/09/2006	21040023193/20.09.2006	4767	4767	NIL
996845	18/10/2006	3140276x236/27.09/18.10.2006	45000	25000	20000
20861	30.10.2006	3140275x/30.10.2006	177000	60000	117000
20872	8.11.2006	3140320x450/18.10.2006	102000	25000	77000
20882	15.11.2006	3140412414/15.11.2006	82000	20000	52000

20801	24.11.2006	3693442443/24.11.2006	78500	50000	28500
20894	28.11.2006	3140413x192/NIL	56000	20000	36000
31851	4.12.2006	3593505/4.12.2006	—	15000	—
31862	2.12.2006	3593504/NIL	—	20000	—
31875	18.12.2006	3593503/18.12.2006	—	20000	—
31884	26.12.2006	3593576x226/26.12.2006	12000	10000	2000
31889	30.12.2006	32198292/28.12.2006	—	3620	—
31899	4.01.2007	3593504/2.12.2006	—	10000	—
				293387	

None of these cash payments totaling to Rs,2,93,387 is reflected in the books of accounts of the assessee. As per 133(6) obtained from M/s. Om Logoistics on 24.11.2009, it has stated that all the payments are on cash basis, hence there is no ledger account. As per this information cash payments were made in violation of section 40A(3) and also these payments did not co-relate with payments shown to have been made by the assessee in its books of accounts. In the books payments have been booked on some other dates. There is no mention of cash payments on the actual date of payment. This means these payments were made by the assessee from its unaccounted sources and for adjusting the same these were later reflected in the books as per the availability of cash in books of accounts. An amount of Rs. 1,62,000/- was received by OLL on different dated w.e.f. 3<sup>rd</sup> of March, 2007 till 23<sup>rd</sup> of March, 2007 from the assessee from its undisclosed sources. Rs. 1,62,000/- Same is added to the income of the assessee as invested from unexplained sources. Penalty u/s 271(1) ( c ) is being initiated for filing inaccurate particulars of income and also for concealing income.

**10.** Out of the above payment of Rs. 1,62,000/-, assessee has made cash payments of Rs.35,000/- on 3.3.2007, Rs. 40,000/- on 17.03.2007 and Rs. 40,000/- on 23.03.2007 in violation of 40A(3). Therefore, Rs.23,000/- ( 20% of Rs. 115,000/-). is added back to the income of the assessee u/s 40A(3) of the Act. Penalty u/s 271(1)(c) is being initiated for filing inaccurate particulars of income and also for concealing income.

**11.** Annexure X-1 (Page No. 162):- is regarding transport charges bill issued by NITCO Bulk Cargo Carrier. There is Bill No. 414 dated 12.09.2006 in which description of total freight of Rs. 62,000/- is mentioned, against which Rs.45,000/- is made in cash by the assessee on 12.09.2006. Similarly, vide bill no. 417 dated 16.09.2006 from above transporter again advance of Rs.45,000/- has been paid in cash. None of these payments are reflected in the books of the assessee. Therefore an amount of Rs. 107,000/- ( 62,000+ 45,000/-). is added back to the income of the assessee as unexplained expenditure. Penalty u/s 271(1) ( c ) is being initiated for filing inaccurate particulars of income and also for concealing income. Disallowance of Rs. 21,400/- is also made u/s 40A(3) of the Act for making cash payment in excess of Rs. 20,000/-.

**12.** Annexure X-7 Page-153 is details of accounts given by M/s. Ashima Industries to the assessee. As per this bill total amount of Rs. 3,71,085/- has been raised by Ashima Industries on account of sale of Plant & Machinery, Chemicals, Acids etc. This is up to the period of 30.10.2006. In addition to this, there are expenses on account of Job Work done by M/s Ashima Industries calculated at Rs.1,34,009/-. These figures of sale of Plant & Machinery match with the figures of account of Ashima Industries reflected in regular books of the Assessee. However, there is cash payment of Rs. 1,00,000/- on 20.11.2006 on account of job work charges, mentioned in the page-153 which is not reflected in regular books of accounts of the assessee. Hence this amount of Rs. 1,00,000/- is added back to the income of the assessee from unexplained sources. Penalty under section 271(1)(c) is being initiated for filing inaccurate particulars of income and also for concealing income. Provisions of section 40A(3) are attracted in this case for making cash payment exceeding rupees 20,000/-. Therefore, An amount of Rs. 20,000/- is added back to the income of the assessee as unallowable revenue

expenditure u/s 40A (3). Penalty u/s 271(1) (c) is being initiated for filing inaccurate particulars of income and also for concealing income.

**13.** Annexure D-35-Page-88 to 97:- are receipts of cash payment given by Ashima industries to Asha Technologies. An amount of Rs.55,000/- in cash has been paid to M/s. Ashima Industries on 2.08.2006 from undisclosed sources. Same is added back to the income of the assessee as unexplained revenue expenditure. Penalty u/s 271(1) (c) is being initiated for filing inaccurate particulars of income and also for concealing income. At the same time there is violation of provisions of section 40A (3) of the Act and hence, an amount of Rs.11000/- is added back to the income of the assessee u/s 40A (3). Penalty u/s 271(1) (c) is being initiated for filing inaccurate particulars of income and also for concealing income.

**14.** Annexure- D(P-85)- is details of accounts prepared by Om Logolistics vide bill no. 119892 dated 8.11.2006. Following cash payments are made by the assessee which are not accounted for in the regular books of the assessee

On 10.10 2006 Rs. 20,000/-

On 28.09.2006 Rs. 42,668/-

On 28.09.2006 Rs. 85,332/-

On 13.10.2006 Rs. 60,000/-

Total Rs. 2,08,000/-

Therefore, an amount of Rs. 2,08,000/- is added back to the income of the assessee as unexplained revenue expenditure. Penalty u/s 271(1) (c) is being initiated for filing inaccurate particulars of income and also for concealing income.

On account of violation of section 40A (3), an amount of Rs.37,600/- (20% of 42668+ 85332+60000)=188000/-). is added back to the income of the assessee. Penalty u/s 271(1)(c) is being initiated for filing inaccurate particulars of income and also for concealing income.

Keeping in view the above findings, income of the assessee firm is computed by the Ld. AO in the assessment order dt. 30/12/2009 which is reproduced as below:

Total Income as declared in the income tax		Nil
Add Back		
i) As discussed in the body of assessment order		1,48,17,110
ii) As discussed in Para-1 above		4,10,145
iii) As discussed in Para-2 above		56,814
iv) As discussed in Para-3 above	(a) 1,23,299 (b) <u>24,659</u>	1,47,958
v) As discussed in Para-4		10,67,000
vi) As discussed in Para-5		15,00,000
vii) As discussed in Para-6		1,04,250
viii) As discussed in Para-7		2,87,995
ix) As discussed in Para-8		1,06,61,722
x) As discussed in Para-9		1,62,000
xi) As discussed in Para-10		23,000
xii) As discussed in Para-11	(a) 1,07,000 (b) <u>21,400</u>	1,28,400
xiii) As discussed in Para-12	(a) 1,00,000 (b) 20,000	1,20,000
xiv) As discussed in Para-13	(a) 55,000 (b) <u>11,000</u>	66,000

xv) As discussed in Para-14	(a) 2,08,000	
	(b) <u>37,600</u>	<u>2,45,600</u>
	Total	Rs. 2,97,97,994/-
Less: Deduction allowable u/s 80IC of the Income Tax Act as discussed in the body of the assessment order		<u>Rs. 2,77,820</u>
Total Taxable Income		Rs. 2,95,20,174
	Say	Rs. 2,95,20,200/-

Issue penalty notices u/s 271A, u/s 271(1)(b) & u/s 271(1)(c) of the Income Tax Act, 1961.

Charge interest u/s 234B & 234C of the Income Tax Act, 1961.

Assessed, issue demand notice and challan

### Proceedings Before CIT(A)

30. The Ld. CIT(A) in respect of Ground No. 1 of the assessee which pertains to an addition of Rs. 1,45,39,290/- on account of reduction of deduction claimed under section 80IC of the Income Tax Act, 1961 wherein the assessee submissions were:

"3.4 The appellant submitted that the Feeder Clamps manufactured by him were sold as an assembly of 6 Feeder Clamps assembled together to be used in the installation of mobile towers popularly known as Mechanical site material. The Feeder Clamp assembly was totally distinct from the Feeder Clamp and the assembly of the same amounted to manufacture. It was submitted that the assembly of feeder clamps was being done from day one of the installation of the plant of the appellant firm. The said process was technical one and required supervision by trained professionals/supervisors. The products were made strictly in accordance with the specifications provided by the EIL, the sole purchaser of the said products. The Id. A. O. accepted that the feeder clamps were being assembled to make an assembly that itself shows that there was an act of manufacturing. Reliance in this regard was placed on the following judgments:-

a) 188 ITR, 370 page (All)

b) 2009 (178) Taxman 22 (P& H).

3.5 The appellant further submitted that as per the Oxford Advanced Learners Dictionary, the word 'manufacture' means to make goods on a large scale using machinery. The term manufacture implied a change, but every change was not a manufacture, despite the fact that every change in an article is the result of a treatment of labour and manipulation. However, this test of manufacture needed to be seen in the context of the above process. The appellant relied on the following cases:-

a) 320 ITR page 546 (S.C.)

b) 204 ITR 412 (SC)

c) 162 ITR 846 (S.C.)

d) 209 ITR 854 (Cal)

e) 119 ITR 895 (All)

3.6 It was submitted that the action of the Ld. A.O. in treating only the manufacturing of Feeder Clamps as manufacturing was illegal and not sustainable in the eyes of law

3.7 Regarding Welding of ladders and accessories, the appellant submitted that it was getting the ladders welded at its own premises and on contract basis. The ladders were being welded and manufactured according to the specification of the EIL. The input and output were totally different and as such the same fell within the definition of manufacturing. The appellant claimed to have carried out the activity of powder coating on pre manufactured G.I. ladders and its accessories etc on job work basis through a contractor, M/s Ashima Industries, Faridabad, and in one case, it also claimed to have done galvanization of ladders, clamps and pendulums on job work basis through M/s A.V. forgings, 230, Phase IX , Indl Area, Mohali. It was pointed out that during the course of survey it was noticed that powder coating was carried out within the business premises of the appellant firm at Kala Amb. During the course of survey a challan book was also found and impounded reflecting the figures of job work got carried out by the appellant firm through M/s Ashima Industries.

3.7 To conclude, it was submitted that all the activities put together right from the manufacturing of plastic feeder clamps, bending, punching, welding, fixing of lug etc. were integral parts of the manufacturing for the mechanical site material which was a specialized job."

The Ld. CIT has held as follows:

"3.8 The rival submissions have been carefully considered with reference to the facts of the case and the case laws relied upon. The most important thing to be noted about the facts of the case is that the Id. A.O. has given detailed findings in respect of the fact situation of the appellant's case not only on the basis of the table inquiries but also on the basis of physical checking carried out on-the-spot through a survey action u/s 433A (1) of the Act On the basis of the said survey action, the Id. A.O. has been in a position to correctly narrate the exact operations being carried out by the appellant firm. On the basis of the table inquiries and site enquiries and on the basis of the scrutiny of the relevant documents, the Id. A.O. has been able to comment on the book entries and book results shown by the appellant firm in the year under consideration.

3.9 The main dispute as per ground no. 1 is the disallowance of deduction u/s 80-IC of the Act. In order to arrive at the correct conclusion in this regard, it is deemed fit to first pay attention to the factual position as emerging from books of account and related documents. In this regard the major findings given by the Id. A. O. are briefly discussed here below:

i) As per the audit report as well as the books of account, the appellant firm commenced its commercial sales w.e.f. 4/9/2006. In the first 27 days, i. e. from 4/9/2006 to 30/9/2006, sales exceeding Rs.2.50 crores have been claimed.

ii) No production has been shown in the months of April May. June & July. But production exceeding Rs. 2 crores has been shown in the month of Aug., 2006.

iii) A temporary electricity connection was released to the appellant' firm for the first time on 27/7/2006 for the purpose of construction of its factory building. This temporary electricity connection was for a load of 9.868 KW only. It was specifically released for construction of the factory building and was' permanently disconnected on 8/12/2006. This clearly means that the building was under construction during the period 27/7/2006 to 8/12/2006. Even the electricity consumption during this period was only sufficient to cater to the' construction needs. Therefore, in the absence of any electricity connection or electricity consumption, the huge production shown in the months of Aug.,2006 to Dec, 2006 becomes totally improbable. The appellant firm also failed to establish that there was any alternate source of power available for production so as to justify its claim of such a huge production. Further, a perusal of the details of load per machine for which the permanent electricity connection was obtained by the appellant firm shows that 9.968 KW load through temporary connection was too little to take care of its production need. Further, there are glaring discrepancies in the amount of electricity units consumption and the corresponding figures of production returned by the appellant during the period of temporary connection and during the period of permanent connection which have been commented in detail by the Id. A.O.

Thus the electricity consumption pattern of the appellant firm shows a total mismatch between the availability and consumption of power and the production claimed. Since the availability and consumption of power is strictly according to the records of the electricity department, the production records' prima facie appear to be manipulated.

iv) Still further, there exists a total mismatch between the statistics pertaining to production and those pertaining to manufacturing expenses and expenses booked in the P & L A/c. For production worth more than Rs.2 cores, manufacturing expenses amounting to Rs.76,441/- only and other expenses amounting to Rs.88874/- only have been claimed in the month of August, 2005. Even if the expenses booked in the months of April to July, 2006 are taken into consideration, the same remain less than 0.5% of the total production. The tabulated figures of production and the expenses given by the Id. A.O. on page-31 of the assessment order clearly show that there is absolutely no co-relation between the production and the manufacturing and other expenses. The expenses vary from 0.36% to 108% in different months. This pattern of expenses and production defies all logic. Whatever expenses have been incurred are on account of wages, salary to staff, electricity bills for running the plastic molding and welding machine and do not relate to any major manufacturing process.

v) A close study of the nature of expenses further reveals that there are nominal expenses incurred on consumables which again makes the claim of the appellant regarding manufacturing and production totally unreliable.

**vi) The appellant firm has claimed a production of about 5.5 crores from Aug., 2006 to March 2007. Obviously a good deal of plant and machinery is required to achieve such heavy production, It is noted that the appellant firm has given a list of plant and machinery to the Central Excise Division Shimla which was required in order to manufacture the goods under consideration. As per this list furnished by the appellant with the Excise Department, plant and machinery to the tune of Rs.1.15 crores approximately was required to be installed. However, no such plant and machinery was apparently installed by the appellant firm during the year under consideration. The total value of the plant and machinery as per its books of account stands at Rs. 16,44,469/- only. Even the said claim of the appellant was found to be partly bogus during the course of survey action u/s 133A (1). It was discovered during the survey action that only five machines, namely welding machine assembly, transformer, plastic injections moulding machine, welding set and cooling tower actually belonged to the appellant firm, the total value of which was less than Rs.12 lacs.**

**The remaining machinery was found to be belonging to M/s. Ashima Industries which was claimed to be performing certain processes of powder coating on job work basis for the appellant. Thus as per the appellant's own books of account there were, no plant and machinery available for welding and punching of holes on G I sheets, an activity declared as the main activity by the appellant before the Central Excise division as well as the Id. A.O. Nor was the capacity of the available plant and machinery of such a scale as to justify the magnitude of production claimed by the appellant.**

**vii) The Id. A. O. has also brought on record the fact that the details of manufacturing activities and the items to be manufactured furnished by the appellant with the Excise office were totally different from those claimed before the income tax Authorities.**

viii) The appellant failed to offer any explanation before the Id. A.O. in respect of the said findings despite specific opportunity granted in this regard. It failed to explain as to how it could achieve such a scale of manufacturing without any plant and machinery and without incurring any cost of manufacturing process.

**ix) It is further noted that the appellant failed to file 10CCB Form along with the audit report with its return of income. It was only after reminder from the Id. A.O. that the said form was filed on 24/12/2009: but there is no mention of any manufacturing activity in this form. During the course of survey proceedings, no regular books of account of the appellant in the form of cash book, ledger, journal, bank pass books etc. were found, nor could the appellant ever produce the same before the Id. A. O. during the course of assessment proceeding despite a number of opportunities granted in this regard. The conduct of the appellant throughout the course of assessment proceedings betrays its intention to delay and obstruct the process of investigation. The Id. A.O. has put in detail the sequence of events in the course of**

assessment proceedings in the assessment order. Thus it is clear that the appellant failed to discharge its primary onus to produce the complete books of account, bills, vouchers and documents and to prove the genuineness of its claim of deduction u/s 80-IC of the Act. The fact that the appellant was submitting different specifications of the so-called manufacturing activities before different official agencies and in different official documents indicates that no manufacturing activity was actually undertaken by the appellant which could be directly and unequivocally mentioned before all-authorities and in all documents.

(x) In the face of the total reluctance of the appellant firm to divulge the complete and correct information before him, the Id. A.O. was left with no option-but to conduct inquires in respect of the working of the appellant firm from the concerned agencies. He also tried to gather first hand information regarding the working of the appellant through a survey action.

xi) On the basis of the enquiries conducted by the Id. A. O. from M/s. Ericsson India Pvt. Ltd. (EIL), it was learnt that the appellant firm was supplying the material to EIL for installation of mobile towers. The said installation material, o, Set of Articles was referred to as "**Mechanical Site Material**". In other words, the appellant firm was supplying a particular Set of articles or Kit to EIL, which contained a number of items as per the specific requirement of EIL. Thus a particular kit or Set of articles was basically a package consisting of loose material and parts required by EIL in connection with the installation of mobile towers. The Id. A. O. noted that the loose parts of a Set or kit were packed in carton boxes of polyfabs for dispatch and that the EIL ordered such sets as per its customized requirement for its managerial convenience at the site of installation of mobile towers. It was duly confirmed by M/s. EIL to the Id. A O that the installation material supplied by the appellant consisted of loose articles and that the appellant firm was not being paid any charges for assembling and testing of goods supplied. The said facts stood duly corroborated by the finding of the survey action. **Many purchase bills were impounded during the course of survey showing the purchase of the very same items which were sold to M/s. EIL. The articles were purchased under the description "Mechanical site Material" and were also sold under the very same description. This obviously led the Id. A.O. to conclude that the appellant firm was simply engaged in the TRADING of installation material with EIL and was not engaged in manufacturing, testing, erecting and installing.** It was further found out during the course of survey action that the appellant firm was simply engaged in the work of rearranging and repacking of loose articles in small numbers and quantities in the form of kits/set of articles as per the requirement of the purchaser. **During survey it was noticed that these articles and items were being repacked and rearranged by a number-of workers engaged for the purpose. Most of these workers were neither educated nor possessed any technical knowledge or skill. Many of them were absolutely fresh hands but were found to be managing the work without any problem because the work involved did not require any technical knowledge skill or training.**

xii) **During the course of survey proceedings, it was found out by the Id. A.O. that the appellant firm was manufacturing only one item, namely Plastic Feeder Clamps.** It was noted that the raw material in the form of plastic dana was purchased which was put into a plastic moulding machine to manufacture plastic feeder clamp. **But it was also found that a major part of plastic feeder clamps was also purchased in readymade form from the market by the appellant.** However, on the basis of the purchases or the plastic dana recorded by the appellant, the Id. A. O. has calculated the number of plastic feeder clamps manufactured and sold by the appellant and has accordingly allowed the benefit of deduction u/s 80-IC in respect of the same. **It has been argued by the appellant that an assembly of six plastic feeder clamps forms a feeder clamp assembly and the same amounts to manufacture.** Since the Id. A.O. has accepted the manufacturing of basic 521764 clamps by the appellant firm, the feeder clamp assemblies formed from the said feeder clamps should also logically be treated as a next step in the line of manufacturing. **It takes six feeder clamps to make one feeder assembly. Accordingly 86960 feeder clamp assemblies should also be treated as manufactured by the appellant firm. The A. O. is, therefore, directed to calculate the profits on the sale of said 86960 assemblies as per the books of account of the appellant and allow the benefit of deduction u/s 80-IC in respect of the same.**

xiii) **As regards the remaining areas of manufacturing claimed by the appellant, namely welding and punching of GI sheets, powder coating, welding of ladders and fixing of lugs at one end of copper cable, specific findings of facts have been given by the Id. AO. on the basis of survey action. It has been brought on record that no press machine was available with the appellant and, therefore, no welding and punching of GI sheets could possibly be carried out by the appellant. The appellant also failed to prove that this work was actually carried out during the year under consideration. No expenses relevant to the said activity were found recorded in the manufacturing and P & L A/c as already discussed in the foregoing paragraphs. A similar finding has been given by the Id. A.O in respect of the welding of ladders. No expenses were found debited in respect of purchase of consumables like soldering / welding rods etc. which are the main inputs for welding of ladders. The appellant absolutely failed to establish that it had actually manufactured ladders at its premises. It also failed to establish that it had got the welding of ladders done on the basis of contractual job work. The Id. AO did try to get confirmation from the parties from whom the appellant claimed to have got the job work done, but 5 out of the given 8 persons were found to be non-existing at the given addresses. The remaining 3 categorically denied to have done any job work for the appellant. Thus the appellant failed to prove its claim even regarding manufacturing in the form of welding of ladders.**

xiv) With the claim of manufacturing of ladders remaining unsubstantiated, the claim of manufacturing in the form of powder coating of ladders also loses its force. Mere activity of powder coating certainly does not fit the definition of manufacturing. Moreover, in this regard also it was found out the Id. A. O. that the appellant did not possess any technical capacity of its own to carry out the work of powder coating. Powder coating of pre-manufactured ladders and its accessories was arranged through contractual job work. One M/s. Ashima Industries of Faridabad carried out this task for the appellant on job work basis and the entire plant and machinery required for the purpose of powder coating was found to be belonging to the said Ashima Industries. Therefore, on the given facts, the Id. A.O. was fully justified in concluding that no manufacturing activity in this regard was concluded by the appellant during the year under consideration.

