

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH  
BENCH 'B' CHANDIGARH**

**BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND  
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA Nos. 602 to 605/CHD/2019  
निर्धारण वर्ष / A.Y. : 2011-12, 2012-13, 2013-14 & 2014-15

M/s Shri Ram Cylinders (Unit-II), Plot No. 10, MW, Industrial Area-I, Chandigarh.	<u>बनाम</u> <u>VS</u>	The ITO, Ward 2(1), Sector 17, Chandigarh.
स्थायी लेखा सं./PAN /TAN No: ABRFS3947G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate and  
Shri A.K.Sood, CA

राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr.DR

तारीख/Date of Hearing : 07.08.2024

उद्घोषणा की तारीख/Date of Pronouncement : 21/10/2024

**PHYSICAL HEARING**

**आदेश/ORDER**

**PER A.D.JAIN, VICE PRESIDENT**

These are assessee's appeals for assessment year 2011-12, 2012-13, 2013-14 and 2014-15 against the common order dated 19.02.2019 passed by the Ld. CIT(A)-1, Chandigarh. As common issues are involved in all these appeals, these were heard together and are being disposed of by this common order.

2. The facts, for convenience, are being taken from ITA No.602/CHD/2024, for assessment year 2011-12. The assessee has taken the following grounds of appeal:

1. *That the learned CIT (Appeals)-I, Chandigarh is not justified in confirming the rejection of claim of the assessee amounting to Rs 27,10,822/- on account of deduction u/s 80IC of the Income Tax Act, 1961 on the plea that the assessee M/s, Shri Ram Cylinders Unit-II does not fulfill the conditions as per clause (4) of Section 80IC of the IT Act, 1961 and also the unit does not have independent existence but has been found to have been constituted and formed by "Splitting up of from the earlier manufacturing-unit of Shri Ram Cylinders.*

2. *The learned CIT (Appeals)-I, Chandigarh has erred in law and facts by denying deduction u/s 80IC in the current year the basis of facts and statements recorded during survey on 26/27.02.2014 i.e. in the subsequent years as each year has to be considered separately and independently for that particular year and there is no adverse finding in the account during the current year.*

3. *The Ld CIT (Appeals)-I has erred in confirming reasons recorded u/s 148 as the reasons recorded for reopening of assessment u/s 148 dated 27.08.2014 are "income against the law and facts of the case and does not amount to chargeable to tax has escaped assessment" as the reasons for reopening of assessment are insufficient and invalid based on incomplete and wrong interpretation of facts during survey operations."*

3. At the outset, the ld. Counsel for the assessee has stated at the Bar that he does not wish to press Ground No.3. Rejected as not pressed.

4. Apropos Ground Nos. 1 and 2, the facts are that the assessee claimed deduction of Rs. 27,10,822/- under Section 80IC of the Income Tax Act. Vide re-assessment order dated 18.03.2016, the AO rejected this claim. The AO held that the assessee was asked vide questionnaire dated 09.02.2016 to furnish the documentary evidence regarding allocation of land and building for running of business/manufacturing activities by Shri Ram Cylinders Unit-I and Unit II

separately. The assessee, in response thereto, furnished reply on 29.02.2016 (Para-I) which is reproduced as under:-

*"The industrial unit started established independent manufacturing facilities in F.Y. 2009-10 at Hilltop Industrial Estate. Jharmairi. EPIP Phase-I (Ext.). Bhatolikalan Baddi. The plot on which the unit is operating belongs to Shri Gulshan Kumar Aggarwal. Shri Arun Kumar Aggarwal and Smt. Kamal Kanta as partners of Shri Ram Cylinders. Shri Ram Cylinders Unit II was established its manufacturing facility as a partnership firm with the same partners Shri Gulshan Kumar Aggrawal. Shri Arun Kumar Aggarwal and Smt. Kamal Kanta in F.Y. 2009-10.*

*... Being same partners in Shri Ram cylinders Unit-I and II the Unit-II was allowed to establish independent manufacturing facility in front half portion of the plot with separate shed, separate machinery, separate gate, separate staff, separate power load and separate registrations under all other acts. There is no restriction on establishing more than one independent manufacturing facility in the same plot. A copy of site plan indicating independent units is enclosed"*

### **AO's Observations**

4.1 The reply of the assessee had been considered by the AO with reference to the material facts available on record and it was found that the assessee had not given any evidence regarding allocation of land and building for running of business/manufacturing activities by M/s Shri Ram Cylinders Unit-I and Unit-II separately. As per the AO's observations, moreover, the assessee had stated that the Unit started establishing independent manufacturing facility in F.Y. 2010-11, which was not true because during course

of survey conducted on 26/27.02.2014 it was found that no separate land was earmarked and no separate building as well was constructed for running of the business of the firm M/s Shri Ram Cylinders Unit-II. The assessee firm Unit-II was formed and established on the land and in the building of firm M/s Shri Ram Cylinders known as Unit-I. No separate section/portion was earmarked for Unit-II in the land and building of Unit-I for running the working of unit-II. Even no rent had been paid by the assessee firm M/s Shri Ram Cylinders Unit-II to M/s Shri Ram Cylinders Unit-I for using its land & building, as no claim of rent expenses paid stands claimed in P&L account in the return of income right from the A.Y. 2011-12, the 1st year of commencement of business.

4.2 Reply to Q.5 of statement of Arun Kumar recorded during survey shows that the assessee firm was created on the same land which was of unit-I.

4.3 Q.5 This premises has a single entry, single shed, common material store, common scrap, common back yard & common office. In view of this, this seems to be a single unit only. What do you have to say in this regard ?

Ans. The unit is owned by Shri Ram Cylinders with Sh. Arun Aggarwal, Gulshan Kumar Aggarwal &

Smt. Kamal Kanta. 2 independent entities are operating from this shed/plot having 2 separate sheds. So many units can be operated from a single plot having different functional area.

The managing partner himself has stated that the unit-1 & unit-11 are merely having some different functional area. He has not been able to establish any independence of these two units as the premises was covered under survey u/s 133A of the Income Tax Act. The site plan is an afterthought because the assessee totally failed during survey operation to explain the independent occupation of land and building by each unit. Thus the contention of the assessee is not acceptable being devoid of facts.

## 2. Gate Pass Entry:

The assessee was asked vide questionnaire dated 09.02.2016 to furnish the proof of gate pass books for the period of 01/04/2010 to 31/03/2011 pertaining to Unit-I and Unit-11. The assessee in response thereto furnished reply on 29.02.2016 (Para-3) which is reproduced as under:-

"There are separate entry/exit gate of each unit. A copy of site plan indicating independent units is enclosed. The units are not maintaining any system of gate pass."

The reply of the assessee has been considered with reference to the material facts available on record and found that the reply of the assessee is not tenable because survey party found on the date of survey that the entry to the firm M/s Shri Ram Cylinders Unit-11 is through the same gate as there is only one entry gate for the land & building of Unit-I ( the already existing firm) and there is no separate gate for Unit-11. Thus the said reply of the

assessee is also devoid of facts and the site plan is just afterthought.