xv) **As regards the fixing of lugs at one end of the copper cable, it has been claimed by the appellant that this activity is an integral part of manufacturing and amounts to manufacturing of a product fit for user. However, the said argument of the appellant is not found to be carrying much force. Just fixing of a lug at one end of the copper cable cannot be said to be amounting to manufacturing as there is no such process involved which gives the copper cable any new form or property. Fixing a lug at one end of the cable does not result in creating a different and a new commodity.**

xvi) As regards the appellant's argument that deduction u/s 80-IC has been allowed in the case of M/s. Lambda Microwave Technology for the similar manufacturing activities, the moot point distinguishing the appellant's case is the specific finding regarding the total absence of the plant and machinery required for manufacturing and the total absence of any expenses required to be incurred for carrying out the manufacturing activity. Added to this is the specific finding regarding the total mismatch between the production claimed and the expenses incurred and between the production claimed and the power consumed. The Id. A.O. has also given a specific finding regarding the unverified claim of the appellant in respect of the contractual job work. **The appellant has not been able to establish in any manner as to how it could achieve such a large scale production and huge turnover of Rs. 7.40 crores approximately with a net profit of Rs.1.36 crores approx. in such a short time without even having the permanent electricity connection and the requisite plant and machinery.** Merely because certain activities are accepted as manufacturing activities on different facts of another case does not mean that the benefit of that finding can be claimed by the appellant without satisfying all the pre-requisite conditions and without establishing that the manufacturing activities were actually carried out by it. **Even form no. 10CCB submitted by the appellant is absolutely silent about the so-called manufacturing activities of the appellant.** The complete facts and circumstances of the appellant's case combined with the findings of the survey action clearly indicate that the **appellant was primarily engaged in trading of various loose**

**materials and items required for installation of mobile towers. It was simply purchasing the said items, primarily from its own sister concern and packing them in the form of sets of articles/kits to suit the requirement of its purchasers. During the year under consideration it had achieved only a limited capacity for manufacturing in respect of plastic feeder clamps which has been duly acknowledged by the Id. A.O. The claim of the appellant regarding manufacturing in respect of the remaining items does not stand substantiated either by its own book results or by way of any independent evidence. Prima facie the appellant has tried to create a facade of manufacturing only in order to avail of the benefit of deduction u/s 80-IC by establishing a centre for trading in the notified Zone. Accordingly, on the given facts the action of the Id. A.O. in disallowing deduction u/s 80-IC is found to be in order, barring the disallowance in respect of the profits on sale of 86960 assemblies of plastic feeder clamps. Thus the appellant succeeds only partly on this ground of appeal.**

### **31. Other issues other than Section 80IC before CIT(A)**

1. **In Ground No. 2** the assessee has agitated the addition of Rs. 4,10,145/- as unexplained cash credit the facts of which are recorded (supra) (AO order). In brief it was a day book/cash book was impounded from business-cum-office premises of the assessee during survey u/s 133A on 7<sup>th</sup> & 8<sup>th</sup> of December, 2009, which was annexured as A-5. This day book for A.Y. 2007-08 was computerized and ledger and cash books were prepared, copy of which was handed to the assessee for its comments. **But it failed to offer any explanation.** A perusal of the said Day Book revealed that the assessee had introduced total cash to the tune of Rs.4,10,145/- during the year under consideration which was put under the heading of "Unsecured Loans" in the computerized Ledger. This amount was treated as unexplained cash credit since the same was not found reflected in assessee's regular books of accounts.

Per contra the assessee submitted that the said addition was made on the basis of mere suspicion relying upon the scribbles which could not have been made the basis of making any addition. It was argued that the cash credits are taxed under section 68 of the Act and in the instant case, as admitted by the Id. A.O., no entries were found entered in the books of account and as such the provisions of section 68 are not applicable to the instant case. The so-called subsidiary books have been prepared by the Id. A.O. out of scribbling of the staff and have no bearing on the case of the assessee.

The Ld. CIT(A) has held as follows:

**4.3** *The rival submissions have been considered with reference to the facts of the case. The impounded day book/cash book has also been perused in original along with the cash book and ledger being maintained by the appellant in regular course of business, a copy of which has been placed on record by the Id. A.O. For the financial*

year 2006-07, the following major entries of cash are found recorded in the impounded day book:-

Date	Cash introduced
6/8/2006	10000
8/8/2006	10000
20/8/2006	10000
12/9/2006	5000
26/9/2006	5000
28/9/2006	700
1/10/2006	20000
19/10/2006	15000
24/10/2006	10000
3/11/2006	5000
4/11/2006	5000
7/11/2006	500
9/11/2006	10000
11/11/2006	5000
12/11/2006	5000
13/11/2006	5000
17/11/2006	5480
23/11/2006	10000
29/11/2006	10000
4/12/2006	10000
9/12/2006	3140
15/12/2006	10000
23/12/2006	10000 „
27/12/2006	20000
31/12/2006	10000
10/1/2007	10000
18/1/2007	7400
20/1/2007	10000
27/1/2007	5000
1/2/2007	15000
17/2/2007	15000
25/2/2007	500
25/2/2007	7400
1/3/2007	10000
3/3/2007	1000
5/3/2007	10000
10/3/2007	15000
14/3/2007	1000
16/3/2007	5000
16/3/2007	5000
25/3/2007	10000
26/3/2007	10000
30/3/2007	10000

A further perusal of the said cash book reveals that it has been maintained systematically date-wise w. e. f. 25/7/2006 upto 09/07/2007 and has been written on day to day basis. The receipts as well as the payments have been entered on both side of the day book. Even the payments to the tune of Rs.2 only have been duly entered in the said cash book. Therefore, the entries made in the day book cannot be dismissed as mere 'scribbling'. The said day book has been systematically maintained for recording the cash receipts and the misc. petty expenses. The said entries are, however, not found recorded in the regular cash book submitted by the appellant. The appellant's argument that addition u/s 68 can be made only in respect of the entries found in the books of account of the assessee does not carry any force. The day /cash book impounded during the course of survey action from the premises of the appellant is also a part of the books of account of the appellant. The said document duly carries the caption as recorded by the appellant "cash book 25/7/06 to 9/7/07" and "Asha Technologies, ... Kala Amb". The appellant has clearly failed to discharge its onus of explaining the source of the cash introduced from time to time as per the details above. Therefore, the conclusion drawn by the Id. A.O. in respect of the

*cash introduced treating the same as unexplained cash credit is in order. Therefore, the addition to the tune of Rs.4,10,145/- on account of unexplained cash credits is upheld.*

32. With regard to Ground No. 3 which pertained to addition of Rs. 56,814/- made on account of payments made to M/s Mod Furnitures the assessee submitted that the scribblings have been made the basis for this addition and the entries in the books of accounts have been brushed aside. The A.O. has not put forth any material on record to substantiate that the payments were made as per the scribblings. The said addition has been made on presumptions and it was a settled law that presumption, however strong, does not play a part of proof. It was reiterated that the payments were made to the given concern as per the regular books of accounts.

The Ld. CIT(A) has held as under:

*5.3 The Ledger impounded during the course of action has been perused in original alongwith the regular cash book and ledger submitted by the appellant. The impounded document carries the caption recorded by the appellant itself "ledger 1st April 2006 31st March, 2007" and "M/s. Asha Technologies". The account of Mod Furniture as entered on page-55 of the said ledger clearly shows the cash payments amounting to Rs.56814/- on various dates. There are no corresponding entries of cash payments in the regular cash book submitted by the appellant. Thus the Id. A. O. has rightly concluded that the cash introduced by the appellant stands as unexplained cash credits. Merely because the said entries have been, subsequently accounted for by the appellant in its regular cash book at the fag end of the financial year in the month of Feb., & March 2007 does not help the appellant explain the source of the cash introduced in the months of June & July, 2006. Therefore, the addition made by the Id. A.O. amounting to Rs.56,814/- is hereby upheld.*

33. With regard to Ground No. 5 the assessee has challenged the addition of Rs. 10,67,000/- made under section 40A(3) of the Act. The assessee submitted that the AO was duly apprised during the course of assessment proceedings that the said payments were never made to M/s Asha Telecom Pvt Ltd. The said cash was withdrawn from the bank and purchases in cash were made of small amounts which never exceeded Rs.20,000/- in one go. The factum of having made the purchases from small vendors has never been disputed by the Ld A. O. as no disallowance for the said purchases has been made. That being the case, the disallowance made by the Ld A.O. is not sustainable in the eyes of law. It was further argued that if the issue of deduction under section 80 IC is decided in favour of the appellant, said disallowance would go to increase the exempt profit of the assessee.

The Ld. CIT(A) has held as under:

" 7.2 The rival submissions have been carefully considered with reference to the facts of the case. It is noted that it was during a close scrutiny of the photo-copies of bank account statements of UCO Bank A/c No. 396 furnished by the appellant that the Id. A.O. discovered that a number of entries in the said statements were tampered with by the appellant. The appellant had gone to the extent of changing the narration of certain credit and debit entries by super imposing different narration over the same. Correspondingly the appellant had taken due care to change the narration in the relevant ledger account. Many such manipulations were noted in the account of the appellant's sister concern, namely M/s. Asha Telecom Pvt. Ltd. The major tampering was in respect of the fact that the payments in the form of cash by withdrawing the cash through the cheques of 'self' were misrepresented as payments by way or account payee cheques. The Id. A. O. has given a detail of all such entries on page 43 of the assessment order. It was further noted by him that the said cash withdrawals and payments were not routed through the cash book by the appellant, whereas other cash withdrawals in normal course were duly reflected in the cash book. The relevant vouchers obtained by the Id. A.O. from the concerned bank also confirmed the fact that the cash withdrawals in question were made by way of cheques of 'self'. The appellant has admitted in its written as well as verbal submissions that the cash was withdrawn from the bank. But it has argued that the same was not paid to M/s. Asha Telecom Pvt. Ltd., but was used to make purchases in cash which never exceeded Rs.20,000/- in one go. However, the said contention of the appellant does not stand corroborated through any evidence. The appellant has not been able to submit any proof regarding the purchases in cash amounting to Rs.53,35,000/- from small vendors. It has also not been able to explain as to why the given entries of cash withdrawals and outgoings were not reflected in the regular cash book, if the same were genuine. It has also not been able to explain as to why the given entries were tampered with in the bank account statement if there was no malafide intention on the part of the appellant. Thus there is prima facie a clear case of cash payments amounting to Rs.53,35,000/- to its sister concern by the appellant by camouflaging the entries of cash withdrawals as entries of payment by cheques and by not reflecting the same in the cash book. The disallowance to the extent of 20% of the said payments made by the Id. A. O. is, therefore, in order and is upheld. The appellant accordingly fails on this ground of appeal."

34. With regard to Ground No. 6 where the assessee has agitated the addition of Rs. 15,00,000/- made as unexplained cash credits, the assessee had contended that the two partners of the assessee firm had contributed a sum of Rs 15,00,000/- in equal proportions. Out of the said amount a sum of Rs 7,00,000/- was deposited by them in UCO Bank , Nahan , A/c No 396 on 25-07-2006 and the balance sum of Rs 8,00,000/- was deposited on 24-08-2006. Both Smt Kamlesh Verma and Smt Rajni Verma, the two partners, were claimed to be ladies of means and income tax assesseees since 2005-06.

Alternatively it was submitted that this was the first year of business and the firm could not have generated the amount as the sales commenced w.e.f Sept 2006 and as such the same could not have been attributed to the firm. If at all the said addition was to be made, the same could have been made in the hands of the partners and not the firm. Reliance in this regard was placed on the following judgments:-

1. 107 ITR 938 page (S.C.)
2. 83 ITR 187 page (S.C.)

The Ld. CIT(A) has held as follows:

"8. The rival submissions have been carefully considered with reference to the facts of the case. It is noted that in continuation of the findings dealt with in ground 5 above, the Id. A.O. further discovered the cash deposits amounting to Rs. 15 lakhs in account No. 396 with UCO Bank, Ogl. The appellant had tampered the said two entries and presented them as cheque entries from M/s. Asha Telecom Pvt. Ltd. in its ledger account. In turn, M/s. Asha Telecom failed to furnish any documentary evidence to prove the source of the said cash payment. Nor could the appellant produce anything to explain the source of the said cash **Through its reply dated 23/12/2009, it was admitted that the said cash entries were unexplained cash credits, on the basis of which the Id. A.O. made the addition.** The appellant's argument during the course of appellate proceedings that the said cash was deposited by the two partners of the appellant firm and that they are ladies of means does not hold any ground. The said argument has been advanced just as an afterthought and absolutely without any details and evidence to substantiate the same. The hollowness of the appellant's argument is further evidenced from the fact that in the very same breath it is advancing an 'alternative' argument in its defense. As an alternative argument, it has been submitted that the sales of the appellant firm commenced w.e.f. Sept., 2006 and therefore the said cash credits could not have been attributed to the firm and should have been added in the hands of the partners of the firm. The said argument of the appellant also does not carry any weight. The appellant has claimed heavy purchases from April to Aug., 2006 and has also booked manufacturing and other expenses in the given months. Thus the business of the appellant had commenced in April 2006 as per its own accounts. Therefore it is not logical to argue that the appellant firm was not responsible for the unexplained cash credits found in its own bank account. It is the settled legal position that the burden to prove the genuineness of the cash credits alongwith the identity and capacity of the creditors is on the assessee and if a cash credit is not satisfactorily explained, the A. O. will be justified to treat it as income from undisclosed sources. Further, even a firm has to establish that the amount was actually given by the lender and if the explanation is not supported by any documentary or other evidence, the deeming fiction created by section 68 can be invoked. The case laws relied upon by the appellant do not help its case.

Accordingly there exists no ground to interfere with the action of the Id. A. O. The addition of Rs. 15 lakhs on account of unexplained cash credits is upheld."

35. With regard to Ground No. 7 & 8 the assessee has agitated the addition of Rs. 1,04,250 and of Rs. 2,87,995/- as unexplained revenue expenditure the Ld. CIT(A) has held as follows:

" 10.3 The rival submissions in respect of ground no.7 & 8 have been carefully considered with reference to the facts of the case. It has already been noted that the appellant was engaged in the trading of loose material and items which were being purchased in readymade form and supplied in the name of mechanical site material after repacking in the form of specified kits. It is also established that the appellant was not carrying out any worthwhile manufacturing activity during the year under consideration. Just in order to create a semblance of manufacturing, the appellant was claiming manufacturing on contractual job work basis. But the specific enquiries conducted by the A.O. revealed that the claim of the appellant in this regard was bogus in respect of many concerns. Similarly claims in respect of payment of cartage charges for purchases were also found bogus by the Id. A. O. All these payments have been claimed in cash. The appellant failed to produce any bills, vouchers and receipts in lieu of cash payments in support of the entries in its books of account despite a number of opportunities granted by the Id. A.O. as per the details given on the first six pages of the assessment order. **It has also been mentioned by the Id. A. O. on page 6 of the order that the appellant was duly allowed to inspect the impounded books and documents and to take copies thereof in order to furnish its reply to the issues involved. However, the appellant did not choose to do so for the reasons best known to it. Therefore, there is found no force in the appellant's argument now that the documentary evidence in support of the expenditure was lying**

**impounded with the Id. A. O. and that the addition was made at the back of the appellant. Since the appellant has failed to prove the genuineness of the expenditure through any independent evidence and the parties concerned have denied the receipts of the payments in question and some parties have been found to be non-existing, the additions of Rs. 1,04,250/- and Rs.2,87,995/- to the taxable income of the appellant are in order. The same are accordingly and ground No. 7 & 8 are dismissed."**

36. With regard to Ground No. 9 which pertains to the addition of Rs. 1,06,61,722/- as unexplained revenue expenditure on account of purchase made from M/s Santosh Cables, M/s Vandana Cables and M/s Venus Cables the assessee had submitted that the representatives of the given concerns visited the premises of the appellant, and supplied the products and took the payments on regular basis. The wrong addresses cannot be made the sole basis of making the addition because the factum of the said purchases has not been disputed by the Ld A.O. It was further submitted that the said addition would only go to increase the non taxable profit of the appellant. Regarding the various payments of Rs 20000/- in cash, it was submitted that there is no illegality in the said arrangement as the same is allowed under section 40A (3) of the Income Tax Act, 1961.