3. Store and Raw material Godown:

The assessee was asked to explain whether it had maintained godown to store raw material and other finished or semi finished goods separately from Unit-I. The proof thereof may be given. The counsel for the assessee stated vide his letter dated 29/02/2016 which is reproduced as under:-

"both the units are maintaining separate godowns for raw material, semi finished goods and finished goods. Both the units are maintaining separate stock for raw material and finished goods as there are marking of assessee's name on raw material coils and on finished goods which are easily identifiable. The finished goods are in the shape of cylinders with engraved marking in the shape of assessee's name. BIS Licence number, batch number, test date and continuous serial number. Every lot is passed by Bureau of India Standards authorities. The main raw material of the unit is MS Coils which are bulky and very big (average weight of MS Coil is 15 to 20 Tonnes per coil) and these are stored under the covered shed outside the manufacturing sheds near the circle cutting machines with distinct markings regarding weight, coil number, heat number which matches with the coil number, weight and serial number in the respective bill and test certificate. The semi finished goods are stored near the machines on

which the process is done in respective manufacturing sheds and the finished goods in the form of Cylinders are stored in the godown area.

4.4 The AO held that the reply of the assessee was in contradiction to the statement of Sh. Arun Kumar Aggarwal, partner of the Firm recorded on the date of survey. The relevant portion is reproduced as under :

*"Q.20 For all the small store items, there is a common store in main shed and a common godown outside whether the store and godown are maintained unit wise or commonly what do you have to say?"*

*Ans:- Yes, it is maintained for all the small hardware items commonly.*

*Secondly, reply to question 14 of the statement of Sh. A.R. Nagvi quoted below also establish that stock and store room were common for both the unit i.e. Unit-I & Unit-II and stock/store of each unit could not be bifurcated.*

*Q.14. You have produced daily report with regard to stock position of all items which are signed by Mr. Navin. Can you bifurcate the stock into both the units? If yes, put up/show stock register of each unit?"*

*Ans:- The daily report of stock position as per the register maintained by Mr. Navin are in respect of both the units w/hich cannot be bifurcated for each unit separately.*

*Therefore, the stock register maintained and produced by Mr. Navin during the course of survey is written up to dated 30.06.2013 and the same is pending till the date of survey, as it is (stock register) is in respect of both the units.*

*As above, the reply of the counsel of the assessee is misleading the facts already on record in the shape of statement of Sh. Arun Kumar Aggarwal and Sh. A.R. Nagvi. Thus on this issue the contention of the assessee is also not acceptable.*

4. No separate employees:

*The assessee, vide this office questionnaire dated 09.02.2016 was asked to furnish the list of employees of unit -I and Unit-II for the year under scrutiny in the following format:*

Sr. No.	Name	of	Nature	of	Date	of	Salary/Wages paid PM
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	<i>Employee</i>	<i>work allotted</i>	<i>appointment</i>	

*In response to the same the counsel for the assessee vide his reply dated 29.02.2016 (Para-5) stated that list of employees for unit-I and II are enclosed.*

*The reply of the counsel of the assessee is not tenable because from the statements of Sh. Arun Kumar Aggarwal, Sh. A.R. Nagvi and Sh. Makhan Lal Verma, the facts emerge that both the units were using common services of the employees. The relevant part of the statements of these persons are reproduced below:-*

*Reply given by Sh. A.R. Naqvi General Manager to question no. 3 of his statement-*

*Q.No. 3 Please give brief profile of your job?*

*Ans.: I am the overall technical incharge of this place for both the Unit-I & II since 2008.*

*From the above quoted three question answers it is evident that the assessee firm was not having its employees separately but the employees of already existing unit-I were working for assessee firm Unit-II also." Further, list of employees submitted during assessment proceedings is contradictory to the evidence in shape of statements recorded during survey. During course of assessment proceedings, list of the employees of the assessee for the period for the financial year 2011-12 was submitted which bears the name of Sh. A.R. Naqvi S/o Sh. Q.R. Naqvi resident of V.P.O. Sirsi, Distt. Muradabad. When the name of this employee is considered with reference to statement of this employee recorded during course of survey, it is found that in reply to question 2 of his statement he has stated-*

*Q.2. How are you associated with M/s Shri Ram Cylinders, Baddi and since when?*

*Ans:- I am working as General manager at M/s Shri Ram Cylinders since 2008.*

*Further in reply to question 3 he has stated that-*

*Q.No. 3:- Please give brief profile of your job?*

*Ans:- I am the overall incharge of this place for both the units- Unit-I & Unit-II since 2008.*

*This statement of Sh. A.R. Naqvi establish that he has been doing the work as overall technical incharge since 2008 when only unit-I was in existence and later on been working in both the Unit-I & Unit-II since 2010( the year when the Unit-II was attempted created). This evidence of statement of Sh. A.R. Naqvi discussed above and the non inclusion of the name of Sh. A.R. Naqvi in the list of employees provided for the period 1st April 2011 to 31st March 2012 for Sh.*

*Ram Cylinders Unit-I establish that the list of employees given by the assessee firm is including false particulars as the employee Sh. A. R. Naqvi of M/s Shri Ram Cylinders Unit-I since 2008 have been shown to be the employee of the assessee firm only. As such the list of the employees submitted for the period under consideration is not accepted but is rejected by holding that this manipulation made in preparing the list of employees by including the false particulars give rise to the factors that the assessee is not eligible for claiming deduction u/s 80IC.*

5. *Use of Assets of Unit-I by Unit-II. :-*

*The assessee vide questionnaire dated 09.02.2016 was asked to furnish the list of assets which owned by Unit-II. Whether any of the asset is shared by Unit-I or not. In response to the above, the counsel for the assessee vide reply dated 29.02.2016 stated that none of the assets of unit -I are shared with unit-II, and also enclosed the list of assets of unit-II.*

*The reply of the assessee is not true because during the course of survey Sh. A.R. Nagvi given in reply to question no. 13 of the statement disclosed that the following assets of Unit-I were used by the assessee firm Unit-II.*

- i) Office premises.*
- ii) Gate pass longue*
- iii) Computers*
- iv) Kitchen*
- v) Canteen*
- vi) Staff quarters*
- vii) Telephone*
- viii) Trucks*
- ix) Land & building*

*It is all evident from the question no. 13 and reply to it as quoted below-*

*Q. Please state about the sharing facilities with corresponding supporting documents alongwith consideration thereof paid/receipt by the other unit.*

*Ans:- There are various items which are shared by both the units which are as under:-*

*ii) Office premises, gate pass longue, computers, kitchen, canteen, staff quarters, accountant, telephone, trucks and land and building are shared by both the units which are shown in the books of Unit-I being the old and first unit and no payment is being paid by Unit -II with respect thereto the other unit. Similarly, the scrap and raw material lying in the store today such as paint, cements, cylinders are also combined for both the units and the same cannot be bifurcated for each such units. It is also clarified that there is no supporting documents in this respect. It may be further clarified that de-color and circle cutting facility is also provided by Unit-I to Unit-II as mentioned in the letter dated 03.03.2009 signed to BIS,*

*Parwanoo and no consideration is being charged or received from Unit-II in this respect.*

6. *Machinery for Unit-II:-*

*The assessee, vide questionnaire dated 09/02/2016 was asked to furnish the list of plant & machinery installed by Unit-II. It was also asked to intimate as to whether any machine is shared by unit-I or not. In response to the same, the counsel for the assessee furnished the reply which is reproduced as under:-*

*"List of Plant and machinery installed by Unit-II is enclosed herewith. No machinery of Unit-II is shared by Unit-I"*

*The reply of the assessee's counsel has been examined and found not true for the following reasons-*

*i) Page No. 13 & 19 of Annexure 47 of loose papers impounded during the course of survey establish that assessee firm Unit-II was using the machinery of already existing firm Unit-I: These pages are the letter written by assessee firm to Bureau of Indian standard and approval given by Bureau of Indian standard, Parwanoo, Distt. Solan (H.P) for sharing the machinery of Unit-I by assessee firm Unit-II. Both these letters dated: 03.03.2009 from assessee firm and dated 05.03.2010 from Bureau of Indian standard giving the approval form part of loose papers impounded during the course of survey as Annexure-47. Further the aspect is much strengthened, by the reply dated 31.12.2014 received from Bureau of Indian Standard in response to information called for u/s 133(6) of the Income Tax Act vide this office letter dated 26.12.2014, as the names given there in the reply appears to be of main basic machinery which is required for performing manufacturing activities and giving result to the final product. In this reply of Bureau of Indian standard, assessee firm Unit-II has been mentioned to be in use (sharing of facilities) of the machinery of Unit-I since 08.03.2010 to 06.06.2011 and even more the test equipments of already existing Unit-I are still being shared by the assessee firm Unit-II till date. For ready reference the reply given by Bureau of Indian Standard is reproduced here as under:*

*Reference is invited to your letter No. ITO/W-2(1)/CHD/2014-15 dated 26.12.2014 on the above subject.*

*As such Shri Ram Cylinders Unit-II has been found and proved to be formed/constituted by splitting up from the already existing firm-M/s Shri Ram Cylinders Unit-I the another firm of the partners of the assessee firm and has been found using plant & machinery being already used by unit-I.*

*(II) Details of purchase of machinery during 2009-10 by assessee firm Unit-II submitted during assessment proceedings do not support*

*the detail of machinery of Unit-II listed on page-34 and page-33 of Annexure 47 of impounded material as on 19.03.2010.*

*During the course of assessment proceedings of AY 2013-14, information of plant & machinery established during the period starting from establishment of assessee firm (Unit-II) was called for along with copies of purchase bills which were submitted by the assessee as such. Copy of details of plant & machinery as date, supplier and bill detail from 01.04.2009 to 31.03.2011 alongwith copies of bills submitted has been perused with reference to the list of manufacturing machinery of Shri Ram Cylinders (Unit-II) forming part of impounded material- Annexure A47(loose papers) at page 34 and page 33 duly signed by Sh. A.R. Naqvi, Authorized Signatory and two other officials on 19.03.2010 which is deemed to be the machinery of assessee firm by 19.03.2010 the date on which it was signed under Seal and Stamp by the incharge officials of the assessee firm and should have been forming the part in the details of purchase of machinery of assessee firm Unit-II as submitted by the counsel of the assessee during assessment proceedings which is not there.*

*Whereas the copy of details of purchase of plant & machinery submitted by the assessee for the period 01.04.2009 to 31.03.2011 referred above reveals that no such machinery items purchased by the assessee firm Unit-II up to 31.3.2010. On the basis of discussion of facts given above it is found that the machinery as detailed at serial no. 1,2,6,11 and 20 of the page 34 and serial no. 23,24,25,27,28,31 and 32 of page 33 of impounded material referred above are important role performer in the manufacturing of the end products of the assessee firm Unit-II, but these machines were not with the assessee firm Unit-II and that assessee was giving result to the productions by using these machines of already existing sister concern of the partners of the assessee firm in the name of M/s Shri Ram Cylinders (Unit-I). All this is sufficient proof that assessee firm Unit-II was working as a split-up from already existing firm M/s Shri Ram Cylinders Unit-I and was acting in contravention of provisions of clause 4 of section 80IC right from starting of its business.*

*(III) Inventory of common machinery used by the assessee firm Unit-II and its already existing sister concern, prepared during survey operation also establish that assessee firm was not valid in existence and in making production by using the machinery of Shri Ram Cylinders Unit-I.*

*During the course of survey proceedings u/s 133A conducted on 26/27.02.2014, Sh. Makhan Lal Verma Maintenance Foreman of the assessee firm made the survey party to prepare inventory of machinery at the business premises of M/s Shri Ram Cylinders Baddi, which was the common machinery being used by both the units that is Unit-I & Unit-II commonly wherein year of purchase has also been mentioned.*

*The facts and reproduction of inventory of machinery reveals that the assessee firm Unit-II was using the machinery of Unit-I and was giving result to its manufacturing activities since the starting year*

*of its commencement of business as the machinery in Question almost relates to purchase year 2007 or 2008, when the assessee firm Unit-II was not in existence. Hence the assessee firm Unit-II comes to be split-up from its already existing sister concern known as Unit-I.*

*As explained above, it is evident that the assessee firm was formed in the name of M/s Shri Ram Cylinders (Unit-II) w.e.f.19.01.2010 and started its commencement of business during the year 2009-10 with the following partners.*

- a) Sh. Gulshan Kumar Aggarwal having 35% share*
- b) Sh. Arun Kumar Aggarwal having 35% share*
- c) Smt. Kamal Kanta having 30% share*

*All the above three partners were already running the firm in the name of M/s Shri Ram Cylinders (here under called as unit-I) since financial year 2008-09 in the same share ratio which was involved in the same business activities of manufacturing of LPG cylinders as were that of the assessee firm M/s Shri Ram Cylinders (Unit-II) Baddi. Thus, assessee is not found eligible for deduction u/s 80IC of the Act as the assessee firm M/s Shri Ram Cylinders Unit-II was created by splitting up from the already existing Unit-I, the sister concern of the assessee having same partners and having been involved in the same manufacturing business activities i.e. manufacturing of LPG cylinders which come evidently proved from the aforementioned factors & facts on record. It further strengthens our claim that the unit-II is not eligible for deduction u/s 80IC of the Income Tax Act, because it has also been found during the survey that new business of the assessee i.e. Unit-II has been found using machinery/plant which was previously being used by Unit-I.*