That Ld. CIT(A) has held as follows:

"10.7 The rival submissions have been carefully considered with reference to the facts of the case. It is noted that the Id. A. O. had conducted extensive inquiries in respect of the purchases claimed by the appellant from M/s. Santosh Cables, M/s. Vandana Cables and M/s. Venus Cables. Heavy purchases were shown by the appellant from the given three concerns and the entire payments of more than Rs. 1 crore were claimed to have been made in cash. On inquiry it was discovered by the Id. A. O. that none of the three concerns existed at the given addresses and some other persons owned the said properties. Transactions worth Rs.1 crore approximately were claimed by the appellant with M/s. Santosh Cables, against which it claimed to have made payments in cash for Rs.20,000/- or slightly less than Rs.20,000/- on each occasion. A perusal of the cash book and the ledger submitted by the appellant during the course of assessment proceedings reveals that the transactions with the given three concerns have been reflected by the appellant in the following manner:-

**Santosh Cables**

Date	Purchase	Cash payment
2/9/06	624000	
1/10	730085	
2/10	421200	
2/10	565406	
2/10	858000	
2/10	739440	
2/11	705344	
2/11	449176	
2/11	639600	
2/11	553363	
1/12	672880	
	686400	
1/12	564893	
2/12	772200	
18/12		20000

22/12		20000
24/12		20000
26/12		20000
27/12		20000
29/12		20000
31/12	686140	
2/1/07		14891
3/1		20000
4/1		20000
6/1		20000
8/1/1		20000
10/1		20000
11/1		20000
13/1		20000
13/1		20000
14/1/1		20000
16/1		20000
17/1		20000
18/1		20000
19/1		20000
20/1		20000
21/1		20000
22/1		20000
23/1		20000
24/1		20000
25/1		20000
27/1		20000
28/1		20000
29/1		20000
<b>30/1</b>		20000
31/1		20000
1/2		20000
2/2		20000
3/2		20000
4/2		20000
5/2		20000
6/2		20000
7/2		20000
8/2		20000
9/2		20000
1/2		20000
11/2		20000
12/2		20000
13/2		20000
14/2		20000
15/2		20000
16/2		20000
17/2		20000
18/2		20000
19/2		20000
20/2		20000
21/2		20000
22/2		20000
23/2		20000
24/2		20000
25/2		20000
26/2		20000
27/2		20000
28/2		20000
1/3		20000
2/3		20000
3/3		20000
4/3		20000
5/3		20000
6/3		20000
7/3		20000
8/3		20000

9/3		20000
10/3		20000
11/3		20000
12/3		20000
13/3		20000
14/3		20000
15/3		20000
16/3		20000
17/3		20000
18/3		20000
19/3		20000
20/3		20000
21/3		20000
22/3		20000
23/3		20000
24/3		20000
25/3		20000
26/3		20000
27/3		20000
28/3		20000
29/3		15000
30/3/07		8924
Total	96681827	1758815

10.8 A perusal of the above shows that the appellant has claimed purchases worth Rs.97 lakhs approx. through the so-called 'agents' on credit basis. The payments have been claimed in cash, Rs.20,000/- every day throughout the month of Jan., Feb. & March. This means that the agents of the seller concern were visiting the appellant every day just to collect cash payment of Rs.20,000/- and that the seller concerned had the financial capacity to sell goods worth Rs.1 crore approx. on credit and was content with the cash collection of Rs.20,000/- every day. At the end of the year, credit balance of Rs. 78,93,236/- has been shown in the name of the said firm. Similar is the position in respect of the purchases claimed by the appellant from Vandana Cables and Venus Cables. The entire purchases have been shown at one go from these two concerns and the payments have been shown through cash entry of Rs. 20,000/- every day. Thus, on the very face of the said arrangement, the appellant's claim comes across as absolutely false and frivolous.

10.9 The appellant has failed to produce any evidence to establish that the said business concerns were genuine and that the transactions with them and the payments shown to them were also genuine. One probable cause behind the sham book entries can be the fact that the appellant firm was engaged in the mere trading of loose material for installation of towers and was making direct purchases of readymade material from its sister concern in a big way. Thus basically there was created a cosy and convenient arrangement between the appellant and its sister concern for booking heavy profits in the hands of the appellant firm in order to claim deduction u/s 80-IC thereon. In order to avoid raising the suspicion of the Income-tax Authorities and in order to escape any scrutiny, the appellant firm appears to have booked certain purchases in the names of third parties other than its sister concern. By resorting to this arrangement, the appellant could succeed in reaping double benefit. While it succeeded in creating a facade of purchases from multiple parties and thus lend credibility to its claim, it succeeded in diverting its funds through bogus cash payments to undisclosed destination. However, the fact of the matter is that the appellant has miserably failed to prove the genuineness of the purchases and of the corresponding payments in cash recorded in its books of accounts. Therefore, the addition of Rs. 1,06,61,722/- to the taxable income of the appellant is found to be in order and is upheld. It won't be out of place to mention here that the appellant, in order to conceal the arrangement of purchases from its sister concern, has booked all kinds of purchases including that of the packing material under the head "purchases" and incorporated the same in the manufacturing trading account. It is noted that a number of components included in the purchases should have been accounted for in the P & L A/c, and not in the trading account.

37. With regard to Ground No. 10 the assessee has challenged the addition of Rs. 1,62,000/- made by Ld. AO as unexplained investment wherein it was submitted that it was made known to the Ld. A.O. that the payments were actually made to M/s Om Logistics as depicted in the books of accounts of the assessee firm. The statement of M/s Om Logistics has been taken at face value and the accounts of the assessee have been rejected in totality. This act of the Ld A.O. was not at all sustainable in the eyes of law .Moreover the copy of the account of M/s Om Logistics was never confronted to the assessee.

38. With regard to Ground No. 11 the appellant has challenged the addition of Rs. 23,000/- made under section 40A(3) in respect of payments made to M/s Om logistics wherein it was submitted that the Ld A.O. has made this disallowance presuming that the assessee had made payments as per the account statement supplied by M/s Om Logistics, i.e on suspicion. It was further submitted that the disallowance shall go to increase the non-taxable profit of the assessee.

**NOTE: (In this addition of Rs. 2,83,387/- is made and addition of Rs. 1,62,000 is directed to be deleted.)**

The Ld. CIT(A) has disposed off grounds at para 37 & 38 supra by holding as under :-

*"11.6 The rival submissions have been carefully considered with reference to the facts of the case. The relevant pages of the impounded document (Annexure X-7) have also been perused in original alongwith the regular cash book and ledger submitted by the appellant during the course of assessment proceedings. The given ten documents (papers) are the original receipts issued by Om Logistics Ltd. to the appellant in lieu of the amount received. The said receipts carry extensive details including the receipt No., date of receipt, consignment note number alongwith the date, the starting point and the final destination, the total freight, the amount received and the balance amount payable. The receipts are the printed receipts and have been duly signed. Alongwith the said cash receipts, there is also a receipt in lieu of cheque payment (Paper no. 163) amounting to Rs.2,68,500/- which stands duly recorded in the regular ledger of the appellant. Thus there can be absolutely no doubt about the authenticity of the entries given in the said impounded documents. However, the said payments are not found to be recorded in the regular cash book of the appellant. Therefore, it is clear that an amount of Rs.2,93,387/- as per the details in the table given on page 46 in the assessment order has been paid by the appellant to Om Logistics from undisclosed sources of. income. However, credit for Rs. 10,000/- paid on 4/1/2007 is being allowed to the appellant since a payment of Rs.40,000/- on the given date has been recorded by the appellant in the regular cash book. Deducting this entry of Rs. 10,000/-, it is held that the source of the remaining expenditure of Rs.2,83,387/- has not been explained by the appellant with reference to its regular books of accounts. Therefore, the same is liable to be added to the income of the appellant u/s 69 C of the Act. It is noted that the Ld. A. O. has omitted to make the said addition in the assessment order after discussing the issue at length. However, this is a mistake apparent from record and can be rectified u/s 154 of the Act. The addition of Rs.2,83,387/- is accordingly directed to be made u/s 69C of the Act to the taxable income of the appellant.*

11.7 As regards the addition of Rs. 1,62,000/- made by the Id. A.O. on account of cash payments made by the appellant to Om Logistics between the period 3/3/2007 to 23/3/2007, it is noted that the said details were procured by the Id. A. O. directly from M/s. Om Logistics Ltd. a copy of which has been placed on the assessment record by the Ld. AO which has been perused in original. The following payments have been made by the appellant to Om Logistics:-

Date	Amount
3/3/2007	35000
8/3/2007	7000
17/3/2007	15000
17/3/2007	15000
17/3/2007	10000
18/3/2007	2000
19/3/2007	18000
21/3/2007	10000
21/3/2007	10000
23/3/2007	40000
Total	162000

While it is factually correct that the said payments have not been recorded in the regular cash book of the appellant, it is noticed that the appellant has entered cash payments amounting to Rs.3,63,924/- from 1st Jan. 2007 to 10<sup>th</sup> March 2007 in the account of Om Logistics as per the following details:-

Date	Amount
1/1/07	20000
4/1/07	20000
4/1/07	20000
20/1/07	20000
22/1/07	20000
31/1/07	20000
1/2/07	20000
2/2/07	20000
4/2/07	20000
6/2/07	20000
14/2/07	20000
19/2/07	20000
20/2/07	20000
21/2/07	20000
22/2/07	20000
22/2/07	20000
5/3/07	20000
8/3/07	15000
10/03/07	8924
Total	363924

Therefore, the benefit of the availability of cash through the said withdrawals is allowed to the appellant. Accordingly the addition of Rs. 1,62,000/- as expenditure from undisclosed sources is directed to be deleted. Thus an addition of Rs.2,83,387/- is directed to be made and addition of Rs. 1,62,000/- is directed to be deleted in respect of ground No. 10.

11.8 As regards the addition of Rs.23,000/- u/s 40A (3) as 20% of Rs. 1,15,000/- paid in cash, the same is found to be in order. As is clear from the table above, the appellant has paid Rs.40,000/- in cash on 17/3/2007 (shown by way of three separate entries on the same date), Rs.35,000/- on 3/3/2007 and Rs.40,000/- on 23/3/2007 to Om Logistics which is clearly in violation of section 40A(3) of the Act. Just, in order to circumvent the said legal provisions, the appellant has been making entries of Rs.20,000/- in cash in its books of accounts. The said modus operandi of the appellant is evident from the

*entries of cash payments of Rs.20,000/- each on consecutive dates In view of the information directly furnished by Om Logistics Ltd. as recorded supra, the addition of Rs.23,000/- is upheld. The appellant thus fails in respect of ground No. 11."*

39. With regard to Ground No. 12 the assessee has challenged the addition of Rs. 1,07,000/- as unexplained expenditure on account of payment to M/s Nitco Bulk Cargo Carriers and addition of Rs. 21,400/- under section 40A(3) of the Act.

40. With regard to Ground No. 13 the assessee has challenged the addition of Rs. 1,00,000/- on account of payment to M/s Ashima Industries and addition to Rs. 20,000/- u/s 40A(3) of the Act.

41. With regard to Ground No. 14 the assessee has challenged the addition of Rs. 55,000/- on account of payment to M/s Ashima Industries and addition of Rs. 11,000/- under section 40A(3) of the Act.

42. With regard to Ground No. 15 the assessee has challenged the addition of Rs. 2,08,000/- on account of payment to M/s Om Logistics and addition of Rs. 37,6000/- u/s 40A(3) of the Act.

The assessee with regard to Ground No. 12,13,14,15 submitted that the alleged annexures relied upon by the Ld A.O. have not been confronted to the assessee and as such the additions deserve to be deleted on this very score. Moreover the disallowances u/s 4QA (3) have been made on suspicion and the same would only increase the non-taxable profit of the assessee. It was further argued that the said additions have led to double taxation as first the sums have been added as income /expenditure from undisclosed sources and subsequently the same have been disallowed under section 40A (3) of the Income Tax Act, 1961

The Ld. CIT(A) has held as under:

*"12.2 The rival submissions have been carefully considered with reference to the facts of the case. It is noted that certain bills were impounded during the course of survey action. These are full-fledged regular bills, the description of which has been given in detail by the Id. A. O. on page 46/47 of the assessment order. The said documents have also been perused in original. Since there is a complete documentary evidence regarding the payments to NITCO Bulk Cargo Carrier amounting to Rs. 1,07,000/- which were not reflected by the appellant in its books of account, the addition to that extent for unexplained expenditure u/s 69C of the Act is called for. The appellant has failed to produce any evidence to prove that the said expenditure was incurred from its explained sources of income. Therefore, the addition of Rs. 1,07, 000/- is upheld. However, addition made u/s 40A (3) amounting to Rs.21,400/- for cash payments in excess of Rs. 20,000/- in respect of the said unexplained expenditure amounts to double jeopardy. The said disallowance is, therefore, not found sustainable and is directed to be deleted. The appellant thus partly succeeds on this ground of appeal.*

*12.3 For the reasons given in respect of ground No. 12 above, the additions of Rs. 1,00,000/- and Rs.55,000/- on account of unexplained expenditure in cash on job work*

charges to M/s. Ashima Industries and of Rs. 208000/- on account of transportation charges to Om Logistics are upheld as valid u/s 69C of the Act. A perusal of P-85 of Annexure D-35 shows that the cash payments made to Om Logistics are different from those found mentioned in the impounded document No. Ann. X-7 as discussed in ground No. 10 above. This fact is clear from the consignment nos. and the dates given on the relevant documents. However, disallowance of Rs.20,000/-, Rs. 11,000/- and Rs.37600/- u/s 40A(3) is directed to be deleted for similar reasons. Thus the appellant succeeds partly on ground No. 13,14, & 15 of appeal."

### **Grounds of Appeal before ITAT**

43. The assessee before us in Form No. 36 has raised following grounds of appeal:

1. That in the facts and circumstances of the case the Ld CIT(A) is not justified in allowing the benefit of the deduction under section 80IC of the Income Tax Act, 1961 only in respect of the manufacturing of assemblies of plastic feeder clamps. That fact of the matter is that all the products manufactured by the assessee qualify for deduction within the meaning of section 80IC of the Income Tax Act, 1961.

2. That in the facts and circumstances of the case the Ld CIT(A) is not justified in upholding the addition of Rs 410145/- as unexplained cash credits under section 68 of the Income Tax Act, 1961.

3. That in the facts and circumstances of the case the Ld CIT(A) is not justified in upholding the addition of Rs 56814/- in respect of the scribbles in respect of the alleged payments made to one M/s Mod Furnitures.

4. That in the facts and circumstances of the case the Ld CIT(A) is not justified in upholding the addition of Rs 1067000/- made by the Ld A.O under section 40A(3) of the Income Tax Act, 1961 on account of alleged payments to M/s Asha Telecom Pvt Ltd.

5. That in the facts and circumstances of the case the Ld CIT(A) is not justified in upholding the addition of Rs 15,00,000/- as alleged unexplained cash credits routed through banking channels.

6. That in the facts and circumstances of the case the Ld CIT(A) is not justified in upholding an addition of Rs 104250/- as unexplained revenue expenditure.

7. That in the facts and circumstances of the case the Ld CIT(A) is not justified in upholding an addition of Rs 104250/- as unexplained revenue expenditure.

8. That in the facts and circumstances of the case the Ld CIT(A) is not justified in upholding an addition of Rs 10661722/- as unexplained revenue expenditure on account of purchases from M/s Santosh Cables, M/s Vandana Cables and M/s Venus Cables.

9. That in the facts and circumstances of the case the Ld CIT(A) is not justified in directing the making of addition of Rs 2,83,387/- even without issuing a show cause notice in respect of the same as opined by her in para 11.7 of her order.

10. That in the facts and circumstances of the case the Ld CIT(A) is not justified in upholding the addition made under section 40A(3) of the Income Tax Act, 1961 in respect of the payments made to one M/s Om Logistics.

11. That in the facts and circumstances of the case the Ld CIT(A) is not justified in upholding the addition of Rs 107000/- on account of alleged unexplained expenditure on account of payment made to M/s NITCO Bulk Cargo Carriers.

12. That in the facts and circumstances of the case the Ld CIT(A) has erred in law and facts in upholding the additions of Rs 1,00,000/-, Rs 55000/- and Rs 2,08,000/- on

*account of jobwork charges to M/s Ashima Industries and Om logistics u/s 69 C of the Income Tax Act, 1961*

13. That the order of the Ld CIT(A) is bad in law and facts.

### **Record of Hearing**

44. The hearing before us took place on 30/05/2024 when both the parties appeared before us. The Ld. AR on behalf of the assessee contended that benefit of Section 80IC is denied to the assessee both by AO and CIT(A). It was contended that they are manufacturers of transmission tower parts / assemblies. They are thus vendor manufacture of parts / assemblies / components in broadly called telecom sector which is growing in India. **It was contended that the Ld. CIT(A) is not all justified in allowing the benefit of deduction under section 80IC of the Income Tax Act, 1961 only in respect of the manufacturing of assemblies of plastic feeder clamps. In fact Department ought to have extended this benefit to all the products which were manufactured by them as they qualify for it.** By restricting the benefit to only assemblies of plastic feeder clamps the CIT(A) and AO have erred in law and fact. It was contended that Ld. CIT(A) has distinguished between manufacturing and non manufacturing. It was contended that assessee has not created a façade of manufacturing. Ld. AR stated that written submission is filed and that same should be relied upon before any order is passed by this Hon'ble Tribunal. We on perusing the written submission of the assessee notice that whereas only the issue of section 80IC was pressed in the hearing and other contentions on other grounds of appeal were not pressed at all in the hearing but in written submission all grounds are pressed.

Per contra Ld. DR has supported the order of Ld. CIT(A) and has prayed that the same be upheld. At concluding, the Ld. AR finally **contended that plastic feeder clamps were manufactured and other items were outsourced.** Other grounds of appeal were not argued and pressed.

### **Findings & Conclusion**

45. The core issue in the present appeal is whether on the facts and circumstances of the case as set out herein above whether the assessee is entitled in law to the benefit of deduction under section 80IC of the Income Tax Act, 1961 or not ?

If answer to above is in affirmative then to what extent the manufactured goods are entitled to ( corresponding to income / profit) the benefit of Section 80IC is available to the Assessee ?

46. We therefore in order to give answer to the above core question as formulated by us have to also decide legality, validity, propriety of the impugned order of Ld. CIT(A) dt. 30/01/2012.

47. We first reproduce below the provision of Section 80IC of the Income Tax Act, 1961 which reads as under:

*80-IC. (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section(2), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains, as specified in sub-section(3),*

*(2) This section applies to any undertaking or enterprise,-*

*(a) which has begun or begins to manufacture or produce any article or thing, not being any article or thing specified in the Thirteenth Schedule, or which manufactures or produces any article or thing, not being any article or thing specified in the Thirteenth Schedule and undertakes substantial expansion during the period beginning-*

*(i) on the 23rd day of December, 2002 and ending before the 1st day of April, 2007, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in the State of Sikkim; or*

*(ii) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in any Export Processing Zone or Integrated Infra- structure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in the State of Himachal Pradesh or the State of Uttaranchal; or*

*(iii) on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in any of the North-Eastern States;*

*(b) which has begun or begins to manufacture or produce any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule, or which manufactures or produces any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule and undertakes substantial expansion during the period beginning-*

*(i) on the 23rd day of December, 2002 and ending before the 1st day of April, 2007, in the State of Sikkim; or*

*(ii) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in the State of Himachal Pradesh or the State of Uttaranchal; or*

*(iii) on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any of the North-Eastern States.*

(3) The deduction referred to in sub-section (1) shall be-

(i) in the case of any undertaking or enterprise referred to in sub-clauses (1) and (iii) of clause (a) or sub-clauses (1) and (iii) of clause (b), of sub-section (2), one hundred per cent of such profits and gains for ten assessment years commencing with the initial assessment year,

(ii) in the case of any undertaking or enterprise referred to in sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b), of sub-section (2), one hundred per cent of such profits and gains for five assessment years commencing with the initial assessment year and thereafter, twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains.

(4) This section applies to any undertaking or enterprise 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 undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such 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.

Explanation- The provisions of Explanations 1 and 2 to sub-section (3) of section 80-IA shall apply for the purposes of clause (ii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

(5) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee, no deduction shall be allowed under any other section contained in Chapter VIA or in section 10A or section 10B, in relation to the profits and gains of the undertaking or enterprise.

(6) Notwithstanding anything contained in this Act, no deduction shall be allowed to any undertaking or enterprise under this section, where the total period of deduction inclusive of the period of deduction under this section, or under the second proviso to sub-section (4) of section 80-IB or under section 10C, as the case may be, exceeds ten assessment years.

(7) The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible undertaking or enterprise under this section",

(8) For the purposes of this section,-

(i) "Industrial Area" means such areas, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(ii) "Industrial Estate" means such estates, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(iii) "Industrial Growth Centre" means such centres, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(iv) "Industrial Park" means such parks, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(v) "Initial assessment year" means the assessment year relevant to the previous year in which the undertaking or the enterprise begins to manufacture or produce articles or things, or commences operation or completes substantial expansion;

(vi) "Integrated Infrastructure Development Centre" means such centres, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(vii) "North-Eastern States" means the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura;

(viii) "Software Technology Park" means any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Industry;

(ix) "Substantial expansion" means increase in the investment in the plant and machinery by at least fifty per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken;

(x) "Theme Park" means such parks, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government.

48. The assessee has availed the benefit of Section 80IC in return of income for the A.Y. 2007-08 corresponding to previous year i.e; 01/04/2006 to 31/03/2007.

49. The condition precedent for availing the benefit of Section 80IC is the assessee must be a manufacturer or producer / produces any article or thing. The word manufacturer / producer / produces thus assumes importance.

50. The Ld. AO in the assessment order has held that assessee M/s Asha Technology is not a manufacturer / producer / produces any article or thing consequently not entitled in law to the benefits under section 80IC and same view is held by the Ld. CIT(A) save and except in respect of the profits on sale of 86960 (assemblies of ) plastic feeder clamps.

51. It is required to be noted that w.e.f from 01/04/2009 by virtue of Section 2 (29BA) the word manufacture was defined as under:

**2 [ (29BA)**

**" manufacture", with its grammatical variations means a change in a non living physical object or article or thing –**

**(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name character and use or**

**(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure ]**

52. The present appeal pertains to whether the assessee is entitled in law to the benefit of the deduction under section 80IC of the Income Tax Act, 1961 in respect of all product lines or plastic feeder clamps. Assessee has contended that all the products manufactured by the assessee and so sold qualify for deduction within the meaning of Section 80IC of the Income Tax Act, 1961.

53. The Ld. CIT(A) while examining the above contention of the assessee firstly has analysed the contention of the assessee wherein it is contended by them is that the feeder clamps manufactured by them were sold as an assembly of six feeder clamps assembled together to be used in the installation of mobile towers popularly known as "mechanical site material". The "feeder clamp assembly" is totally distinct from the "feeder clamp" and the assembly of the same amounted to manufacture. It was asserted that the "assembly of feeder clamps" was being done from day one of the installation of the plant of the assessee firm. The said process was technical one and required supervision by the trained professionals / supervisors. The products were made strictly in accordance with the specifications provided by the EIL the sole purchaser of the products. The Ld. AO accepted that the "feeder clamps" were being assembled to make "assembly" that itself shows that there was an act of manufacturing.

In support of the aforesaid reliance was placed by the assessee on following judgments:

- i) 188 ITR 370 (All) = CIT Vs. UP State Agro Industrial Corporation (No1)
- ii) 2009 (178) Taxmann 22 (P&H) = [2009] 308 ITR 222 (P&H) CIT Vs. Shri Mahesh Chandra Sharma.

It was further contended by the assessee before CIT(A) that as per oxford advanced learner's Dictionary the word "Manufacture" means to make goods on a large scale using machinery. The term manufacture implied a change but every change was not a manufacture, despite the fact that every change is an article is the result of a treatment of labour and manipulation. However this test of manufacture needed to be seen in the context of the above process. The assessee relied upon:

i) 320 ITR 546 (SC), ii) 204 ITR 412 (SC), iii) 162 ITR 846 (SC) and few other judgments of High Courts i.e; (a) 209 ITR 854 (Cal), (b) 119 ITR 895 (All). The assessee assailed the order of the Ld. **AO in treating only the manufacturing of "feeder clamps" as manufacture and not others and hence the grievance.** The assessee with regard to welding of ladders and accessories contended before the Ld. CIT(A) that it was getting the ladders welded at its own premises and on contract basis. The ladders were being welded and manufactured according to specifications of the EIL. The input and the output were totally different and as such same fell within the definition of manufacturing.

The assessee has claimed that they have carried out the activity of powder coating on pre manufactured GI ladders and its accessories etc on job work basis through a contractor M/s Ashima Industries, Faridabad and in one case, it also claimed to have done galvanization of ladders, clamps and pendulums on job work basis through M/s AV Forgings, Mohali, Punjab. The assessee has asserted that powder coating was carried out within the business premises. It was also asserted a challan book found reflects the figures of job work done by M/s Ashima Industries, Faridabad.

In brief assessee contended before the Ld. CIT(A) that all the activities put together right from the manufacturing of plastic feeder clamps and bending, punching, welding, fixing of lug etc were integral parts of the manufacturing for "mechanical site material" which was a specialised job.

The Ld. CIT(A) on this core issue of manufacturing has held that findings of the Ld. AO is a factual finding both by examining papers and so also by carrying out a survey. Survey inquiry and site inquiries, examination of documents, book entries are all factual. The core issue or main dispute is the disallowance of deduction u/s 80IC of the Act which is linked to manufacturing. The Ld. CIT(A) has first placed reliance on books of account and related documents. He then has analysed the Ld. AO findings which we are **repeating and reiterating** as follows:

i) *As per the audit report as well as the books of account, the appellant firm commenced its commercial sales w.e.f. 4/9/2006. In the first 27 days, i. e. from 4/9/2006 to 30/9/2006, sales exceeding Rs.2.50 crores have been claimed.*

ii) *No production has been shown in the months of April May. June & July. But production exceeding Rs. 2 crores has been shown in the month of Aug., 2006.*

iii) *A temporary electricity connection was released to the appellant' firm for the first time on 27/7/2006 for the purpose of construction of its factory building. This temporary electricity connection was for a load of 9.868 KW only. It was specifically released for construction of the factory building and was' permanently disconnected on 8/12/2006. This clearly means that the building was under construction during the period 27/7/2006 to 8/12/2006. Even the electricity consumption during this period was only sufficient to cater to the' construction needs. Therefore, in the absence of any electricity connection or electricity consumption, the huge production shown in the months of Aug.,2006 to Dec, 2006 becomes totally improbable. The appellant firm also failed to establish that there was any alternate source of power available for production so as to justify its claim of such a huge production. Further, a perusal of the details of load per machine for which the permanent electricity connection was obtained by the appellant firm shows that 9.968 KW load through temporary connection was too little to take care of its production need. Further, there are glaring discrepancies in the amount of electricity units consumption and the corresponding figures of production returned by the appellant during the period of temporary connection and during the period of permanent connection which have been commented in detail by the Id. AO.*

*Thus the electricity consumption pattern of the appellant firm shows a total mismatch between the availability and consumption of power and the production claimed. Since the availability and consumption of power is strictly according to the records of*

the electricity department, the production records' prima facie appear to be manipulated.

iv) Still further, there exists a total mismatch between the statistics pertaining to production and those pertaining to manufacturing expenses and expenses booked in the P & L A/c. For production worth more than Rs.2 crores, manufacturing expenses amounting to Rs.76,441/- only and other expenses amounting to Rs.88874/- only have been claimed in the month of August, 2005. Even if the expenses booked in the months of April to July, 2006 are taken into consideration, the same remain less than 0.5% of the total production. The tabulated figures of production and the expenses given by the Id. A.O. on page-31 of the assessment order clearly show that there is absolutely no co-relation between the production and the manufacturing and other expenses. The expenses vary from 0.36% to 108% in different months. This pattern of expenses and production defies all logic. Whatever expenses have been incurred are on account of wages, salary to staff, electricity bills for running the plastic molding and welding machine and do not relate to any major manufacturing process.

v) A close study of the nature of expenses further reveals that there are nominal expenses incurred on consummables which again makes the claim of the appellant regarding manufacturing and production totally unreliable.

vi) **The appellant firm has claimed a production of about 5.5 crores from Aug., 2006 to March 2007. Obviously a good deal of plant and machinery is required to achieve such heavy production, It is noted that the appellant firm has given a list of plant and machinery to the Central Excise Division Shimla which was required in order to manufacture the goods under consideration. As per this list furnished by the appellant with the Excise Department, plant and machinery to the tune of Rs.1.15 crores approximately was required to be installed. However, no such plant and machinery was apparently installed by the appellant firm during the year under consideration. The total value of the plant and machinery as per its books of account stands at Rs. 16,44,469/- only. Even the said claim of the appellant was found to be partly bogus during the course of survey action u/s 133A (1). It was discovered during the survey action that only five machines, namely welding machine assembly, transformer, plastic injections moulding machine, welding set and cooling tower actually belonged to the appellant firm, the total value of which was less than Rs.12 lacs.**

**The remaining machinery was found to be belonging to M/s. Ashima Industries which was claimed to be performing certain processes of powder coating on job work basis for the appellant. Thus as per the appellant's own books of account there were, no plant and machinery available for welding and punching of holes on G I sheets, an activity declared as the main activity by the appellant before the Central Excise division as well as the Id. A.O. Nor was the capacity of the available plant and machinery of such a scale as to justify the magnitude of production claimed by the appellant.**

vii) **The Id. A. O. has also brought on record the fact that the details of manufacturing activities and the items to be manufactured furnished by the appellant with the Excise office were totally different from those claimed before the income tax Authorities.**

viii) The appellant failed to offer any explanation before the Id. A.O. in respect of the said findings despite specific opportunity granted in this regard. It failed to explain as to how it could achieve such a scale of manufacturing without any plant and machinery and without incurring any cost of manufacturing process.

ix) **It is further noted that the appellant failed to file 10CCB Form along with the audit report with its return of income. It was only after reminder from the Id. A.O. that the said form was filed on 24/12/2009; but there is no mention of any manufacturing activity in this form. During the course of survey proceedings, no regular books of account of the appellant in the form of cash book, ledger, journal, bank pass books etc. were found, nor could the appellant ever produce the same before the Id. A. O. during the course of assessment proceeding despite a number of opportunities granted in this regard. The conduct of the appellant throughout the course of assessment proceedings betrays its intention to delay and obstruct the process of investigation. The Id. A.O. has put in detail the sequence of events in the course of assessment proceedings in the assessment order. Thus it is clear that the appellant failed to discharge its primary onus to produce the complete books of account, bills, vouchers and documents and to prove the genuineness of its claim of deduction u/s**

**80-IC of the Act. The fact that the appellant was submitting different specifications of the so-called manufacturing activities before different official agencies and in different official documents indicates that no manufacturing activity was actually undertaken by the appellant which could be directly and unequivocally mentioned before all-authorities and in all documents.**

**(x) In the face of the total reluctance of the appellant firm to divulge the complete and correct information before him, the Id. A.O. was left with no option-but to conduct inquiries in respect of the working of the appellant firm from the concerned agencies. He also tried to gather first hand information regarding the working of the appellant through a survey action.**

xi) On the basis of the enquiries conducted by the Id. A. O. from M/s. Ericsson India Pvt. Ltd. (EIL), it was learnt that the appellant firm was supplying the material to EIL for installation of mobile towers. The said installation material, or, Set of Articles was referred to as "**Mechanical Site Material**". In other words, the appellant firm was supplying a particular Set of articles or Kit to EIL, which contained a number of items as per the specific requirement of EIL. Thus a particular kit or Set of articles was basically a package consisting of loose material and parts required by EIL in connection with the installation of mobile towers. The Id. A. O. noted that the loose parts of a Set or kit were packed in carton boxes of polyfabs for dispatch and that the EIL ordered such sets as per its customized requirement for its managerial convenience at the site of installation of mobile towers. It was duly confirmed by M/s. EIL to the Id. A O that the installation material supplied by the appellant consisted of loose articles and that the appellant firm was not being paid any charges for assembling and testing of goods supplied. The said facts stood duly corroborated by the finding of the survey action. **Many purchase bills were impounded during the course of survey showing the purchase of the very same items which were sold to M/s. EIL. The articles were purchased under the description "Mechanical site Material" and were also sold under the very same description. This obviously led the Id. A.O. to conclude that the appellant firm was simply engaged in the TRADING of installation material with EIL and was not engaged in manufacturing, testing, erecting and installing.** It was further found out during the course of survey action that the appellant firm was simply engaged in the work of rearranging and repacking of loose articles in small numbers and quantities in the form of kits/set of articles as per the requirement of the purchaser. **During survey it was noticed that these articles and items were being repacked and rearranged by a number-of workers engaged for the purpose. Most of these workers were neither educated nor possessed any technical knowledge or skill. Many of them were absolutely fresh hands but were found to be managing the work without any problem because the work involved did not require any technical knowledge skill or training.**

xii) **During the course of survey proceedings, it was found out by the Id. A.O. that the appellant firm was manufacturing only one item, namely Plastic Feeder Clamps.** It was noted that the raw material in the form of plastic dana was purchased which was put into a plastic moulding machine to manufacture plastic feeder clamp. **But it was also found that a major part of plastic feeder clamps was also purchased in readymade form from the market by the appellant.** However, on the basis of the purchases or the plastic dana recorded by the appellant, the Id. A. O. has calculated the number of plastic feeder clamps manufactured and sold by the appellant and has accordingly allowed the benefit of deduction u/s 80-IC in respect of the same. **It has been argued by the appellant that an assembly of six plastic feeder clamps forms a feeder clamp assembly and the same amounts to manufacture.** Since the Id. A.O. has accepted the manufacturing of basic 521764 clamps by the appellant firm, the feeder clamp assemblies formed from the said feeder clamps should also logically be treated as a next step in the line of manufacturing. **It takes six feeder clamps to make one feeder assembly. Accordingly 86960 feeder clamp assemblies should also be treated as manufactured by the appellant firm. The A. O. is, therefore, directed to calculate the profits on the sale of said 86960 assemblies as per the books of account of the appellant and allow the benefit of deduction u/s 80-IC in respect of the same.**

xiii) **As regards the remaining areas of manufacturing claimed by the appellant, namely welding and punching of GI sheets, powder coating, welding of ladders and**

**fixing of lugs at one end of copper cable, specific findings of facts have been given by the Id. AO. on the basis of survey action. It has been brought on record that no press machine was available with the appellant and, therefore, no welding and punching of GI sheets could possibly be carried out by the appellant. The appellant also failed to prove that this work was actually carried out during the year under consideration. No expenses relevant to the said activity were found recorded in the manufacturing and P & L A/c as already discussed in the foregoing paragraphs. A similar finding has been given by the Id. A.O in respect of the welding of ladders. No expenses were found debited in respect of purchase of consumables like soldering / welding rods etc. which are the main inputs for welding of ladders. The appellant absolutely failed to establish that it had actually manufactured ladders at its premises. It also failed to establish that it had got the welding of ladders done on the basis of contractual job work. The Id. AO did try to get confirmation from the parties from whom the appellant claimed to have got the job work done, but 5 out of the given 8 persons were found to be non-existing at the given addresses. The remaining 3 categorically denied to have done any job work for the appellant. Thus the appellant failed to prove its claim even regarding manufacturing in the form of welding of ladders.**

xiv) With the claim of manufacturing of ladders remaining unsubstantiated, the claim of manufacturing in the form of powder coating of ladders also loses its force. Mere activity of powder coating certainly does not fit the definition of manufacturing. Moreover, in this regard also it was found out the Id. A. O. that the appellant did not possess any technical capacity of its own to carry out the work of powder coating. Powder coating of pre-manufactured ladders and its accessories was arranged through contractual job work. One M/s. Ashima Industries of Faridabad carried out this task for the appellant on job work basis and the entire plant and machinery required for the purpose of powder coating was found to be belonging to the said Ashima Industries. Therefore, on the given facts, the Id. A.O. was fully justified in concluding that no manufacturing activity in this regard was concluded by the appellant during the year under consideration.

xv) **As regards the fixing of lugs at one end of the copper cable, it has been claimed by the appellant that this activity is an integral part of manufacturing and amounts to manufacturing of a product fit for user. However, the said argument of the appellant is not found to be carrying much force. Just fixing of a lug at one end of the copper cable cannot be said to be amounting to manufacturing as there is no such process involved which gives the copper cable any new form or property. Fixing a lug at one end of the cable does not result in creating a different and a new commodity.**

xvi) As regards the appellant's argument that deduction u/s 80-IC has been allowed in the case of M/s. Lambda Microwave Technology for the similar manufacturing activities, the moot point distinguishing the appellant's case is the specific finding regarding the total absence of the plant and machinery required for manufacturing and the total absence of any expenses required to be incurred for carrying out the manufacturing activity. Added to this is the specific finding regarding the total mismatch between the production claimed and the expenses incurred and between the production claimed and the power consumed. The Id. A.O. has also given a specific finding regarding the unverified claim of the appellant in respect of the contractual job work. **The appellant has not been able to establish in any manner as to how it could achieve such a large scale production and huge turnover of Rs. 7.40 crores approximately with a net profit of Rs.1.36 crores approx. in such a short time without even having the permanent electricity connection and the requisite plant and machinery.** Merely because certain activities are accepted as manufacturing activities on different facts of another case does not mean that the benefit of that finding can be claimed by the appellant without satisfying all the pre-requisite conditions and without establishing that the manufacturing activities were actually carried out by it. **Even form no. 10CCB submitted by the appellant is absolutely silent about the so-called manufacturing activities of the appellant.** The complete facts and circumstances of the appellant's case combined with the findings of the survey action clearly indicate that the **appellant was primarily engaged in trading of various loose materials and items required for installation of mobile towers. It was simply purchasing the said items, primarily from its own sister concern and packing them in the form of sets of articles/kits to suit the requirement of its purchasers.** During the year under

consideration it had achieved only a limited capacity for manufacturing in respect of plastic feeder clamps which has been duly acknowledged by the Id. A.O. The claim of the appellant regarding manufacturing in respect of the remaining items does not stand substantiated either by its own book results or by way of any independent evidence. Prima facie the appellant has tried to create a facade of manufacturing only in order to avail of the benefit of deduction u/s 80-IC by establishing a centre for trading in the notified Zone.

54. After analysing carefully the above findings, observations of the Ld. AO; the Ld. CIT(A) has held as follows:

**“ Accordingly on the given facts, the action of the Ld. AO, in disallowing the deduction under section 80IC is found to be in order barring the disallowance in respect of the profits on sale of 86960 assemblies of plastic feeder clamps.”**

55. The correspondingly we notice following in the order of Ld. AO in so far as manufacturing facility of the assessee which we are **repeating and reiterating** (despite these are already reproduced by us supra) as follows:-

*“It is important to analyze the facts and implications thereof, regarding plant & machinery installed by the assessee during the year under consideration. Following is the chart of Plant & Machinery reflected by the assessee in schedule of fixed assets, details of which were filed by the counsel of the assessee vide letter dated 18-11-2009.*

Sr. No	Name of vender	Date of purchase	Value in Rs.	Invoice No.	Nature of Machine	Comments of Assessing Officer
1	M/s. Ashima Industries	24-4-2006	1,38,320/-	09	Powder coating furnace & powder coating booth	During the course of survey it was noticed that this plant belonged to M/s. Ashima Industries only. The plant is used for baking of articles on which power is sprayed.
2	— do -----	19.05.206	109200	12	Powder coating Plant chemical Tanks (6)	—do— used for acid washing of articles before powder coating.
3	Do	06.06.2006	52,000/-	26	Air compressor with 3 H.P. Motor	—do—
4	Do	19.06.2006	28,880/-	13	Powder coating chemical utilizers	_ ---- do—
5	M/s. Monu Weld-Tech Industries	06.06.2006	1,31,968/-	-	Welding Machine Assembly	-
6	M/s. Dashmesh Electrical Works	05.06 200?	24,750/	148	Transformer 200 KVA	-
7	M/s Electronica Mechanic+..... .....	30.06.2006	10,28,269	273	Plastic Injection Moulding Machine	Plastic Feeder Clamps are manufactured from this moulding machine.
8	M/s. Ashima Industries	18.07.206	80,985/-	38	Powder Coating Gun Filter Set with	course of survey it was

					Fitting	noticed that this plant belonged to M/s. Ashima Industries only
9	M/s. Kool Drop Cooling Towers	24.07.2006	13,000/-	3	Cooling Tower Model KD121	
10	M/s. Shiv Shakit Electrical	01.08.2006	5737/-	735	Welding Set	
11	M/s. Ashima Industries.	10.03.2007	37,360/-		Furnace Part Sheet Metal	During the course of survey it was noticed that this plant belonged to M/s. Ashima Industries only
	Total		16,44,469/-			

Above chart reveals that there is no such plant and machinery installed by the assessee which could substantiate the manufacturing activity of the scale and nature as reflected in books of the assessee or as furnished with Distt. Industries Deptt. or with the Central Excise Division. Only one plant i.e. Plastic Injection Moulding Machine satisfies the claim of the assessee which is used for manufacturing of Plastic Feeder Clamps. There is no Press Machine in the above list which is used for bending and punching of holes on G.I Sheets, which has been declared as the main manufacturing activity by the assessee in its replies filed with this office on 18-11-2009 and also filed with the Central Excise Division.