*Keeping in view the facts discussed above it is seen that the undertaking M/s Shri Ram Cylinders Unit-II, 10, MW, Indl. Area, Phase-1, Chandigarh (Baddi) does not fulfill the conditions as per clause(4) of 80IC of the I.T.Act. The unit does not have independent existence but has been found to have been constituted and formed by splitting up from the earlier manufacturing unit (Unit-I), 10 MW, Indl. Area, Phase-1, Chandigarh which was already being run by the partners of the assessee firm since 2007 because the assessee firm Unit-II was carrying on manufacturing activities by using the employees of Unit-I- 10, MW, Indl. Area, Phase-1, Chandigarh as the assessee firm was not having its independent employees, by using the machinery of Unit-I- as assessee firm was not owning that machinery, by using the other assets of Unit-I- as the assessee firm was not having that assets as its own, by using the godown and stores for raw material and for end products as well of Unit-I ,as there was no separate godown and store of the assessee firm as all proved evidently in above discussions, hence the formations/constitution of assessee firm Unit-II is not held valid since its starting in view of the requirement of the provisions of section 80IC for becoming eligible for deduction.*

*The assessee Shri Ram Cylinders Unit-II, 10, MW, Indl. Area, Phase-1, Chandigarh been considered not eligible for deduction claimed*

*u/s 80IC, hence the assessee firm, for its activities done during the year 2010-11 relevant to A. Y. 2011-12 is held not eligible for deduction claimed u/s 80IC of the Income Tax Act for Rs. 27,10,822/-, on the basis of the factors discussed in detail in the preceding paras. Hence deduction of Rs. 27,10,822/- for A.Y. 2011-12 claimed by the assessee is disallowed. Accordingly an addition of Rs. 27,10,822/- is made to the income of the assessee. Penalty proceedings u/s 271(1)(c) are initiated separately for concealment of income by furnishing inaccurate particulars as discussed above."*

### **CIT(A)'s Findings**

5. By virtue of the impugned order dated 19.02.2019, the CIT(A) confirmed the assessment order and dismissed the assessee's appeal. While doing so, it was held that the AR's submission that no machinery of Unit-II is shared by Unit-I has been duly rebutted by the Ld.AO. If we peruse Page Nos. 13 & 19 of Annexure 47 of loose papers impounded during the course of survey establish that assessee firm Unit-II was using the machinery of already existing firm Unit-I. It is pertinent to mention here that these pages are the letters written by assessee firm to Bureau of Indian standard (BIS) and approval given by Bureau of Indian standard, Parwanoo, Distt. Solan (H.P) for sharing the machinery of Unit-I by assessee firm Unit-II. Both these letters dated: 03.03.2009 from assessee firm and dated 05.03.2010 from Bureau of Indian standard giving the approval form part of loose papers impounded during the course of survey as Annexure- 47. When an information was called from the BIS u/s 133(6) of the Act, the BIS submitted its reply vide dated

31.12.2014 from where it is found that assessee firm Unit-II has been mentioned to be in use (sharing of facilities) of the machinery of Unit-I since 08.03.2010 to 06.06.2011 and even more the test equipments of already existing Unit-I are still being shared by the assessee firm Unit-II till date.

The CIT(A) held that the appellant has claimed that the first commercial manufacturing activity was started in the AY 2010-11 and most of the common machinery is minor machinery and has been used as a precautionary measure for not getting delayed in start of commercial production as there was a time gap between the placement of order and actually delivery of these machines. 'AO during the course of assessment proceedings of AY 2013-14 called for information of plant & machinery established during the period starting from establishment of assessee firm (Unit-II). The AR submitted Copy of details of plant & machinery as date, supplier and bill detail from 01.04.2009 to 31.03.2011 alongwith copies of bills. The AO analysed assessee's submissions with reference to the list of manufacturing machinery of Shri Ram Cylinders (Unit-II) forming part of impounded material-Annexure A-47 (loose papers) at page 34 and page 33 duly signed by Sh. A.R. Naqvi, Authorized Signatory and two other officials on 19.03.2010 which is deemed to be the machinery of assessee firm

by 19.03.2010 the date on which it was signed under Seal and Stamp by the incharge officials of the assessee firm and should have been forming the part in the details of purchase of machinery of assessee firm Unit-II as submitted, by the counsel of the assessee during assessment proceedings.

The CIT(A) held that on the basis of discussion of facts given above the AO has rightly concluded that the machinery as detailed at serial no. 1,2,6,11 and 20 of the page 34 and serial no. 23,24,25,27,28,31 and 32 of page 33 of impounded material referred above are important role performer in the manufacturing of the end products of the assessee firm Unit-II, but these machines were not with the assessee firm Unit-II and that assessee was giving result to the productions by using these machines of already existing sister concern of the partners of the assessee firm in the name of M/s Shri Ram Cylinders (Unit-I). Moreover, AR has not submitted all the bills of plant & machinery pertaining to from the inception of Unit-II.

The CIT(A) held that further, AO has analysed an Inventory of common machinery used by the assessee firm Unit-II and its already existing sister concern, prepared during survey operation also establishes that assessee firm was not valid in existence and in making production by using the machinery of Shri Ram

Cylinders Unit-I. It is undisputed fact that during the course of survey proceedings Sh. Makhan Lal Verma Maintenance Foreman of the assessee firm made the survey party to prepare inventory of machinery at the business premises of M/s Shri Ram Cylinders Baddi, which was the common machinery being used by both the units that is Unit-I & Unit-II commonly wherein year of purchase has also been mentioned.

The CIT(A) held that on perusal of Panchnama dated 20.04.2010 drawn on account of search conducted by the DGCEI Ludhiana Regional Unit, an observation has been made which reads as under:

*"The said Unit was not working at the time of search..... Further, it was revealed Unit-II has not implied any work force so far and they could not produce any attendance register of the same and most of the machinery installed was not affixed to any foundation in earth. On enquiry Sh. Naqvai informed that certain machinery are not required to be affixed to the ground."*

The CIT(A) held that it is clear that the assessee i.e. Unit-II has not started its commercial manufacturing as on 20.04.2010. Assessee is misleading that Unit-II has started its first commercial manufacturing as in Financial Year 2009-10 i.e. as on 31.03.2010. Meaning thereby that two different agencies have independently established the said facts that Unit-II was not working on its own as no commercial manufacturing was found started as on 20.04.2010. There was no separate attendance

register of Unit-II. Above all most of the machinery was not found affixed to any foundation in earth. Assessee has created Second Empire on the foundation of Old Empire. The claim of Ld.AR that plant & machinery of Unit-II was grouted in the floor does not hold good.