Information was obtained u/s 133(6) of the Act from the Central Excise Division, Shimla. Vide letter No. 14360, dated 9.12.2009 the Asstt. Commissioner, Central Excise submitted photocopies of documents and papers furnished by the assessee while applying for excise exemption certificate. Perusal of this information reveals that the assessee firm had furnished full description of goods and central excise tariff headings of the goods to be manufactured and also furnished description of inputs used in manufacturing of said items. The relevant information is reproduced hereunder: -

**Description of goods to be manufactured by the Assessee.**

Particulars	Tariff Heading	Description of items falling under the excise tariff heading
Telecom Parts	7211	Flat-rolled products of iron or non alloy steel, of a width of less than 600 mm, not clad, plated or coated.
	7211.30	Hoops
Sheet Metal Components	7210	Flat-rolled products of iron or non alloy steel, of a width of 600mm, or more clad, plated or coated.
		Planted or coated with zinc
	7210.11	Corrugated
	7210.19	Other
	7209	Flat-rolled products of iron or non alloy steel, of a width of 600 mm, or more, cold rolled (cold reduced not clad, plated or coated
	7209.20	Sheets
Powder	3907.3010	Epoxies resins (as per new tariff w.e.f 28.02.2005)
Copper	7409	Copper plates, sheets (including circles) and strip, of a thickness exceeding 0.15 mm
	7410	Copper foil (whether or not printed or backed with paper, paperboard, plastics or similar backing material) of a thickness (excluding any backing) not exceeding 0.15 mm.
Stainless Steel	7225	Flat-rolled products of other alloy steel, of a width of 600mm, or more

	7228	Other bars and rods of other alloy steel; angle shapes and sections of other alloys steel; hollow drill bars and rods, of alloy and non alloys steel.
Aluminium	7606	Aluminum plates, sheets(including circles) and strip, of a thickness exceeding 0.2 mm
S.S. Fasteners	Ch 13	Lac, Gums, Resins and other vegetable saps and extracts
	7318	Nails, drawing pins, staples.
	1318	No tariff head
	Ch 15	Animal or vegetable fats and oil and their cleavage products; prepared edible fats animal or vegetable waxes.
	1500	No tariff heading
C.R.C. Sheets	7211	Flat-rolled products of iron or non alloy steel, of a width of less than 600 mm, not clad, plated or coated, (as per new tariff w.e.f.28.2.2005)
	7211 2950	-Strip
S.S. Shets	7219,	Flat-rolled products of stainless steel, of a width of 600 MM or more (as per new tariff w.e.f. 28.2.2005)
		-Other
		—sheets and plates-
	7219.9013	—thickness less than 3 mm
	7318.1500	Other screws & bolts whether or not with their nuts or washers.
LPO Cable	7408	Copper wire
	7408. 19	-of copper alloys - other
Corrugated Packing	4819	Cartons, boxes, cases, bags and other packing containers, of paper, paper board, cellulose wadding or webs of cellulose fibers, box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like.(as per new tariff w.e.f. 28.2.2005)
	4819. 10	-Cartons, boxes and cases, of corrugated paper or paperboard
	4819.1010	—boxes
Polythene	3920	Other plates, sheets, film, foil and strip, of plastics, non cellular and not reinforced, laminated, supported or similarly combined with other materials (as per new tariff w.e.f. 28.2.2005)
		-of polymers of ethylene
	3920.10	—sheets of polyethylene
	3920.1019	— others
Copper	8544	Insulated (including enameled or anodized)wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors, optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors, (as per new tariff w.e.f. 28.2.2005) -winding wire
	8544. 19	-other
	8544. 1920	—plastic insulated

Assessee has also furnished the Excise Office the description of the inputs used in above manufacturing activities, which are:- Mild Steel, Stainless Steel, Copper Sheets, Brass Sheets, Copper Pipes, Brass Rods, S.S. Rods, Powder, Welding Rods and Accessories. Perusal of purchase bills of material, or raw material for that matter, reveals that no such material/ raw material were ever purchased by the assessee. Moreover, excise tariff heading is incorrect in r/o S.S. Fasteners which gives description of vegetable oil etc. instead of s.s. fasteners. Most importantly, there is no compatibility with Plant & Machinery installed by the assessee, as tabulated above, and also as listed with the Excise Deptt., tabulated below. The Telecom Parts mentioned in the excise tariff heading are not the items that assessee in dealing in with M/s. EIL. The

assessee also furnished value of plant & machinery to the tune of Rs. 1,14,28,006/- to the Central Excise Dept. which never existed or were ever installed by the assessee. This investment amount of Rs. 1,14,28,006 in plant and machinery would have been correct if the assessee really intended to manufacture above listed items. But this has never happened in this case. The detail of plant & machinery furnished with the Central Excise Dept. is reproduced as under: -

Sr. No.	Description of machinery	Make / Model	Details /install	Location of factory	Invoice No.
1.	Cooling Tower	Local Make	Workshed	Vill: Johron	003, dt. 24.7.2006
2.	Welding Set	Local	Workshed	-do-	735, dt. 1.8.2006
3.	Plastic Injection Moulding	Local	Workshed	-do-	273 & 274, dt. 30.6.2006
4.	MIG Welding Machine	Local	-do-	-do-	17, dt. 6.6.2006
5.	Transformer	-do-	-do-	-do-	0148, dt. 6.6.2006

In view of the above facts, it is evident that there are inherent contradictions in the facts and submissions of the assessee which could substantiate the claim of the of being an manufacturing unit.

Further, assessee submitted with the Excise Deptt. the following Manufacturing Flow Chart. Same chart has also been furnished with the assessing officer vide letter dated 18-11-2009.

#### Manufacturing Flow Chart

Raw material procurement
Shearing
Pressing (Bending, Punching, Grinding)
Powder Coating & Galvanizing
Inspection
Packing
Dispatching

Description of stages of above chart has been further elaborated by the assessee as follows:-

1 Procurement of Raw material- The raw material is procured from the approved vender and from open market against the purchase orders.

2. Shearing:- The raw material i.e. sheets (S.S., M.S. etc.) is cut into various shapes and sizes by shearing Machine as per the specified drawings and requirements.

8. Pressing:- The cut raw material is then bend and punched and welded with M.I.G. Welding and A.R.C. Welding and grinded to give it proper shape.

9. Powder Coating & Galvanizing:- The shaped, pressed, welded, grinded material is then phosphated, powder-coated and galvanized.

10. *Inspection:- Finished material is then inspected by the person, who will vouch that the material measures upto the laid standard.*

11. *Packing:- Finished and inspected material is then meticulously packed in corrugated and other boxes ready to be dispatched.*

12. *Dispatching:-The goods are then dispatched through various channels of transport to the buyers.*

*Perusal of above information also reveals that there is no compatibility between the goods to be manufactured, raw material consumed, manufacturing processes involved and plant & machinery installed by the assessee firm. There is no such plant & machinery installed by the assessee during the year under consideration which could carry out the work of Shearing, Pressing, Bending, Punching, Grinding, and Galvanizing. There is only one machinery called as Plastic Injection Molding Machine, which is used for manufacturing of Plastic Feeder Clamps, however, this activity is not mentioned in the Manufacturing Flow Chart. Moreover, most of the goods to be manufactured by the assessee, as mentioned in above chart, have nothing to do with the nature of plant & machinery installed by the assessee. Further, it is pertinent to mention here that assessee has never purchased any such raw material which is to be used as input in the manufacturing activities, as mentioned above in the chart furnished with the Central Excise office. In order to carry out manufacturing activity of the nature as mentioned in its application submitted to the Central Excise Division, Shimla, the assessee firm would require plant & machinery of crores of rupees, which it has rightly mentioned in its application dated 3.5.2007 submitted to the Supdt., Central Excise, Kala Amb. As per this application, the value of plant & machinery is Rs. 1,14,28,006/- contrary to the actual amount of plant & machinery for Rs. 16.44 lacs approximately reflected in the schedule of fixed assets for the year under consideration.*

*The above facts & figures and circumstances clearly establish that assessee was never in the activity of manufacturing of materials supplied to M/s. Ericsson India Pvt. Ltd, except Plastic Feeder Clamp. Rest of the items were outsourced from open market or from its related concern namely M/s. Asha Telecom Pvt. Ltd which were packed and arranged in small Kits or packing to suit the requirement of the purchaser EIL. Expenses of manufacturing and p/L account do not represent the nature of expenses to be incurred on manufacturing. These expenses are incurred on payment of wage to workers, salary to staff, electricity bills of lighting and for running Plastic moulding machine and welding machine. These are expenses incurred on the nature of trading activity.*

*In view of the above facts and analysis of information collected from other agencies and also formulated and tabulated by the assessing officer, the claim of the assessee that it is engaged in the manufacturing of Telecom Parts, does not stand proved from this angle also.*

*Nevertheless, assessee was again given final opportunity of being heard vide this office questionnaire dated 17-12-2009 bearing No. 3875 after incorporating all relevant facts and issues collected so far by the assessing officer. Vide this questionnaire assessee was requested to furnish information to prove that it was really engaged in the manufacturing of all items or some of the items. For this purpose, assessee was directed to inspect the impound books/ documents/ papers etc. But he failed to comply with the same. Assessee filed its reply to the above questionnaire on 24-12-2009. But it failed to furnish any documentary evidence or information to substantiate its claim of being a manufacturer. Vide para 4 of the reply, assessee has relied upon the judgment of Hon'ble Madras High Court reported in 282 ITR 466 vide which manufacturing of Cable Jointing Kit has been held as manufacturing. It is pertinent to mention here that in the instant case assessee has never mentioned in its replies that it is manufacturing Cable Jointing Kits. Vide reply dated 18-11-2009, the counsel of the assessee has stated that assessee is manufacturing telecom parts and tower installation material. The manufacturing processes involved have been discussed Shearing, Moulding, Welding & Fabrication, Assembling & Powder Coating. Nowhere*

*in the course of assessment proceeding, the assessee has ever furnished exact details of products manufactured, raw material used, machinery and plant engaged. Nowhere the detail description of Cable Jointing Kit has ever been filed. Had the assessee / discharged its primary onus by furnish and producing relevant records, papers, documents etc., the onus would have been on the assessing officer to prove it otherwise.*

*In the above reported case assessing officer has relied on the findings of the Central Excise authorities that assessee was not engaged in manufacturing activity. The assessing officer never made any field enquires or made personal visit to assessee's factory. The Central Excise authorities visited office of the assessee and not the factory premises to witness actual working. Moreover, in the reported case there was relevant machinery and plant installed in the factory premises. There was evidence of raw material used by the assessee. In the case of the present assessee firm, first of all it not on record to prove that it was engaged in the manufacturing of Cable Jointing Kit. The assessee is simply packing and arranging the material in different quantities and number which was received in bulk from the suppliers. In the reported case assessee is not assembling or packing but its manufacturing the kits. In the case of the assessee the assessing officer himself visited the business cum office premises u/s 133A of the IT Act to find out the true facts of the case when there was no compliance and cooperation on the part of the assessee to prove its primary onus. And on the basis of survey only true facts of the case were ascertained which helped in ascertaining the factual reality. The assessing office collected information u/s 133(6)/ 131 of the IT Act to substantiate the findings. In the reported case the assessee is manufacturing Telephone Cable Jointing Kits and not Telecom Parts used for installation of mobile towers. The word telephone has got specific meaning thereby referring to telephone set or its parts whereas word Telecom has wider connotation. On the other hand assessee firm M/s. Asha Technologies is supplying mechanical site material to be used for installation of mobile towers. Plea of the counsel that assessee's product undergoes much more treatment than the required in manufacturing of cable jointing kit, is against the facts of the case. It means that the learned counsel of the assessee has not properly appreciated the facts of the case. In the case of the assessee Mechanical Site Material is collection of number of different loose articles put together in a form of kit. No processing or other treatment of any nature is given to these loose articles. Some of the loose articles and powder coated which has been dealt with in earlier paras. These collections of articles remain as such from the point of supplier to the point of recipient M/s. Ericsson India Pvt. Ltd. It is M/s. EIL which assembles or uses these kits in the erection or installation of mobile towers. And in true context, in such situations, rather M/s. Ericsson India Pvt. Lt. would have been the genuine applicant of 80IC deductions had the company fulfilled other conditions of 80 IC."*

56. We therefore concur with the findings of the Ld. CIT(A) supra para 53.
57. We notice from the written submission of the assessee in respect of Ground No. 1 which we once again reproduce below:

*"1. That in the facts and circumstances of the case the Ld CIT(A) is not justified in allowing the benefit of the deduction under section 80IC of the Income Tax Act , 1961 only in respect of the manufacturing of assemblies of plastic feeder clamps. That fact of the matter is that all the products manufactured by the assessee qualify for deduction within the meaning of section 80IC of the Income Tax Act , 1961."*

It is interalia contended that the assessee started its business operation at Tehsil Nahan, District Sirmaur, Himachal Pradesh in the A.Y. 2007-08 for the manufacture of mechanical site equipments used in the installation of mobile towers for Ericsson

India Ltd. The Ld. AO in his assessment order has presumed that the assessee was only doing the activity of manufacturing of feeder clamps in its plant and all other activities were held not having been done by the assessee. In that manner / fashion, he disallowed the entire manufacturing activities and assessed the entire profit for the assessment year under consideration of Rs. 1,48,17,110/- as taxable income of the assessee not eligible for deduction under section 80IC of the Act. We hold that it is wrong on the part of the assessee to state that exercise of holding the manufacturing activities of feeder clamps to the extent of 86960 was done on basis of presumption and so also of other activities i.e non manufacturing. Profit of Rs. 1,48,17,110/- is curtailed for non manufactured products and for manufactured product i.e; 86960 pieces of plastic feeder clamps benefit has been given of manufacturing, while calculating the profits of assessee.

The assessee for non manufacturing products i.e; entire other activities of the assessee has placed reliance on definition of manufacture as contained in Section 2(29BA) which was inserted w.e.f 01/04/2009 even going by definition of manufacture w.e.f 01/04/2009 we hold that other activities of the assessee does not fall within the mischief of the word manufacture in view of the finding of Ld. AO which is upheld by the Ld. CIT(A) on sound reasoning(supra) which is based on appreciation of evidence on record, material available on record and other relevant contentions. It is not based on irrelevant considerations. There are cogent reasons in support of the same.

The judgment of Hon'ble Bombay High Court in case of CIT Vs. Penwalt India Ltd. reported in 196 ITR 813 is not applicable to the facts of the present case. In that case Hon'ble High Court had observed that " Therefore we have to proceed on the basis of decisions cited that an assessee would be said to be engaged in manufacturing activity if he is doing a part of the manufacturing activity by himself and for the rest of it, engages the services of somebody else on a contract **other than a contract of purchase.**"

The Hon'ble High Court further held that " out of so many activities, except for one activity, namely getting the machinery manufactured through turner harse, all other activities are admittedly undertaken by the assessee company". In the present case whatever is manufactured i.e; 86960 of plastic feeder clamps the benefit is given of 80IC and what is denied is related to non manufacturing activities by giving cogent reasons both by AO and CIT(A). Merely because benefit of manufacture of 86960 of

plastic feeder clamps have been given to the assessee by Ld. AO and sustained by CIT(A) is no ground to contend that **entire mechanical site equipments** used in installations of mobile towers should be allowed as deductions under section 80IC of the Act. **Such stand of assessee is wrong in law.**

The requirement of law is not used in the installations of mobile towers but it is "manufacture" of same by the assessee in order to avail the benefit of Section 80IC. We hold that contention of the assessee is wrong in law. No attempt has been made before us during the course of the hearing and even in the written submission filed before us as to how it can be said in law that "other non manufactured items / goods" are in fact actually manufactured by the assessee at their factory premises. We hold that finding of Ld. AO and sustained by Ld. CIT(A) is not controverted by any means whatsoever and therefore the said findings are sustained and conclusive. What is allowed is manufacture of plastic feeder clamps numbering 86960 and nothing beyond that. Entire other activities of assessee not forming or amounting to manufacturing is disallowed rightly. It is not contended before us during the course of the entire hearing and even in written submission so filed that there is a wrong and incorrect appreciation of evidence by the authorities below. It is also not contended before us that the findings of the authorities below are not based on any evidence or no evidence. It is also not contended before us that the reasons so given by the authorities below are not cogent enough. We find the orders of the lower authorities on merits to be a speaking order / well reasoned order which is based on evidence and material available on record. No extraneous or subjective finding is given. It is also not contended that the orders of the lower authorities are perverse or positively perverse. We also hold and record that during the course of the hearing there was not even a whisper on manufacturing and production activities carried out by the assessee firm. Mere act of supplying entire "mechanical site equipments" ipsofacto is no qualifications to avail the benefit of Section 80IC in the absence of any justifications that such "entire mechanical site equipments" were infact manufactured by the assessee. The finding of Ld. AO and Ld. CIT(A) on merits(supra) are not controverted by the assessee save and except that since 86960 plastic feeder clamps are allowed the remainder should too allowed an approach wholly untenable in law further merely because Department has not filed any appeal against the 86960 plastic feeder clamps which was found by Ld. AO to have been actually manufactured and same having been sustained by Ld. CIT(A) is no ground to contend that the "entire mechanical site equipments" used in

installations of mobile towers even if not manufactured should be given benefit of Section 80IC of the Act.

58. The assessee is taking advantage of the word "86960 assemblies of feeder clamps" had been allowed even by CIT(A). Be it noted what is allowed is 86960 of plastic feeder clamps and not entire assembly which as a whole has been disallowed as not amounting to manufacture. In other words profit only for sale of 86960 plastic feeder clamps are allowed and rest of the profit has been disallowed on elaborate grounds as set out by Ld. AO and upheld by the Ld. CIT(A).

59. We would like to elucidate further that assessee had a dealing with Ericsson India Pvt. Ltd. (EIL) Gurgaon, Haryana. A bare perusal of ledger book of the assessee for the A.Y. 2007-08 reveals that it is making major part of sales, approximately to the tune of 97.5% to EIL Gurgaon and remaining nominal share to its related concern namely M/s Asha Telecom Pvt. Ltd., Faridabad. EIL have informed the Department officially that the goods supplied by the assessee where in the nature of installation related material which were required by them for installation of mobile towers at customer's site i.e; customers of EIL. EIL and Assessee firm had entered into agreement for supply of installation material. As per agreement, the supplier M/s Asha Technologies the assessee firm agreed to supply the parts and materials at the price fixed in the agreement to the EIL. The details of installation of products with description of each such material to be supplied as per the agreement were provided for in the Annexure A {[page 1 to 14] (Reference page 10/49 of Ld. AO order)}. We on perusing the Annexure A supra are of the considered view that the list of goods specified therein **are far too many and most of it are not manufactured by the assessee firm they are infact sourced and purchased from third parties.** We are in the agreement with the view of Ld. AO and CIT(A) as the order of the Ld. AO is sustained by him that " It is a customized requirement of the EIL to suit its practical requirements and for its managerial convenience at the site of installation of mobile towers to be assembled or commissioned at the site."

59.1 We further observe that as per the provisions of the agreement executed between the parties, these installation materials or set of articles was collectively referred to as "mechanical site material". Same terminology was given to these items on the sale invoice and was further represented by a detailed Bill of Quantity (BOQ). This BOQ would give exact details of items contained in a particular set of articles or kit. There could be number of BOQ's as per the requirement of the EIL like

BOQ 1, BOQ 2, BOQ 4, BOQ 6 so and so on forth. Each BOQ would refer to a particular set of items for particular use at the site of installation for the customers of EIL. Therefore sale bill issued by the assessee firm would simply give description of material supplied as "mechanical site material BOQ" which would further be followed by Annexure of Bill of Quantities(BOQ). A few copies of sale bills of different BOQ are at Annexure B (page 1 to 3) for reference (Ref 11/49of Ld. AO order) We on perusing the Annexure B (page 1 to 3) supra are of the considered view that Tax Invoices numbering 3 of assessee firm shows description of goods as (1) FAPI 02 513 AL Ph 6 Mechanical Site Material BOQ 1, (2) FAPI 02 514 ALph6 Mechanical Site Material BOQ 2, (3) FAPI 02516 ALph Mechanical Site Material BOQ4, (4) FAPI 02518 ALPH 6 Mechanical Site Material BOQ 6, (5) FAPI 02519 AL ph6 Mechanical Site Material BOQ 7 [invoice dt. 04/09/2006] [Annexure B] (AO order). The second invoice shows description of goods as Black Tape 50 sq mts, Corrugation Box, BV Bolt, Cable 35.50 mm. The third invoice shows description of goods as "Dishnet Mech Site Material BOQ 6". We are therefore of the considered view that description of goods so shown were not manufactured by the assessee firm. We are in agreement with the view of the Ld. AO and CIT(A) who has since sustained the order of the Ld. AO which is based on material evidence on record and further these material evidences have not been challenged before us in any manner whatsoever either in pleadings or during the course of the hearings and so also before lower authorities in any manner so as to demonstrate **that all the goods / items / parts supplied where manufactured by the assessee firm in hard core production process in their factory premises which were supplied to EIL and others under assessee's tax invoices.**

59.2 We notice from Annexure C page 1 to 10 of Ld. AO's order which is sustained by the Ld. CIT(A) which are Bill of Quantity of supplies made by M/s Asha Technologies too have a numerous items of goods not manufactured by the assessee.

59.3. We concur with following findings of Ld. AO sustained by CIT(A) :

*In common parlance, these Site Materials would refer to loose materials and parts like - Self Bonding PVC Tapes, Rubber Cover, House Clamp, Cable, Cable Lug, Jointing Sleeve, Tie Strap, Insulating Cover, Plastic Feeder Clamps, Adaptor, Threaded Rod, Screw, Nuts, Washer, Marking Label, Ladder, Ladder Joint, Ladder Hook, Pendulum, Wall Bracket, Flexible Conductor, lug, Bolt, Junction, Angle Support, Rivet, Tube Holder, Cable Chute, Modular Box etc. etc. The purchase bills of these materials by the assessee firm also clearly mention the same description of items as is mentioned in the BOQs of sale invoice effected by the assessee. There is no change in the name, its character, use and identity at the end of the purchaser i.e. EIL. These loose parts or materials were firstly arranged and then packed by the assessee in different numbers and quantities in carton boxes or in polybags according to the requirements of the*

BOQs, as mentioned in the Purchased Order placed with the assessee firm by EIL. Every supply by the assessee firm was to be in accordance to the Purchase Order placed by EIL.

Photocopies of some of Purchase bills & Sale Bills are enclosed for perusal and reference, as Annexure-D (page 1-31).

Vide letter No.EIL/EE-09..3827 UEN dated 16.12.2009, M/s. Ericsson India Pvt. Ltd. further confirmed that these loose articles were installation materials used for the purpose of setting up of Mobile Communication Network to be consumed at the Telecom Site owned by Telecom Operators i.e. EIL's Customers. It further stated that invoices issued by the assessee firm did not include any service charges for assembling, testing services of goods supplied by it. The Company (EIL) was responsible for installation of telecom equipments at site.

**Perusal of purchase bills found and impounded during the course of survey operation revealed that the assessee was making purchases of articles of 'Mechanical Site Material', as mentioned above, as such from the suppliers with same name, same use and same identity and characteristics with which the assessee firm had further supplied to M/s. Ericsson India Pvt. Ltd. Gurgaon. A chart has been prepared in respect of these purchase bills impounded during the course of survey, which substantiates finding of the Assessing Officer that the items purchased and sold were of same name, use and identity. This chart is being reproduced as under for reference. Chart of purchase bills tabulated is annexured as Annexure- E .**

**The above facts reveals that the assessee firm is simply engaged in the trading of installation material with the EIL Company. The assessee firm is not responsible for its assembling, testing, erection and commissioning at the site of installation of Mobile Towers, which is carried out by EIL itself. The site of installation of Mobile Tower exists mostly outside the State of Himachal Pradesh and also outside the specified area notified by the Central Government in Himachal Pradesh for industrial undertakings to claim tax holidays. Therefore, activity of assembling of loose materials supplied by the assessee firm takes place outside the area notified by the Central Government in**

**Himachal Pradesh. Moreover, assembling of loose materials is done by M/s Ericsson India Pvt. Ltd. and not by the assessee firm. Therefore, in this area also assessee firm fails to satisfy the conditions laid down in section 80IC.**

**The assessee firm also made sales to its sister concern, M/s. Asha Telecom Pvt. Ltd, Faridabad in similar manner. But volume of sales was very nominal.**

**During the course of survey u/s 133A in the business cum office premises of the assessee firm at village Johron, Trilokpur Road, Kala Amb, Tehsil Nahan, Distt. Sirmour H.P, carried out on 7<sup>th</sup> & 8<sup>th</sup> of December, 2009, the above findings were established beyond doubt. The above mentioned facts were witnessed by the assessing officer and other officials of the department in person in the business premises of the assessee firm . It revealed that assessee was simply engaged in the work of re-arranging and re-packing of articles and parts in small numbers and quantities as per the requirements of the purchaser. These articles and parts were being purchased in bulk from third parties but mainly from its related concern, namely M/s.Asha Telecom Pvt. Ltd. 17/3, Mathura Road, Faridabad, Haryana. Purchase bills of these goods were also found in the business cum office premises and were impounded in the process. However in most of the cases, bills / vouchers and receipts could not be detected during the course of survey. Neither same were furnished by the assessee after the date of survey. Perusal of these purchase bills clearly shows that assessee is making purchases of materials as such and then dispatched to EIL after rearranging and repacking. Therefore, comparative analysis of purchase bills and BOQs, annexed with sale invoices issued by the assessee, is desirable for an objective conclusion.**

**It was also noticed during survey that assessee firm had engaged number of workers for re-packing and rearranging of loose articles. Their statements were recorded in which they confirmed that they were engaged in the work of packing of material. Many of them were hardly educated and were without any technical and skilled knowledge. Neither were they having any work experience of technical and**

**skilled nature required for manufacturing activity. Many of them had joined the work a few days back only. But, in spite of that they were doing work without any problem because of the fact that work of re-arranging and re- packing did not require any technical or skilled work experience or training. As per the statement of Sh. Narender Kumar, work supervisor for production in the business premises of the assessee, same type of activity existed in earlier years also.**

**Therefore, perusal of above facts and circumstances well establish that assessee was never engaged in the activity of manufacturing of any of the products, which were part of supplies to the EIL.”**

59.4 We concur with following findings of Ld. AO which is sustained by the Ld. CIT(A).

Production of plastic feeder clamps

**“It is pertinent to mention here that there is only one area where the assessee actually carries out manufacturing activity i.e. manufacturing of Plastic Feeder Clamps. Perusal of Purchase Bills and other facts reveals that the assessee is manufacturing Plastic Feeder Clamps used in mobile towers for passing cables through it. However, major chunk of Plastic Feeder Clamps was purchased as such from the market. Raw material for Plastic Feeder Clamp is plastic dana which is heated and then put into a Plastic Moulding Machine for end product. Thus satisfying the conditions for manufacturing since some definite new product, distinct and different in name, use and identity is manufactured from plastic dana. Following is the detail of purchase of plastic dana by the assessee for manufacturing of plastic feeder clamps during the year under consideration:**

**Purchase of Plastic Dana:-**

Sr. No.	Name of the supplier	Bill No.	Date	Description of the goods	Qty.	Rate per unit/	Total amount
1	Mahavir Industries, MIE Bhadurgarh, Part-A Haryana	1424	11.02.07	SME reprocessed plastic dana	2000 kg.	27 per kg.	56160
2	Mahavir Industries, MIE Bhadurgarh, Part-A Harvar.a	409	29.01.07	SME reprocessed plastic dana	2000 kg.	32 per kg.	66560
3	Mahavir Industries, MIE Bhadurgarh, Part-A Haryana	1398	13.01.07	SME reprocessed plastic dana	1000 kg.	32 per kg.	33280
4	R.B.Enterprises, 17/3, Mathura " Road, Faridabad	901	23.11.06	Plastic Dana 25X60 Bags	1500per -kg.	52 per kg.	81120
5	R.B. Enterprises, 17/3, Mathura Road, Faridabad	898	16.11.06	Plastic Dana 25X20/ Plastic Dana 25X40	500/1000 kg.	114/52 per kg.	113360
6	R.B. Enterprises, 17/3 Mathura Road, Faridabad	965	28.03.07	Plastic Dana 25X10	250 kg	52 per kg.	13520
7	R.B.Enterprises, 17/3, Mathura Road, Faridabad	953	06.03.07	Plastic Dana 30X25	750 kg	30 per kg.	23400
8	R.B.Enterprises, 17/3, Mathura Road, Faridabad	929	17.01.07	Plastic Dana 25X4	100	86	8944
9	R.B.Enterprises, 17/3, Mathura Road, Faridabad	919	31.12.06	Plastic Dana 25X70 Bags	1750	52	94640
10	R.B.Enterprises, 17/3, Mathura Road, Faridabad	917	18.12.06	Plastic Dana 28X80	2000	52	108160
11	R.B.Enterprises, 17/3,	911	03.12.06	Plastic dana	1500 Kg/ 50	52/85	85540

	Mathura Road, Faridabad			25X60, Plastic Dana 25X2	Kg.		
	Total				14400		684684

Perusal of above chart shows that assessee has made purchases of plastic dana of 14400 kg which has been used wholly for manufacturing of plastic feeder clamps since there is no closing stock of plastic dana as on 31-3-2007. During the course of survey an exercise was made to ascertain the actual number of Plastic Feeder Clamps to be manufactured from a specific quantity of plastic dana. This was duly acknowledged by the production supervisor, Sh. Naresh Kumar Bhatia in his statement dated 8/12/2009. This is tabulated as below:-

Sl. No.	Description	Number of items	Weight of 10 pair of PFC
1.	Plastic Feeder Clamp 7/8" to be used for BSNL Towers	10 pairs	0.752 gms.
2.	Plastic Feeder Clamp 7/8" to be used for Bharti Towers	10 pairs	0.436 gms.

The above table shows that weight of 10 pairs of Plastic Feeder Clamp of specification of 7/8" used for BSNL Towers is only 752 gms and specification of 7/8" used for Bharti Towers is 436 gms. The employee, Sh. Sunil Kumar who looks after manufacturing of PFCs, stated that during the year 2009-10, the firm was manufacturing two types of PFCs, one for the mobile towers to be installed by EIL for BSNL and the other, for Bharati. There is no evidence on records to show the full description of plastic Feeder Clamps manufactured by the assessee during the year under consideration. Neither any information was furnished by the assessee during the course of assessment proceedings to work out the above details. In the absence of any information, the relevant detail of PFC production and its costing is worked out on the basis of above tabulated figures.

Perusal of purchase bills of Plastic Feeder Clamps from M/s Kishan Plastics, detailed chart tabulated below, reveals that rate of per piece of plastic feeder clamp is charged at Rs. 2.25 per piece for smaller pieces and Rs. 4.00 per piece for bigger ones. Therefore to have an fair and reasonable analysis of manufacturing of Plastic Feeder Clamps it is presumed that assessee might have manufactured both types of PFC (Plastic Feeder Clamps) at the ratio of 50% of each category. Half of 14400 kg works out to 7200 kg. If weight of 20 pieces (10 pairs) of BSNL PFC works out to 752 gms, then from 7200 kg of plastic dana approximately 1,91,489 pieces i.e. ( 7200x1000x20/752) of PFC of bigger size can be manufactured. Similarly, in r/o PFC for Bharti for smaller size, it works out to 330275 pieces i.e. ( 7200x1000x20/436). Application of rates charged by M/s. Kishan Plastics for small size PFC, @ Rs. 2.25, the amount of costing of smaller PFCs works out to Rs. 7,43,118. And for big piece, @ Rs. 4.00, per piece works out to Rs./- 7,65,956/-. Therefore total cost of PFC of both sizes works out to Rs. 15,09,074/- i.e ( Rs. 743118+765926). The assessee has shown net profit @ 18.41% for the relevant year. Therefore, net profit earned on the manufacture and sale of PFC works out to Rs 2,77,820/-. which is eligible for deduction u/s 80IC of the Act. To the extent of Rs 2,77,820/- assessee qualifies for 80 IC exemptions."

We hold above finding is based on material available on record and the same is not disputed by the assessee firm on merits. **The amount for purpose of calculation of profit under section 80IC on Plastic Feeder Clamp only is allowed to the extent of Rs. 2,77,820/-.**

59.5. We also concur with following findings of Ld. AO which is sustained by the Ld. CIT(A)

**“Following is the chart of purchase of pre- manufactured Plastic Feeder Clamps by the assessee during the year under consideration. The same do not qualify for deduction u/s 80IC.**

No.	Name of the Party	Bill No.	Date	Description of the goods	Qty	Rate per unit	Total Amount
1	Kishan Plastic, 17/3 Mathura Road, Faridabad	251	06.06.06	Feeder Clamp (Plastic),	36000 pc.	2.5 per pc.	93600
2	Kishan Plastic, 17/3 Mathura Road, Faridabad	359	06.11.06	Feeder Clamp (Plastic)	33000 pc.	2.25 per pc.	77220
3	Kishan Plastic, 17/3 Mathura Road, Faridabad	285	24.07.06	feeder Clamp (Plastic)	56400 pc.	2.25 per pc.	131976
4	Kishan Plastic, 17/3 Mathura Road, Faridabad	277	13.07.06	feeder Clamp (Plastic)	50400 pc.	2.25 per pc.	117936
5	Kishan Plastic, 17/3 Mathura Road, Faridabad	268	01.07.06	Feeder Clamp (Plastic)	36000 pc.	2.25 per pc.	84240
6	Kishan Plastic, 17/3 Mathura Road, Faridabad	262	20.06.06	Feeder Clamp (Plastic)	135000 pc.	2.50 per pc.	140400
7	Kishan Plastic, 17/3 Mathura Road, Faridabad	296	05.08.06	Feeder Clamp (Plastic)	38000 pc.	2.25 per pc.	88920
8	Kishan Plastic, 17/3 Mathura Road, Faridabad	292	03.08.06	Cable Chute/Gutka Plastic/Bend Plastic	270/3480/1972 pes.	110/1.00/ 3.00 per pc.	40659
9	Kishan Plastic, 17/3 Mathura Road, Faridabad	355	26.10.06	Feeder Clamp (Plastic)	72000 per pc.	2.25 per pc.	168480
10	Kishan Plastic, 17/3 Mathura Road, Faridabad	331	28.09.06	Feeder Clamp (Plastic)	80400 per pc.	2.25 per pc.	188136
11	Kishan Plastic, 17/3 Mathura Road, Faridabad	393	25.12.06	Feeder Clamp (Plastic)	#####.	2.00 per pc.	124800
12	Kishan Plastic, 17/3 Mathura Road, Faridabad	505	16.03.07	Feeder Clamp (Plastic)	99600 per pc.	2.00 per pc.	207168
13	Kishan Plastic, 17/3 Mathura Road, Faridabad	385	09.12.06	feeder clamps big	17500 per pc.	4.00 per pc.	72800
14	R.B.Enterprises, 17/3, Mathura Road, Faridabad	894	06.11.06	Feeder Clamp 500X88, 1000X12/ Plastic Cap Small for Feeder	64800/2150	2.00/1.00	153868
15	R.B.Enterprises, 17/3, Mathura	887	26.10.06	Feeder Clamp 1000X84	84000	2.25	196560

	Road, Faridabad						
16	R.B.Enterpri ses, 17/3, Mathura Road, Faridabad	878	28.09.06	Feeder Clamp 134 Bags X600/CAP Big 2 bags/ CAP smal 4 bag	80400/181 4 /3200 nos	2.25/1.50/1	194294
17	R.B. Enterprises, 17/3, Mathura Road, Faridabad	858	13.07.06	Feeder Clamp 600X20, 1000X20	32000	2.25	74880
18	R.B. Enterprises, 17/3, Mathura Road, Faridabad	857	01.07.06	Feeder Clamp 600X25	15000	2.25	35100
19	R.B. Enterprises, 17/3, Mathura Road, Faridabad	849	20.06.06	Feeder Clamp (Plastic Parts)/ Sheet Banded Component s	54000 nos/1200 kg	2.50/38 per kg.	187824
20	R.B. Enterprises, 17/3 Mathura Road, Faridabad	846	06.06.06	Feeder Clamp (Plastic, Bags 94)	60600	2.5	158000
21	R.B.Enterpri ses, 17/3, Mathura Road, Faridabad	956	13.03.07	Feeder Clamp 7/8" 600X40/ Plastic Dana 25 X 5/ plastic dana 25X4/Pend ulam Cap Big/Caps for leader	24000/125 kg./100kg./ 1050/1000	2/47/86/1.50/ 1	67652
22	R.B. Enterprises, 17/3, Mathura Road, Faridabad	958	15.03.07	Feeder Clamp 7/8" 600X74. 1000X66	110400	2	229632
23	R.B. Enterprises, 17/3, Mathura Road, Faridabad	940	19.02.07	Feeder Clamp 7/8"	72000	2	149760
24	R.B. Enterprises, 17/3, Mathura Road, Faridabad	918	25.12.06	Feeder Clamp 7/8" 600X100	60000 pcs	2	124800
25	R.B. Enterprises, 17/3, Mathura Road, Faridabad	916	14.12.06	Feeder Clamp Big	20000	5.5	114400
	Total						3223185

The above finding of fact is well reasoned and is based on material on record. It was not contested by the assessee firm in the course of hearing before us. We simultaneously hold that the assessee firm has miserably failed to establish even the manufacture and production of these Plastic Feeder Clamps as listed above which is well tabulated with all the material particulars and evidences. The value of which is worked out to Rs. 32,23,185/-. It is required to be noted that the above goods were purchased as pre-manufactured Plastic Feeder Clamps by the assessee during the year under consideration and that the same by virtue of being sourced and

**purchased are not entitled to the benefit of deduction under section 80IC. Needless to say that no jobwork contracts are placed on record by the assessee firm. They are thus pure purchases.**

Be it noted above are purchase and not manufacture.

59.6 We also conquer with the following findings of Ld. AO sustained by the Ld. CIT(A) on Powder Coating and Galvanizing which is recorded in the assessment order at pages 18 to 22 and in particular the following core finding on the issue :

*"The process of Powder Coating or Galvanizing on articles as mentioned in the above table, does not bring out any change in the original product which could be termed as different product and which could be identified as different thing in the commercial market. A ladder remains a ladder and is also sold to EIL as ladder only. Similar is the case with galvanizing. Galvanizing is done outside by third party, However, during the year under consideration, galvanized ladders and accessories were supplied by M/s. Namdhari Industrial Traders of Ludhiana. Only in one case galvanizing has been done on job work basis from M/s. A.V. Forging, 230, Phase-IX, Indl. Area, Mohali. Therefore, these activities of powder coating and galvanizing do not qualify the definition of either manufacturing or processing which could render the product to become a totally new distinct item with changed name and use in the commercial market."*

The above findings are reasonable fair and just. The same have gone un rebutted during the hearing before us.

59.7 We further conquer with the findings / observations of the Ld. AO sustained by the Ld. CIT(A) on assembling of plastic feeder clamps which is recorded as under and finds no infirmity in it whatsoever.