The CIT(A) held that the AO of the Unit-I in AY 2012-13 while disallowing depreciation has made following observations:

*"Above reply reveals that the machinery of the assessee firm which was used by the sister concern of the assessee is of plying main role in the process from start of manufacturing to the end of testing of the product and this machinery have been reported to be used by the sister concern of the assessee from 08.03.2010 to 06.06.2011 but the testing equipment are being used till the date of sending the reply by Bureau of Indian Standard. The value of the machinery detailed in above reply is calculated on the basis of facts on record as under:-*

1)	Deep Draw Hydrolic Pres	Rs.	14,00,000/-
2)	Circle Cutting Machine	Rs.	3,00,000/-
3)	Joggling Machine	Rs.	75,000/-
4)	Hydrolic Decoiler	Rs.	7,50,000/-
5)	Roller Conveyer	Rs.	1,00,000/-
		Rs.	26,25,000/-
	Tax	Rs.	3,28,283/-
	Total value	Rs.	29,53,283/-

*As the machinery was allowed to be used by the sister concern of the assessee up to June 2011, the depreciation cost of above machine @15% which comes to Rs.4,42,992/- for the year 2011-12 relevant to assessment year 2012-13 is at least liable to be charged from the sister concern of the assessee to the extent of the use of machinery for three months which comes to Rs.1,10,740/-, specifically in view of the fact that assessee has established business in Himachal Pradesh to be eligible for deduction u/s 80IC for income from manufacturing activities. Assessee is held liable to charge hire charges for allowing the use of its machinery to its sister concern for Rs. 1,10,740/- as discussed above and subject it to tax. Accordingly an addition of Rs. 1,10,740/- is made to the income of the assessee on account of hire charges of machinery."*

The CIT(A) held that if we peruse the details of fixed assets of Unit-II as on 31.03.2010 or 01.04.2010 the total opening balance of Plant & Machinery etc amounts to Rs. 71,67,593/-. Meaning thereby that the percent of machinery used by the assessee unit of the Old Unit-I is at 41.20% which exceeds 20% of the total plant and machinery of the assessee. Hence, appellant is squarely hit by the provisions of section 80IC (4) of the Act.

The CIT(A) held that the above factual positions establishes that when commercial production started in the AY 2010-11 as admitted by the AR, the above machinery pertaining to Unit-I was used by the assessee. Above discussed facts clearly prove that Shri Ram Cylinders Unit-II has been formed/constituted by splitting up from the already existing firm-M/s Shri Ram Cylinders Unit-I the another firm of the partners of the assessee firm and has been found using plant & machinery being already used by unit-I. The AR of the appellant has failed to establish that the Unit-II is not formed by splitting up of a business already in existence as per provisions of u/s 80IC(4) of the Act.

The CIT(A) held that the findings of the Ld.AO are further strengthened by the facts collected by the survey party and

confronted to the appellant during assessment proceedings of all the years i.e. 2011-12 to 2014-15 which are as follows. The Land & Building was not earmarked in the case of Unit-II. No rent has been paid by the current unit. If we peruse the balance Sheet of the appellant no such Land & Building is shown in the Fixed Asset Schedule. To say that Land & building is owned by the partners further strengthens AO's conclusions that the Unit has not started establishing independent manufacturing facility in F.Y. 2009-10 because during course of survey conducted on 26/27.02.2014 it was found that no separate land was earmarked and no separate building as well "was constructed for running of the business of the firm M/s Shri Ram Cylinders Unit-II. The assessee firm Unit-II was formed and established on the land and in the building of firm M/s Shri Ram Cylinders known as Unit-I. No separate space was earmarked for Unit-II in the land and building of Unit-I for running the working of Unit-II. Even no rent has been paid by the assessee firm M/s Shri Ram Cylinders Unit-II to M/s Shri Ram Cylinders Unit-I for using its land & building, as no claim of rent expenses paid stands claimed in P&L account in the return of income right from the A.Y. 2010-11, the 1st year of commencement of business. The Managing partner Sh. Arun Aggarwal himself has stated during the survey operation that the unit-I & unit-II are merely having

some different functional area. Therefore, the site plan is an afterthought because the assessee totally failed during survey operation to explain the independent occupation of land and building by each unit. On perusal of Registered Deed executed and registered on 30.12.2005 with the Registrar Office, Nalagarh, it is found that the said Land is registered in the name M/s Shri Ram Cylinders Unit-I. So it is all the more important that if at all there is establishment of New Unit-II, then it has to pay rent to Unit-I. This fact is not emerging from the record. The facts submitted by the Ld. AR are incorrect.

The CIT(A) held that the survey party found on the date of survey that the entry to the firm M/s Shri Ram Cylinders Unit-II is through the same gate as there is only one entry gate for the land & building of Unit-I ( the already existing firm) and there is no separate gate for Unit-II. Above all both the Units have same Gate Pass Entry. When confronted, the AR has himself admitted that no gate pass in respect of raw material and stock dispatched is issued. He has failed to submit any proof of Gate Pass Book. The Ld. AR has conveniently tried to cover up the main issue which has emerged due to survey operation.

The CIT(A) held that when the AO asked the appellant during assessment proceedings to explain whether it had

maintained "Godown" to store raw material and other finished or semi finished goods separately from Unit-I. The proof thereof may be given. The Ld. AR argued that both the units are maintaining separate godowns for raw material, semi finished goods and finished goods. But the reply of the AR is devoid of any fact in the light of the statement of Sh. Arun Kumar Aggarwal, the Managing Partner of the Firm recorded on the date of survey. He stated that the store and godown are maintained for all the small hardware items commonly. In reply to Question No.14 of the statement of Sh. A.R. Naqvi stated that the stock and store room were common for both the unit i.e. Unit-I & Unit-II and stock/store of each unit could not be bifurcated. Even Mr. Navin, Store Incharge has stated in answer to question No.5 that the daily report of stock position as per the register maintained by him are in respect of both the units which cannot be bifurcated for each unit separately. This stock register is maintained and produced by Mr. Navin during the course of survey was written up to dated 30.06.2013 and the same is pending till the date of survey, as it is (stock register) is in respect of both the units. The AR has failed to rebut these facts.

The CIT(A) held that during survey it was found that same employees are used for both the units. When asked by the AO to

submit details of employees of unit -I and Unit-II for the year under scrutiny in the following format:

<i>Sr. No.</i>	<i>Name of Employee</i>	<i>Nature of work allotted</i>	<i>Date of appointment</i>	<i>Salary/Wages paid PM</i>

The AR submitted separate lists for both the units. But he has failed to rebut the various statements given by Sh. Arun Kumar Aggarwal- the Managing Partner, Sh. A.R. Naqvi and Sh. Makhan Lai Verma. The facts emerged from their statements are that both the units were using common services of the employees. In reply given against Question No. 21 Sh. Arun Kumar, Managing Partner that he cannot name or identify "A Few" employees of each unit. Similarly in reply given by Sh. A.R. Naqvi General Manager to question No. 3 of his statement, it is emerging that he is the overall technical Incharge of this place for both the Unit-I & II since 2008. From the quoted statements, it is evident that the assessee firm was not having its employees separately but the employees of already existing unit-1 were working for assessee firm Unit-II also. The details provided about employees during assessment proceedings do not match with the content of the statements. For example in the list supplied during assessment proceedings for the financial year 2011-12 the name of Sh. A.R. Naqvi S/o Sh. Q.R. Naqvi resident of V.P.O. Sirsi, Distt. Moradabad is included in the UNIT-II employees. But in reply to

question 2 & 3 of his statement he has stated that he is working as General manager at M/s Shri Ram Cylinders since 2008 and that he is overall technical incharge of this place for both the units i.e. Unit-I & Unit-II since 2008. The AR has failed to rebut this bare fact during appellate proceedings.

The CIT(A) held that on asking to furnish the list of assets which are owned by Unit-II and whether any of the asset is shared by Unit-I or not by the AO, the AR has categorically submitted that none of the assets of unit -I are shared with unit-II, and also enclosed the list of assets of unit-II. But on the other hand, during survey proceedings in responses to Question No. 13, Sh.A.R. Naqvi disclosed in his statement that the following assets of Unit-I were used by the assessee firm Unit-II, (i) Office premises, (ii) Gate pass longue, (iii) Computers, (iv) Kitchen, (v) Canteen,(vi)Staff quarters, (vii)Telephone, (viii) Trucks, and (ix) Land & building.

The CIT(A) held that on the basis of these facts, the Ld. AO has rightly concluded "Office premises, gate pass longue, computers, kitchen, canteen, staff quarters, accountant, telephone, trucks and land and building are shared by both the units which are shown in the books of Unit-I being the old and first unit and no payment is being paid by Unit -II with respect to the other unit.

Similarly, the scrap and raw material lying in the store today such as paint, cements, cylinders are also combined for both the units and the same cannot be bifurcated for each such units. It is also clarified that there is no supporting documents in this respect." It may further be clarified that de-color and circle cutting facility is also provided by Unit-I to Unit-II as mentioned in the letter dated 03.03.2009 of the BIS, Parwanoo and no consideration is being charged or received from Unit-II in this respect. When a survey is conducted on a place, the survey party has to prepare the list as per claim of the assessee and as per return filed by the entity. This procedure cannot be used as an evidence by the AR in his favour. The content of the matter emerges only after completion of survey and understanding the facts in holistic analysis. Mere brushing aside the list of facilities commonly used as supporting services does not help assessee to rebut AO's claim. The emphasis by the Ld. AR on rejection of books of accounts also does not hold good as this is not required as per provisions of section 80IC (4) of the Act. No person whose statements were recorded under oath has ever retracted from his or her statement be it Sh. Arun Kumar Aggarwal, the Managing Partner, or Sh.A.R. Naqvi, General Manager, or Sh.Makhan Lal Verma, Supervisor/cashier etc. Further, it is AO's duty to follow a consistent stand on an issue for all the years where common

issue is involved. It is in these facts and circumstances, the AO cannot consider each year a separate year. In the light of detailed discussion above, the Ld.AR has failed to establish that the assessee unit is out of the ambit of provisions of section 80IC (4) of the Act. The addition made by the AO is confirmed. The Grounds of Appeal Nos.2 & 3 are dismissed.

### **Our Findings**

6. Heard. The question is as to whether the authorities below have rightly held the assessee not eligible for deduction under Section 80IC of the Act, as it did not fulfil the conditions contained in Section 80IC(4) of the Act.

Section 80IC(4) reads as follows :

*"[Special provisions in respect of certain undertakings or enterprises in certain special category States.*

**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).*

.....

**(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 80-1 A 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.*

6.1 For our purposes, Section 80IC(4)(i) is relevant, since the authorities below have held that the assessee was formed by the splitting up of a business already in existence.

6.2 The background facts are that the assessee is a partnership firm of Unit-II having partners Shri Gulshan Kumar Aggarwal, Shri Arun Kumar Aggarwal and Smt. Kamal Kanta. The firm came into existence w.e.f. 19.01.2010 for the purpose of manufacturing LPG Cylinders at village Bhatolikallan, Baddi in Himachal Pradesh. The premises in which Unit-II was established belongs to Shri Gulshan Kumar Aggarwal, Shri Arun Kumar Aggarwal and Smt. Kamal Kanta as partners of Shri Ram Cylinders, which was established as a separate independent industrial unit for manufacturing LPG cylinders at half back side of the shed. The AO denied the deduction claimed by the assessee after action u/s 133A of the Act in February 2014, it was found that the New Unit-II has been established by splitting up the Old Unit-I. The basis of his conclusion is that the same land & building, store & raw material Godown, Gate Pass Entry and above all, Machinery and employees have been used for establishing the new unit.

6.3 The CIT(A) confirmed the assessment order.

7. The Ld. CIT(A), it is seen , has held the assessee not to be eligible for the deduction claimed, on the following four points:

1. Plant and Machinery of Unit-I used by Unit-II on the basis of permission given by BIS.
2. Use of Land and Building belonging to Unit-I used by Unit-II, common gate, common godown and no rent charged
3. Common employees
4. Use of common facilities

8. **Use of Plant and Machinery of Unit-I by the assessee Unit-II**

8.1 Now, so far as regards the first issue, the Ld. CIT(A) has held the assessee to have utilized the Plant & Machinery of Unit-I. In this regard, it has been observed that permission was sought by the assessee for this from Bureau of Indian Standards (BIS), vide letter dt. 03/03/2010 and such permission was granted by BIS. As per the Ld. CIT(A), information was called for under section 133(6) of the Act from BIS. This information revealed that the assessee (Unit No. II of Shri Ram Cylinders) was sharing the machinery of Unit No. I from 08/03/2010 to 06/06/2011. The assessee contends that such finding is entirely a result of misinterpretation of dates. It is seen that the Partnership Firm of the assessee was formed [APB-1 page 103-106] on 19/01/2010. The permission was sought (APB-1 pages 238-241) vide letter dt. 03/03/2010 from BIS for the use of certain machinery of Unit-I. It is this date which has wrongly been mentioned as 03/03/2009. Importantly, no opportunity in this regard was afforded

to the assessee. The permission was granted by the BIS, for the period from 08/03/2010 to 06/06/2011 , vide letter dt. 05/03/2010. As available from APB-2, page 307, trial production was done by the assessee on 31/03/2010, whereas according to APB-2 page 308, commercial production commenced from 07/12/2010. The deduction claimed by the assessee was available to it from 2011-12 onwards. So, no deduction was claimed by the assessee for A.Y. 2010-11. All concerned registrations were granted to the assessee from 31/03/2010 to 07/12/2010. The bill for the first commercial production was issued on 07/12/2010, after installation and commissioning of all the machinery meant for manufacturing of cylinders. As such, it was only minor machinery and the assessee cannot be said to be wrong in contending so, for which, the permission was sought from the BIS further, as per the details available, as filed before both the authorities below. Even then minor machinery was purchased by the assessee prior to commencement of commercial production. According to this detail:

Machinery	Amount	Purchase date
Deep Draw Hydraulic Press	14,00,000	30.03.2010
Circle Cutting Machine	3,00,000	
Joggling Machine	75,000	
Hydraulic Decoiler	7,50,000	19.09.2010
Roller Conveyer	1,00,000	27.03.2010
	26,25,000	
Tax	3,28,283	
Total Value	29,53,283	

8.2 From the above, there is nothing available on record to show that the assessee was, in fact, utilizing machinery of Unit-I.