**" Assembling of plastic feeder clamps:-**

*During the course of survey it was noticed that assessee had employed some workers for an activity which it termed as assembling of Feeder Clamps. Feeder Clamp is a set of articles containing Plastic Feeder Clamp as main part, Adapter, Clamp, Threaded Rod, Screw, Nuts, Washer. As already stated above, the EIL has chalked out its own method of getting the material supplied from the assessee firm in a particular manner and style which would suit its practical requirement and also suit its managerial convenience. Hence this set of Feeder Clamps has been formulated. As witnessed during the course of survey, workers were simply putting together Plastic Feeder Clamps and other parts to prepare a set of article. This activity did not require any training or skilled knowledge. It could be done by looking at others doing the same. Even no formal instruction is needed to carry out the work. There were workers with experience of two to three days also were doing this job. No costing etc. is required. No intermittent and systematic processes are involved. A set could be put together in less than three to four minutes of time. And could be dismantled easily without any physical distortion or deterioration of any nature which otherwise takes place in other areas of assembling like assembling of Air Conditioner etc. which fall within the ambit of definition of manufacturing or assembling. In this case it doesn't happen at all. Same parts can be put together again to prepare a set. There is no change in the name, use and characteristics of the parts. Moreover, these parts could be dispatched separately also which was taking place in the business premises of the assessee on the date of survey. Purchase bills and sale bills do not differentiate its name, use and commercial identity. Feeder Clamp remains as Feeder Clamp only at the hands of the purchaser also. Therefore, putting together of Feeder Clamps does not qualify the*

definition of assembling and manufacturing. This is for the reasons that none of the components or materials used can partake the character of or be a substitute for the functioning or the commercial value attributable to the final product. In this case there is firstly no intermittent processes involved in putting together of parts, there is no separate name use and characteristic different from the original product. There is no different commercial identity of the same in open commercial market. These parts can be supplied to the purchaser without putting together also. Just putting these items together to give a coloring of manufacturing activity or assembling for seeking the benefit of 80 IC, is not sufficient. A bonafide and genuine situation, intent and requirement of commercial market has to be there to substantiate the happening. Therefore, assessee's claim is not based on any correct appreciation of facts. Moreover, there is no evidence provided to the assessing officer to show that this activity was carried out by the assessee during the relevant year also."

59.8 We further find no infirmities whatsoever on following finding of the Ld. AO sustained by the Ld. CIT(A).

**"Bending, punching of G.I Sheets:-**

During the course of survey it was notice that assessee had purchased pre-cut GI sheets of size of one meter length x 425mm width. These sheets were bent inward by 25 mm from two sides and three holes were punched. For this activity a Press Machine was being used. The prepared sheet is used to carry telecom cable over the Ladder placed on Mobile Tower. Simply bending and punching hole in a pre-cut G.I sheet is not manufacturing activity. No new and distinct commodity is coming out. It has no separate commercial identity in the market. It is purchased as sheet and dispatched as sheet in a set of articles. Therefore, on similar grounds, as mentioned in the case of Feeder Clamp, this is neither assembling nor manufacturing which could qualify for deduction u/s 80IC. Moreover, important thing is that this activity did not exist in the year under consideration since there was no Press Machine available with the assessee. This fact can be verified from the list of Plant & Machinery reflected in the schedule of fixed assts. Neither there is any documentary evidence to prove that this work was done on contract basis. No bills/ vouchers of any kind could be found in the office of the assessee on the date of survey. Moreover, there is no any relevant expense debited to manufacturing and P/L account in the said year which could prove that this work was done on contractual basis. As already mentioned, onus to prove these things was on the assessee. But unfortunately assessee never bothered to cooperate with the assessing officer. Hence, claim of the assessee is rejected that this activity is eligible for 80 IC deduction.

59.9 We further find no infirmities whatsoever on following findings of Ld. AO sustained by Ld. CIT(A)

**"Welding of Ladder & accessories:**

One of the parts/ articles in a Set of Articles is Indoor Ladder and Out Door Ladder and its accessories which are used in mobile towers. It was noticed in the survey that assessee was purchasing ladders as such and also in some cases getting them welded at the business premises through contractual job work. The pieces of ladders meant for steps were welded with two sides of the ladder. No separate and different product emerged from this process. Assessee was making purchases of these articles as ladders and selling them as ladders only. The facts can be verified from the chart of purchase bills of material as well as from the chart of Items of Supplies, mentioned in separate annexure above. However, in the year under consideration there is no such evidence to prove that assessee did carry out this activity of welding of ladders and accessories. There is welding set available with the assessee but the same could have been used for the purposes of construction of factory building. Just possession of a machinery does not necessarily mean that related activity was carried out with the help of said machinery, unless other relevant factors are proved. In the instant case, there are no expenses debited in r/o purchase of consumables like soldering/ welding rod etc which are the main inputs. Consumables reflected in the books are only in r/o

expenses on gases. There is no evidence to prove that assessee might have carried out this work on job work basis which was happening on the date of survey. But the raw material or consumables were being supplied by the assessee only. Nevertheless, enquires were made in r/o parties which had carried out job work for the assessee in the year under consideration. This job wok account included job work carried out by M/s. Ashima Industries for powder coating. It was noticed that in all these cases, except in Ahima Industries, payments were made in cash and squaring up the account at the end of the financial year. Letters u/s 133(6) were issued to them for confirmation but none of the said accounts could be confirmed. The detailed chart of these accounts is tabulated as under with remarks of the assessing officer:-

Sr.No.	Name of Party	Amount paid	Mode of payment	Remarks of A.O.
1	Ram Kripal Fabricator	Rs. 49,000/-	Cash	Letter issued u/s 133(6) received unserved with the remarks of the Post Man that not known
2	Deepak Electro Plating	Rs. 42,5607/-	Cash	Letter issued u/s 133(6) received unserved with the remarks of the post man that " No Such Person."
3	Radhika Metal Finishers	Rs.49,580/-	Cash	Letter issued u/s 133(6) received unserved with the remarks of the post man that " Incomplete Address."
4	Aditya Technologires	Rs.41,090/-	Cash	In response to letter u/s 133(6) the party denied to had any transaction or job work done for the assessee.
5	S.R Engineerns	Rs.32, 460/-	Cash	Letter issued u/s 133(6) received unserved with the remarks of the post man that "no such person existing at the given address."
6	Sunny Enterprise	Rs.39,510/-	Cash	In response to letter u/s 133(6) the party denied to had any transaction or job work done for the assessee.
7	Shiva Enterprises	Rs. 38,710/-	Cash	In response to letter under section 133(6) the party denied to had any transaction or job work done for the assessee.
8	Sonu Engineering Works	Rs.49,775/-	Cash	Letter issued u/s 133(6) received unserved with the remarks of the post man that "no such person existing at the given address."

**Above facts were confronted to the assessee for his comments and explanation but it failed to comply with the same in spite of repeated reminders and requests.** Moreover, during the course of survey there were no bills / vouchers of above accounts or cash receipts of payments. The onus of proving the genuineness of these accounts and entries there in could not be discharged by the assessee. Therefore, the plea of the assessee, if any, that it had engaged contractual job work for welding of ladders does no get discharged. Nevertheless, this activity of welding pieces does not qualify the definition of manufacturing or assembling."

59.10 We conquer with the findings of Ld. AO and sustained by the Ld. CIT(A)

on :-

**Fixing of lug at one end of Copper cable-**

One of the Kits of Articles for supply to EIL is named as " Earthing Set" in which one of the articles in the collection of items is Copper Cable crimped with lug at one end Assesses claim that fixing of Lug to one end of copper cable tantamounts to assembling or manufacturing is also against the facts as discussed above in the case of assembling. Feeder Clamps. This is the case of stretching the definition of manufacturing or assembling to such an extreme extent that it automatically loses its relevance and meaning. If just fixing a lug to one end of cable is accepted as assembling or manufacturing, then every second action of an undertaking will qualify for deduction u/s 80IC.

*Therefore, all the above mentioned activities carried out by the assessee and claimed to be an act of manufacturing or assembling, fail to test the definition of manufacturing and assembling. It is pertinent here to bring forth dictionary meaning of as to what is meant by Manufacturing or Processing. In Black's Law Dictionary (5<sup>th</sup> Edition), the work "manufacture" has been defined as, "the process or operation of making goods or any material produced by hand, by machinery or by other agency; by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine". The process is a manufacturing process when it brings out a complete transformation in the original article so as to produce a commercially different article of commodity. That process itself may consist of several processes. The different processes are integrally connected which result in the production of a commercially different article. If a commercially different article or commodity results after processing then it would be a manufacturing activity. In the instant case none of the above requirements of conditions stands fulfilled by the assessee. There are no any processes of the nature involved which may give such materials new form, qualities, properties or combinations. There is no transformation as such in the original article. Processes involved should be intermittent and also should be integrally connected, whereas no such things are existing in the case of the assessee firm. An act of re-arranging and repacking of articles to suit the customized requirements of the purchaser is not necessarily assembling or manufacturing. In the process, if the assessee, carries out some further acts of putting loose parts together for proper presentation and for the practical convenience of the customer, same will not definitely tantamount to assembling or manufacturing."*

In the premises we too finally conquer with conclusions drawn by the Ld. AO and sustained by the Ld. CIT(A) as under:

*"Hence, in view of above findings of the Hon'ble Courts, it is beyond doubt that the business activity carried on by the assessee firm M/s. Asha Technologies, does not tantamount to manufacturing or assembling. None of the prerequisites or conditions enumerated in above judgments of the Hon'ble Courts, stands fulfilled by the assessee firm. In this case, materials used for so called manufacturing or assembling, retain original identity even after assembling or manufacturing. The commodity is not subjected to intermittent and integrated processes to bring out total transformation of the goods into a new commodity commercially distinct and separate and having its own character, use and name. Moreover, the assessee firm never rendered due cooperation and compliance in finalizing the assessment proceedings. All relevant facts, issues and information etc. were collected by the assessing officer himself under different provisions of the Act. Nevertheless, for the sake of natural justice, same were confronted to the assessee time and again for its comments and explanation duly substantiated with documentary or corroborating evidences. But it failed all the times to comply with the requirements of the provisions of the Act.*

*Therefore in view of the above facts and circumstances, claim of the assessee is rejected that it is engaged in the business of manufacturing or assembling, entitling it to claim deduction u/s 80IC of the Income Tax Act. Accordingly, an income of Rs. 1,48,17,110/- as reflected in the income tax return for the year under consideration, is subjected to income tax at the then prevailing tax rates. Penalty u/s 271 (1) (c) of the Income Tax Act is also initiated for filing inaccurate particular of income and for concealing income."*

59.11 We conquer with entire finding of Ld. AO and sustained by the Ld. CIT(A) which is drawn on basis of presuming that assessee is engaged in the business of manufacturing activities from page no. 30 to 41 of the order of Ld. AO.

59.12 We hold that findings of the Ld. AO and said finding sustained by the Ld. CIT(A) on other discrepancies and abnormalities which are covered from para 1 to para 14 (page 42 to 47 of Ld. AO order) which are covered by the assessee in form of Q.No. 2 to 12 are all correct and same were not pressed during the course of hearing nor argued. The Ld. DR has not addressed us on this score too consequentially. The contentions raised in written submission of AR are ornamental only. It has been raised for sake of raising it. We also hold even on merits the

observations and findings of lower authorities are well merited and are based on material on record. Evidence is appreciated correctly. It cannot be said in law that the findings are based on no evidence.

59.13 We on perusing Annexure B of Ld. AO's order page 1 where there is invoice dt. 04/09/2006 of the assessee firm we notice in description of the goods the following:

Account Ericson India Private Ltd.

1. FAPI 02513

ALph6 Mechanical site material BOQ1 = 40 Boxes = Kits 10

2. FAPI02514

ALph6 Mechanical site material BOQ2 = 100 Boxes = Kits 40

3. FAPI 02516

ALph Mechanical site material BOQ4 = 360 Boxes = 90 Kits

4. FAPI 02518

ALph6 Mechanical site material BOQ6= 50 Boxes = 5 Kits

5. FAPI 02519

ALph6 Mechanical site Material BOQ-7 = 200 Boxes = 20 Kits

P.O. No. 4501316227 31 No. of Cases 810 Boxes

Approx weight 13400 KG.

Total Value is Rs. 5028355/-

We on perusing Annexure C of Ld. AO's order finds following:

**(A) Under BOQ 1 following items are there:-**

- (i) Sealing of connectors, outdoor
- (ii) Freeder marking sector
- (iii) Freeder earthing set for ½"
- (iv) 50 qsmm – 20m outdoor (GI conductor)
- (v) Earthing wire set indoor – green 30m
- (vi) Earthing set for cabinet green
- (vii) "2" Condit flexible (steel armouring type for optical y- cable
- (viii) Saddle ss with base, screws, and gitti for 2 conduit (outdoor use)
- (ix) Tie straps B = 9, SL=457 RFST
- (x) Cable clamp w=4 8 L = 368 (cable tie)

**(B) Under BOQ2 following items are there:-**

- (i) Sealing of Connectors Outdoor
- (ii) Earthing Set 7/8", outdoor
- (iii) Tie Straps B= 9,5 L= 457 RFST
- (iv) Feeder Clamps, 3 coax 7/8" (Set of 25 nos)
- (v) Feeder Marking Sector GSM
- (vi) Outdoor Ladder Set (3mx2 with all accessories)
- (vii) Earthing wire Set Outdoor, GI, 20m
- (viii) Earthing Bar Outdoor, SS
- (ix) Earthing Bar Outdoor, Cu
- (x) Indoor ladder Set (400 mmx2 25mx2)
- (xi) 35mm<sup>2</sup>-30m Grounding set with accessories
- (xii) Common Installation Material
- (xiii) Cable chute set 2Mx3 with end piece
- (xiv) Earthing set for cabinet, 35sqmm
- (xv) Cabinet supporting Iron
- (xvi) Feeder Inlet (12-7/8" & 6-1/2")

**(C) Under BOQ4 following items are there :-**

- (i) Outdoor Ladder Set (3mx2 with all accessories) with one extra pendulum support & accessories- 450mm
- (ii) 50sqmm-20m outdoor earthing set (GI)
- (iii) ECB Outdoor (same specs as indoor) with mounting nut & bolt (copper)
- (iv) ECB Outdoor (Tower mounted)
- (v) Common Installation Material
- (vi) Sealing of Connectors, Outdoor-3M/ permacel only
- (vii) Earthing Set 7/8", outdoor
- (viii) Tie Straps B=9,5 L=457 RFST
- (ix) Feeder Clamps, 3 coax 7/8" (25 pcs)
- (x) Feeder Marking, Sector
- (xi) Earthing set for DTMA, 25sqmm
- (xii) Earthing set for cabinet, 35sqmm (1.5M)-Green colour cable

**(D) Under BOQ 6 following items are there:-**

- (i) Earthing set
- (ii) Cable Tie

- (iii) Jointing Sleeve
- (iv) 16 MM Lug
- (v) Self bonding tape
- (vi) RVC Tape

**(E) Under BOQ 7 following items are there:-**

- (i) Sealing of Connectors, Outdoor
- (ii) Earthing Set ½" Feeder, Outdoor
- (iii) 50 sqmm 20m outdoor earthing set (GI)
- (iv) Earth bar
- (v) Earthing set for cabinet
- (vi) 2" conduit flexible (steel armouring type for Optical Y- cable)
- (vii) Tie Straps B=9, 5 L= 457 RFST
- (viii) Cable clamp W=4, 8, L= 368
- (ix) Feeder Marking, Sector
- (x) Outdoor Ladder Set (3mx2 with all accessories )
- (xi) Cable Chute 1 x 2 m (100mmx 60mm)
- (xii) Indoor cable ladder 1x3m-300mm wide
- (xiii) Cable load in (1/2"- 9 holes)

Basis above documentary evidences we hold that the assessee firm is not manufacture of goods sold under Invoice dt. 04/09/2006 supra. Similarly there are other invoices of the assessee firm on record where under different types of items goods as per BOQ (Bill of Quantity) have been sold to EIL and the Department of Income Tax has proved its case against the assessee firm save and except Plastic Feeder Clamp simplicitor only. EIL placed orders on the basis of BOQs which find mention in the invoices of the assessee firm and the goods mentioned therein **where not manufactured / produced by the assessee firm in their factory premises in Himachal Pradesh**. We hold that goods sold and supplied by the assessee where infact far too many as per the evidence on record and correspondingly there were infact no manufacturing and production capacity in the assessee's factor premises. Hence claim of deduction under section 80IC miserably fails.

59.14 We have also carefully perused Annexure E to the Ld. AO's order from page 1 to 29 which is a consolidated list of purchase bills found and impounded during the course of survey operation which **rightly** reveals that the assessee firm was making

purchases of article of mechanical site material as mentioned therein / supra too as such from the suppliers with same name, same use and same identity and characteristics with which the assessee firm **had further supplied (in turn) to EIL. The Chart has been perused by us and it shows that items / goods purchased and sold were of some name use and identity. We agree in toto with the findings of Ld. AO sustained by Ld. CIT(A) that the assessee firm is simply engaged in the trading of the installation material with the EIL itself.**

We therefore concur with the findings of the Ld. AO which is sustained by CIT(A) that the installation of mobile towers exists mostly outside state of Himachal Pradesh and also outside the specified area notified by the Central Government in Himachal Pradesh for Industrial undertaking to claim tax holidays. Therefore activity of assembling of loose materials supplied by the assessee firm takes place outside the area notified by the Central Government in Himachal Pradesh. **Loose materials supplied by the assessee firm under their invoices are not manufactured / produced in the factory premises in Himachal Pradesh. Hence condition of 80IC is not met and satisfied by the assessee firm. The contention raised in the hearing that all the items save and except plastic feeder clamps are obtained by getting job work done is false and no documentary evidences of job work done by several parties as mentioned in Annexure-E (Ld. AO's order) has been placed on record. Be it noted in the Annexure-E there are in all 366 parties and some parties are common.** We further hold that looking to the BOQ's supra it is next to impossible for anyone to procure the items that too even on job work basis as there are far many items in BOQs.

59.15 In the assessment order dt. 30/12/2009 on page 12 it is averred that survey operation was carried out at the business premises of the assessee firm, on 07 & 08<sup>th</sup> December 2009 where the officials of Income Tax Department found that the assessee firm was simply engaged in the work of rearranging and repacking of articles, items, parts, etc. in small numbers and quantities as per the requirement of the purchaser. These articles and parts were purchased in bulk from the third parties including Asha Telecom Pvt. Limited, Faridabad a related concern of the assessee firm. Most of these sale bills / vouchers and receipts could not be detected during the course of survey perusal of purchased bills revealed that assessee firm was making purchases of material as such and then despatched to EIL after rearranging and repacking. We hold that if assessee firm wanted to set up a defence or had a case in law and or had a legitimate defence that they infact manufactured and

produced all the items, articles, parts, as per BOQ Annexure C and Annexure A then first of all they ought to have done inspection of the impounded document of survey which they did not do so despite opportunity. Further, nothing prevented them to seek cross examination of officials who went for survey and inspected site, they could have lead the evidence of their workers and produced all the documents of manufacture and production of all items listed in BOQ supra. But all these did not happen or was resorted to while the assessment proceedings were going on. This conduct on part of assessee firm speaks volume and lead us to firmly believe that they had nothing in their defence. In fact they miserably failed to set up a defence on all items as per BOQs supra as being manufactured and produced by them. **They have further failed to place any job work contract entered between the assessee firm and job work contractors in respect of all items in BOQ.** The Department has discharged the initial burden of proof and the remainder was on assessee firm which they miserably failed obviously for the reason that they had no defence. No evidence of consumption of raw material are on record in respect of items appearing in BOQs supra.

59.16 We also hold that the assessee firm before the lower authorities failed to lead any oral evidence much less documentary evidence that they in fact carried out the manufacturing and production activity of articles, items, things, parts etc. The material particulars of which are described in Annexure A and C of AO's order. The burden of proof was on assessee firm as primfacie the Department had discharged the initial burden of proof. To establish contrary was on part of assessee firm. The Ld. AO's order which is sustained by Ld. CIT(A) order speaks volume about conduct of assessee firm and its officials throughout in the proceedings held under the Income Tax Act, 1961. It is recorded that they always remained evasive and never cooperated with the Department.