8.3 The Ld. CIT(A) has held that the machinery of the assessee was installed as on 19/03/2010. The said conclusion has been arrived at by comparing the material impounded, i.e, loose papers, Annexure A-47 (APB 33 & 34) with the list and details of machinery furnished by the assessee during the assessment proceedings as well as before the Ld. CIT(A). In fact, 19/03/2010 is the date on which the seal and stamp of the assessee's incharge, were appended. The details of the machinery installed as on 31/03/2010 and 31/03/2011 is in accordance with the assessee's balance sheet (APB-2, page 303-306), for the period ending 31/03/2010 and balance sheet (APB-1, page 12-17) for the period ending 31/03/2011, respectively. Paper Book-1, page 242-286 contain copies of complete details of the machinery as on 31/03/2011 and copies of the bills. Then, APB-128 to 130 is a list of machinery of the assessee and APB 125-127 is the list of the machinery for the assessee, i.e, Unit -II. These lists were prepared by the Department itself during the survey. Therein, all main machines employed for manufacturing have been clearly mentioned. This itself goes to show that both the units are using independent separate machinery. So much so, even the Transformers and DG Sets are distinct for the two units. Further, as stands identified by the survey party itself, the main machines, like Circle Cutting Machines, D-

Coiler, Hydraulic Press, Power Presses, Mig Weilding machines and other items are employed parallely by both the untis. Still, even in the face of this documentary evidence, particularly the lists , which cannot be doubted, having not been disputed to have been prepared by the survey team at the time of survey.

8.4 Though the Ld. CIT(A) has observed that the assessee did not submit all the details of the Plant & Machinery pertaining to the period from its inception, as noted hereinabove, commercial production of the assessee began from 07/12/2010. Grant of permission by BIS, on 05/03/2010, for the use of some minor machinery of the Unit-I by the assessee for trial run, during the setting up of the machinery required for commercial production, was for the period from 08/03/2010 to 06/06/2011. As considered hereinabove, the details of the machinery account, alongwith bills had duly been filed by the assessee. This being so the observation made by the Ld CIT(A) has no legs to stand on.

8.5 The Ld. CIT(A) has observed, from an analysis of the inventory of common machinery used by the assessee, prepared at the time of survey, that according to the statement of Shri Makhan Lal Verma, Maintenance Foreman, the machinery list was mainly machinery of the year 2007, which was used by both the units. As noted hereinabove, during the survey proceedings, the survey team prepared separate list of Plant & Machinery installed at both the units. This list

includes separate parallel machineries used by both the units for the production in each ground separately. The list of common machineries was also separately prepared (page 131) by the survey team. This includes mainly scrap minor machineries, to a large extent of the assessee of Unit-I and parallelly of the assessee. These machineries as follows:

	Name	Qty	Year of Purchase
1	Crane	1	2008
2	Power Press	6	2007/12
3	Ring drill Machine	1	2007
4	Pipe Coiling Machine	1	2007
5	Ring Grinder	1	2007/10
6	Ring Cutting Machine	1	2007
7	Ring Press Machine	1	2007
8	Mig Welding Machine	4	2007/10
9	Arc Welding Machine	2	2007
10	Furnish oil pump	1	2007
11	HSS Pest	1	2007
12	Fartik Pest	1	2007

8.6 The details of the above machineries shows that as compared to Crane (Sr. No. 1), the rest of the machineries are of much lesser value. This Crane, also, is not a machinery required for production, which, in the assessee's case, is LPG Cylinders.

8.7 The Ld. CIT(A) has, further, made reference to the search conducted by the DGCEI, Ludhiana Regional Unit, particularly with regard to Panchnama dt. 20/04/2010, observing that the unit was not working at the time of search, i.e. on 20/04/2010. Now, as noted

hereinabove, the commercial production of the assessee got started only on 07/12/2010, since prior to that, this complete machinery had not been installed. Rather, at that time, the assessee was in the process of getting itself registered with various Government Authorities. 20/04/2010 is a date prior to 07/12/2010. Therefore, obviously, the unit was not working as on that date. Undisputedly, the first bill for the sale from commercial production was issued on 07/12/2010. The commercial production, as such, began in the later half of the A.Y. 2011-12. To reiterate, as has also not been disputed, no deduction under section 80IC of the Act was claimed for the A.Y. prior to that year, i.e. for A.Y. 2010-11. It is a further observation of the Ld. CIT(A) that the assessee had misleadingly stated that it had started its first commercial production as on 31/03/2010, i.e, in F.Y. 2009-10; and that no commercial manufacturing was found as on 20/04/2010 and most of the machinery was not found fixed to the foundation. Now, once, as observed hereinabove, as on that date, the assessee had not installed the entire machineries, such complete machineries could not have been found affixed to the ground and commercial manufacturing could not have been started by then. To reiterate, it started only on 07/12/2010, as is evident from the first bill of sale from the commercial production(supra). In this regard, as available from the APB-1, page 245, the total machinery purchased up to 31/03/2010 was of Rs. 71,67,593/-. It was later, that more

machinery was purchased, as can be seen from pages 245 to 248, before commencement of commercial production. The observation of the Ld. CIT(A) is without basis, since the assessee was in the process of installation of machineries.

8.8 The next observation of the Ld. CIT(A) is with regard to disallowance of depreciation of three months, i.e., upto June 2011, amounting to Rs. 1,10,740/- (1/4<sup>th</sup> of 15% of Rs. 29,53,328/-) for A.Y. 2012-13, during the assessment of Unit-I, for machineries used by the assessee. Concerning this, scrutiny assessment orders (APB-3, pages 310-324) Unit -I, for A.Y-s 2012-13 to 2014-15, dt. 18/03/2015, 18/03/2016 and 26/12/2016, respectively are on record. These orders were passed after survey was conducted on both the units. Unit -I was also availing deduction under section 80IC of the Act, which was allowed for all these three assessment years. For A.Y 2012-13, depreciation was allowed for three months, upto June 2011, for machineries used by the assessee. The disallowance was a presumptive disallowance. It was the aforementioned BIS letter dt. 05/03/2010 , which formed the basis of such presumptive disallowance. This letter, to remind oneself, permitted the use of machineries of Unit -I by the assessee. However, as rightly stated and not rebutted, it was merely the permission for use. There is nothing on record, on the other hand, to establish the actual use by the assessee of the machineries of Unit-II during the said period, but for the minor

machineries, as discussed. The actual date of purchase of machineries required for manufacture by the assessee was undisputedly much prior to 07/12/2010, the date of commencement of commercial production. The observation made by the Ld. CIT(A) is not based on the correct facts.