59.17 We hold that save and except one item i.e; plastic feeder clamp they have miserably failed to discharge the burden of proof of manufacture and production in respect of several items which they had supplied to EIL as per BOQs supra. They have attempted to justify powder coating, bending, punching of GI sheets, welding of ladder, fixing of lug at one end of copper cable in vain. What was expected of them was to show production process, manufacturing process of several items as per Annexure A and C of Ld. AO's order as sustained by CIT(A) which they have miserably failed to do so. Save and except plastic feeder clamps (supra) they

sourced and purchased finished items, parts, articles, as was required by EIL and camouflaged it by rearranging and repacking it in such a manner that it looks on face of it that it was manufactured and produced by them. We hold that the assessee firm has conducted themselves in an irresponsible manner without any fear of law which act of theirs is not worth pardoning. In guise of manufacturing of plastic feeder clamps they have supplied goods, items, parts as per BOQs of EIL by directly sourcing and purchasing them from their well known sourced outlet which in law is not manufacturing and production in the factory premises in the State of Himachal Pradesh. They had no plant and machinery capable of producing the list of items as per BOQ of EIL. There were no raw materials for producing the same. There were no raw material registers, no raw material was purchased which was capable of producing list of items as per BOQ of EIL. There were no trained workers. No records of excise. All this are proof enough against the assessee firm which the Income Tax Department has proved it.

59.18 We hold that powder coating and galvanizing done by M/s Ashima Industries, Faridabad and M/s AV Forging Mohali during the course of survey was being carried out in the premises of the assessee when job work is normally done outside the factory premises as entire object is to save on cost. The Ld. AO once again has well tabulated such activities by way of Chart on page 18, 19, 20 and 21 of his order. Once again assessee firm has failed to discharge onus of manufacturing and production in manner known to law. Findings of AO sustained by the Ld. CIT(A) on page 21 / 22 of AO's order is therefore correctly recorded as under:

*The process of Powder Coating or Galvanizing on articles as mentioned in the above table, does not bring out any change in the original product which could be termed as different product and which could be identified as different thing in the commercial market. A ladder remains a ladder and is also sold to EIL as ladder only. Similar is the case with galvanizing. Galvanizing is done outside by third party, However, during the year under consideration, galvanized ladders and accessories were supplied by M/s. Namdhari Industrial Traders of Ludhiana. Only in one case galvanizing has been done on job work basis from M/s. A.V. Forging, 230, Phase-IX, Indl. Area, Mohali. Therefore, these activities of powder coating and galvanizing do not qualify the definition of either manufacturing or processing which could render the product to become a totally new distinct item with changed name and use in the commercial market.*

We also hold that finding of Ld. AO sustained by Ld. CIT(A) on assembling of plastic feeder clamp, bending, punching of G.I Sheets, welding of ladder and fixing of lug at one end of cable are all well reasoned findings and these items were never sold and supplied to EIL independently what was sold and supplied to EIL was mechanical site material as per BOQ Annexure C and as per Agreement Annexure

A (Ld. AO's order). The cumulative reading of both the Annexures with Annexure B (Ld. AO's order) i.e; tax invoice of assessee firm to EIL goes to show that these items were part of mechanical site material which were made to EIL in a manner acceptable to them. These items were not sold and supplied to EIL independent of mechanical site material. No independent valuation of these items have been done from the point of view of either the cost or price. It was expected on the part of the assessee firm to have given independent valuation or price of it in order to claim benefit of 80IC but unfortunately that has not happened. The books of account of the assessee firm are totally silent on this factual aspect. We therefore hold that majority of the items were sourced / purchased and supplied to EIL. We also hold that nothing prevented the assessee firm to maintain records of such activity independently as manufactured and produced items in house. In fact whatever was found to have been manufactured and produced i.e; plastic feeder clamp aggregating to Rs. 2,77,820/- the benefit of Section 80IC has been given.

59.19 We hold that after carefully perusing the Tax Audit Report (paper book page 1 to 49) we notice the following discrepancies too from the point of view of production and manufacture of mechanical site material sold to EIL by the assessee firm. The Tax Audit Report is under section 44AB of the Income Tax Act.

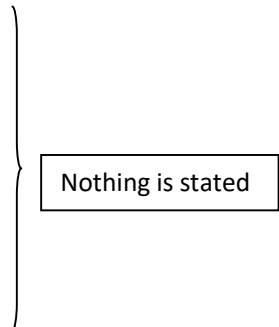
- **In Form CD in Column 8 it is stated against nature of business – manufacturing of telecom parts.**
- **In Column 9(c) list of books of account examined – cash book, ledger, bank book, journal. No production related books on record.**
- **In Column 12(b)- VAT not included**
- **In Column 28(b) – In case of manufacturing concern give quantitative details of the principle item of raw material, finished product and by products – quantitative details was not provided to us. It is averred by Auditors that " as explained by the it is not possible to maintain quantitative detail due to diverse nature, size and style or product.**

**Note: Assessee firm has not provided to its own Auditor any details with regard to the products which is alleged to have been manufactured and produced by them.**

- **In Column 28 (a)- Raw materials :-**

- (i) Opening stock
- (ii) Purchases during previous year
- (iii) Consumption during the pervious year
- (iv) Sales during the previous year
- (v) Closing stock
- (vi) Yield of finished product
- (vii) Percentage of yield
- (viii) Shortages / excess if any

Nothing is stated

- **Finished product**
    - (i) **Opening Stock**
    - (ii) **Purchased during previous year**
    - (iii) **Quantity manufactured during previous year**
    - (iv) **Sales during previous year**
    - (v) **Closing stock**
    - (vi) **Shortage / excess if any**
- 
- **Column No. 30: Whether any cost Audit was carried out = No cost audit has been done**
  - **Column No. 31: Whether any audit was conducted under the Central Excise Act, 1944 = No such audit has been done under Central Excise**
  - **Column No. 32 (d): Material consumed / Finished product = Details not available**

59.20 In Form No. 10CCB which is Audit Report under section 80I(7) / 80-IB/80IC **majority of the Form is with remark N.A.** Total value of machinery or plant used in the business is **meagre Rs. 16,44,469/-** against total sales of Rs. 7,40,79,384/-. Claim under section 80IC is 1,36,38,162/-. The Form 10CCB which is on record speaks volumes about conduct of the assessee firm. We therefore hold that entire details in Form 10CCB are missing.

59.21 We also hold that as per list of fixed assets provided in Tax Audit Report it is not possible to have manufacturing turnover of Rs. 7,40,79,384/-. We also hold that the Income Tax Department made necessary enquiries with the Excise Department and all adversial were found against the assessee which are spelt out by the Ld. AO in his order which is sustained by Ld. CIT(A). The order of Ld. AO as sustained by Ld. CIT(A) has correctly recorded and in pursuance thereof following finding is rightly given:

*“Nevertheless, assessee was again given final opportunity of being heard vide this office questionnaire dated 17-12-2009 bearing No. 3875 after incorporating all relevant facts and issues collected so far by the assessing officer. Vide this questionnaire assessee was requested to furnish information to prove that it was really engaged in the manufacturing of all items or some of the items. For this purpose, assessee was directed to inspect the impound books/ documents/ papers etc. But he failed to comply with the same. Assessee filed its reply to the above questionnaire on 24-12-2009. But it failed to furnish any documentary evidence or information to substantiate its claim of being a manufacturer. Vide para 4 of the reply, assessee has relied upon the judgment of Hon'ble Madras High Court reported in 282 ITR 466 vide which manufacturing of Cable Jointing Kit has been held as manufacturing. It is pertinent to mention here that in the instant case assessee has never mentioned in its replies that it is manufacturing Cable Jointing Kits. Vide reply dated 18-11-2009, the counsel of the assessee has stated that assessee is manufacturing telecom parts and tower installation material. The manufacturing processes involved have been discussed Shearing, Moulding, Welding & Fabrication, Assembling & Powder Coating. Nowhere in the course of assessment proceeding, the assessee has ever furnished exact details*

of products manufactured, raw material used, machinery and plant engaged. Nowhere the detail description of Cable Jointing Kit has ever been filed. Had the assessee / discharged its primary onus by furnish and producing relevant records, papers, documents etc., the onus would have been on the assessing officer to prove it otherwise.

*In the above reported case assessing officer has relied on the findings of the Central Excise authorities that assessee was not engaged in manufacturing activity. The assessing officer never made any field enquires or made personal visit to assessee's factory. The Central Excise authorities visited office of the assessee and not the factory premises to witness actual working. Moreover, in the reported case there was relevant machinery and plant installed in the factory premises. There was evidence of raw material used by the assessee. In the case of the present assessee firm, first of all it not on record to prove that it was engaged in the manufacturing of Cable Jointing Kit. The assessee is simply packing and arranging the material in different quantities and number which was received in bulk from the suppliers. In the reported case assessee is not assembling or packing but its manufacturing the kits. In the case of the assessee the assessing officer himself visited the business cum office premises u/s 133A of the IT Act to find out the true facts of the case when there was no compliance and cooperation on the part of the assessee to prove its primary onus. And on the basis of survey only true facts of the case were ascertained which helped in ascertaining the factual reality. The assessing office collected information u/s 133(6)/ 131 of the IT Act to substantiate the findings. In the reported case the assessee is manufacturing Telephone Cable Jointing Kits and not Telecom Parts used for installation of mobile towers. The word telephone has got specific meaning thereby referring to telephone set or its parts whereas word Telecom has wider connotation. On the other hand assessee firm M/s. Asha Technologies is supplying mechanical site material to be used for installation of mobile towers. Plea of the counsel that assessee's product undergoes much more treatment than the required in manufacturing of cable jointing kit, is against the facts of the case. It means that the learned counsel of the assessee has not properly appreciated the facts of the case. In the case of the assessee Mechanical Site Material is collection of number of different loose articles put together in a form of kit. No processing or other treatment of any nature is given to these loose articles. Some of the loose articles and powder coated which has been dealt with in earlier paras. These collections of articles remain as such from the point of supplier to the point of recipient M/s. Ericsson India Pvt. Ltd. It is M/s. EIL which assembles or uses these kits in the erection or installation of mobile towers. And in true context, in such situations, rather M/s. Ericsson India Pvt. Lt. would have been the genuine applicant of 80IC deductions had the company fulfilled other conditions of 80 IC."*

The above findings have not been challenged before us factually and no arguments were canvassed against the same during the hearing before us. The above finding is thus speaking factual aspect and is not disputed before us.

59.22 We further notice that the assessee in his brief statement of fact has stated that return of income declaring a net taxable income of NIL after claiming deductions under section 80IC of the Income Tax Act, 1961 in respect of its entire profit on account of manufacturing activities done by it. A survey operation was conducted in the premises of the assessee on 07/08/12/2009 under section 133A of the Income Tax Act, 1961. That vide assessment order passed under section 143(3) the deduction claimed under section 80IC of the Income Tax Act, 1961 was allowed only to the extent of Rs. 2,77,820/- and various disallowances were also made to the taxable income of the assessee. In that fashion, vide order dt. 30/12/2009. Income of the assessee was assessed at Rs. 2,95,20,200/-. Upon appeal before Ld. CIT(A) claim

of the assessee was allowed only for manufacturing of plastic feeder clamps as deduction under section 80IC of the Income Tax Act 1961. Detailed written arguments have been submitted on account of manufacturing and how the assessee qualifies for deduction under section 80IC of the Act,. Written submission filed before CIT(A) from page 77 to 98 are relied upon in Paper Book filed before us to be considered for disposing of this appeal.

In view thereof we hold that no arguments are canvassed before us on merits on the order of the Ld. CIT(A) impugned in present appeal, save and except just the grounds formulated on basis of impugned order of CIT(A). There are no arguments on merits save and except on first ground of appeal i.e on plastic feeder clamps which were canvassed before us during the hearing. No other arguments on other aspects of the case be it on manufacturing of mechanical site material as per BOQ supra sold and supplied as manufactured and produced by assessee and otherwise were ever canvassed before us during the course of hearing. How non manufactured items sourced and purchased which too are sold to EIL should be treated has not been discussed, argued or agitated on basis of CIT(A) order. Consequently, we sustain the order of CIT(A) as passed.

60. The other grounds of appeal from 2 to 12 were not argued before us during the course of hearing and simultaneously Ld. DR too has not dealt with it. The assessee in their written submission has averred as under:

*" Apart from this ground of appeal, various other additions had been made and sustained by the learned Commissioner of Income Tax (Appeals), which have been challenged vide grounds No. 2 to 12 of the grounds of appeal. In that regard, it is most respectfully submitted that detailed submissions in respect of these grounds of appeal were made by the assessee from pages 77 to 98 of the paper book and contents of the same are not being repeated for the sake of brevity. It is most respectfully submitted that relying upon the said submissions, the remaining grounds of appeal may kindly be adjudicated upon."*

We observe that above is just ornamental in nature. Whereas in the hearing nothing save and except the core issue in the ground No. 1 was only argued. Further submissions from page 77 to 98 which assessee expects us to go through were submissions made before CIT(A) against the Ld. AO's order dt. 30/12/2009. Nothing new out of those or arising in against the order of CIT(A) have been made before us at all during the course of the hearing before us. In fact on Ground No. 2 to 12 as per Form No. 36 which is form of appeal to the Tribunal no submissions were made in the hearing before us. Therefore we hold that these grounds are not pressed before us

at all in a manner known to law. Even otherwise on merits for Ground No. 2 to 12 we concur with the observations and findings of the Ld. CIT(A). We hold that observations, findings and conclusions are based on material on record which has gone unrebutted by the assessee firm. The order of Ld. CIT(A) is based on relevant evidence which was found by the Ld. AO. The impugned order is well reasoned and speaking the assessee has not contended before us that the impugned order is subjective and is based on assumptions and presumptions. They have also not contended that the material considered are extraneous in nature and is subjective. It is not contended before us that the finding of Ld. CIT(A) is not based on evidence on record or that there is no evidence on record.

61. We make it clear that we are sustaining the finding of the Ld. AO as well as Ld. CIT(A) only to the extent what they have allowed and nothing else.

62. In view of forgoing the appeal of the assessee is partly allowed as aforesaid.

63. Now we shall deal with ITA No. 61/Chd/2013 which pertains to the A.Y. 2009-10.

64. In ITA No. 61/Chd/2013 the factual matrix is more or less identical with appeal in ITA No. 388/Chd2012 which pertains to A.Y. 2007-08. The order of Ld. AO is dt. 30/12/2011 under section 143(3) of the Income Tax Act, 1961. In these proceedings also manufacture of Plastic Feeder Clamps are alone were found to be manufactured by the assessee as in ITA No. 388/Chd/2012 and assessee was given benefit of Rs. 4,09,110/- by the Ld. AO which order on this score is sustained by the Ld. CIT(A). The income of Rs. 4,41,98,259/- out of income of Rs. 4,46,07,369/- claimed as deduction under section 80IC is disallowed by the Ld. AO which order is sustained by the Ld. CIT(A). We hold that Ld. CIT(A) in para 4.4 of the impugned order dt. 16/11/2012 in CIT(A) No. IT/474/11-12/SML has rightly said that "The given issue has already been decided by me against the appellant for the detailed reasons given in my order dated 30.01.2012 in appeal No. IT/315/2009-10/SML for the A.Y. 2007-08. The facts of the case being identical as per the appellant's own admission, it is held that the facts and circumstances of the appellant's case combined with the findings of the survey action clearly indicate that the appellant was primarily engaged in trading of various loose materials and items required for installation of mobile towers. It was simply purchasing the said items, primarily from its own sister concern and packing them in the form of sets of articles/kits to suit the requirement of its

purchasers. Even upto and during the year under consideration it had achieved only admitted capacity for manufacturing in respect of plastic feeder clamps which has been duly acknowledged by the Id. A.O. The claim of the appellant regarding manufacturing in respect of the remaining items does not stand substantiated either by its own book results or by way of any independent evidence. Prima facie the appellant has tried to create a façade of manufacturing only in order to avail of the benefit of deduction u/s 80-IC by establishing a centre for trading in the notified Zone. Accordingly, on the given facts, the action of the Id. A.O. in disallowing deduction u/s 80-IC to the tune of Rs. 4,41,98,259/- is found to be in order, barring the disallowance in respect of the profits on sale of the assemblies of plastic feeder clamps, if any. In the assessment order under consideration, the A.O. has additionally mentioned that the statements of a few workers were recorded during the course of survey proceedings in which they confirmed that they were engaged in the work of packing of material. For example, Smt. Santosh Sharma W/o Sh. Gurudayal Singh, Supervisor stated in response to question No.17 that the women employees were carrying out the work of packing of material handed over to them by Sh. Naresh Bhatia. **She further stated that all the components being packed by them alongwith the ladders were being received by the firm in readymade form which was simply being packed in plastic covers.** Even Sh. Pawan Verma, husband of Smt. Rajni Verma, managing partner stated in response to a question on page 15 of his statement **that no manufacturing activity was taking place at the appellant's unit except in respect of the making of plastic clamps.** On the basis of the finding of the survey proceedings, the A.O. has accepted the manufacturing and sale of plastic feeder clamps valued at Rs. 409110/- and has allowed the benefit of deduction u/s 80IC in respect of the same. Since the A.O. has accepted the manufacturing of 294548 pieces of bigger size and 508027 pieces smaller size of plastic feeder clamps, the feeder clamps assembling from the said feeder clamps should also logically be treated as a next step in the line of manufacturing. It takes 6 feeder clamps to make one feeder assembly. The A.O. is, therefore, directed to calculate the number of feeder clamps assemblies manufactured by the appellant firm and to calculate the profit on the sale thereof as per the books of accounts of the appellant. The benefit of deduction u/s 80IC in respect of the same should be allowed to the appellant. Thus the appellant succeeds only partly on this ground of appeal." We sustain the said finding. We also concur with the finding of Ld. CIT(A) given in para 5, 5.1 of the impugned order. The findings are well merited and is

based on material on record. It is not contended before us that the said findings is illegal and bad in law. Hence we uphold the disallowance of Rs. 38,10,950/- under section 40A(3) of the Income Tax Act, 1961, the finding is based on documentary evidence on record i.e; C2 and C9 Cash Books. The assessee before us has not been able to establish that findings are based on no evidence. It is not contended that the findings are perverse or positively perverse. These findings are not challenged before us on any legitimate grounds. We therefore hold that by well reasoned and speaking order the Ld. CIT(A) has given the findings. The same holds good for findings given in para 6, 6.1 & 6.2 of the impugned order. We sustained the same as well merited. They too are based on material on record. They are not subjective findings. Simultaneously, we also sustain the findings of Ld. CIT(A) made vide para 7, 7.1 & 7.2 of the impugned order as well merited, speaking and on the basis of material on record. Speaking and well reasoned order is given and we concur with it. Once again the assessee has not challenged the same on any legitimate and cogent ground before us. With regard to findings given in Para 9, 9.1 of the impugned order of Ld. CIT(A) we concur with her views. The findings are logically made in reasonable fair and just manner. With regard to Mechanical Site Material which have been sold and supplied by the assessee to EIL / others save and accept Plastic Feeder Clamps we go by our reasoning and findings which we have made in connection with identical appeal in ITA No. 388/Chd/2012 (supra).

In the premises, we sustain the findings of Ld. CIT(A). This appeal is partly allowed on the same basis as has been done by the Ld. CIT(A).

65. In the result, both the above appeals of the Assessee are partly allowed as aforesaid in respect of impugned orders dt. 30/01/2012 and 16/11/2012.

Order pronounced in the open Court on 19/07/2024

Sd/-

**विक्रम सिंह यादव**  
( VIKRAM SINGH YADAV )  
लेखा सदस्य/ ACCOUNTANT MEMBER  
AG

Sd/-

**परेश म. जोशी**  
( PARESH M. JOSHI )  
न्यायिक सदस्य / JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़ / DR, ITAT, CHANDIGARH
6. गार्ड फाईल / Guard File