8.9 The Ld. CIT(A) has observed that the details of the fixed assets of the assessee as on 31/03/2010, or 01/04/2010 shows that the total opening balance of Plant & Machinery, etc., amounted to Rs. 71,67,593/-; that this meant that the percentage of machinery of Unit-I used by the assessee was 41.20%, which exceeded 20% of the total Plant & Machinery of the assessee, attracting the provisions of Section 80IC(4) of the Act. Again, as taken note of in the preceding paragraphs, as on 31/03/2010, the machinery installed was of this amount, i.e., of Rs. 71,67,593/-. The Partnership Firm, as taken note of, was established on 19/01/2010 . From this itself, it cannot be imagined that the assessee could have gone into commercial production by 31/03/2010, within two months and ten days of its coming into existence. To state again, undisputedly, deduction under section 80IC was claimed for the first time in A.Y. 2011-12. Thus, for A.Y. 2010-11, since it was not due, no deduction under section 80IC was claimed.

8.10 The Ld. CIT(A) has also observed that the AR of the assessee admitted that when commercial production started in A.Y. 2010-11,

machinery of Unit-I was used by the assessee; that this proves that the assessee Unit-II was formed by splitting up from the already existing firm, M/s Shri Ram Cylinders Unit-I. In view of the elaborate discussion made hereinabove, this observation of the Ld. CIT(A) is entirely baseless. The assessee, we find, on the basis of the cogent documentary evidence discussed in the preceding paragraphs, is entirely an independent unit, having not been formed by splitting up of Unit-I. This was a wholly new unit involving fresh investment in Plant & Machinery, leading to additional capacity in the national economy, as well as enhancement in gross domestic production, which, evidently, are pre-conditions for seeking to avail deduction under section 80IC of the Act, as envisaged by the legislature. It is a deduction to support industrial unit existing solely on its own, as a viable unit. The physical identity of the old Unit-I is not at all shown to have been carried over in the assessee's fresh unit and the undertaking has not been proved as having been formed out of the existing business. There is no transfer of any asset of the old business to the new undertaking indicating any reconstruction or splitting of the old business. There has been substantial employment of new capital, which is a pre-condition for becoming eligible for availing deduction under section 80IC. As available from APB page14, which, again, remains unchallenged however, capital of Rs. 2,49,19,000/- has been infused to establish the new unit. The investment in the new

machinery was of Rs. 1,67,89,202.78, as is available at APB page 16, before depreciation as on 31/03/2011. The depreciation chart showing such depreciation is at APB-1, pages 144-155. The Schedules of fixed assets of both the units does not show the transfer of any asset from Unit-I to the assessee Unit -II. Too, both the units have been independently formed under independent partnership deeds. Each of them operates under different manufacturing facilities. There are different independent sheds. There are independent machineries. Both Unit-I and Unit-II stand registered as separate SSI Units. They have separate distinct Excise Registration and Sales Tax Registration. Their PANs are different. They have different individual licenses under the Factories Act. The Pollution Control Board has registered both the units under different registrations. There are separate power connections. The licenses under the Chief Controller of Explosives are also separate. The BIS Registrations are also distinct. There is separate ESI Registration. The PF Registrations are also separate and distinct. Both the units are separately registered as vendors of all the different three oil companies. All in all, both the units are inter se independent distinct individual manufacturing units.

8.11 For the above discussion, we do not agree with the findings recorded by the Ld. CIT(A) qua the issue of Plant & Machinery of Unit-I being employed by the assessee Unit-II. The order under appeal is, therefore, un-sustainable on this and we hold so.

9. **Use of Land and Building of Unit –I by the assessee Unit-II**

9.1 The Ld. CIT(A) has held the assessee Unit-II of M/s Shri Ram Cyilinders to be not entitled to the benefit of deduction under section 80IC of the Act since according to the Ld. CIT(A), the assessee has put to use Land & Building of Unit-I, with common gate, and a common godown and for the reason that no rent was charged there-for. It has been observed that the site plan is an afterthought and no separate land was earmarked. It has been observed that Shri Arun Aggarwal, partner stated that both units were having different functional areas. It was observed that the Registered deed of the land is in the name of only Unit-I.

9.2 In this regard, it remains undisputed that as per the details prepared separately for both the Units by the survey party, there are two distinct demarcated sheds with entirely independent distinct machineries installed, with independent power connections and independent generator sets in those sheds. Some of the heavy machineries, like Deep Draw press, Heavy power presses, Generator of 380KVA each are grouted on the ground with foundation. All these are registered with the three oil companies, and the BIS, besides other concerned Government departments.

9.3 The conditions laid down under section 80IC(4) of the Act, as correctly stated stand fulfilled, making no mention of the assessee being the owner of the building concerned. That being so, the non-

charging of rent does not erase the otherwise eligibility of the assessee's claim of deduction under section 80IC(4). There is otherwise no interlacing or intermixing in the sense that there are independent sheds and employment of independent manufacturing machineries by both the Units.

9.4 The factum of Shri Arun Aggarwal, partner having stated in his statement that both the Units are having different functional areas goes in favour of the assessee rather than against it. As observed, both the Units are separate independent Unit interse. There are separate bills of machineries, as listed by the survey party itself during the survey.

9.5 Apropos the observation that there was only one gate for the land and building of both the units, the same is not detrimental to the claim of the assessee. It is on record that both the Units have separate gates and separate entries to the sheds. So far as regards the question of non-issue of gate passes, again, it is on record that in respect of raw material and stock dispatched, there is no gate pass. The material is recorded directly in the records of the respective firms. Otherwise, separate inward material and outward material register are maintained by both the Units. This is available from APB-1 page 107-109, i.e. the documents impounded as well as the list of books. There is a layout plan (APB-1 page 139-143). Such layout plan is both a combined lay out plan and a separate layout plan for both Units. APB-

134-136 contains list of stock of Unit-I, whereas there is a list of stock of the assessee Unit-II, at APB-137-138. These documents, undisputedly, were made available before both the authorities below. Else, it has not been shown that the assessee would be disentitled for the deduction claimed for the same gate for Land & Building for both Units, or for non issuance of gate pass.

9.6 The Ld. CIT(A) has further observed that in the statement of the partner, it has been mentioned that there is common godown to store raw material and finished and semi finished goods, for small hardware items. It has also been observed that even the employees stated that there is a common store and stock room for both units and that there are common stock and record of both Units.

9.7 Here, it has not been opposed that both Units maintained separate stock and stock register for raw material and finished goods. There are markings on raw material, coils and finished goods, which clearly distinguish them in the Units interse. The finished goods, i.e., cylinders, bear engraved markings, i.e. the Unit name, BIS License number, batch number, test date and continuous serial number. The BIS passed every lot of cylinders. The MS coils, which is the chief raw material for the cylinders produced, are very bulky. They are stored in the covered sheds located outside the manufacturing sheds. These MS coils weigh 15 to 20 tons per coil. They bear distinct markings

indicating weight, coil number, wight number, which match with the coil number and weight and serial number in the respective bill and test certificate. The manufacturing process is carried out separately for the two Units and the respective cylinders are stored in the godown areas. Scrap is stored in the open backyard of the Units. It is identified by weight. The HR coils, the chief raw material, is stored in the open under the temporary shed located outside the main shed. Undisputedly, stock taking was done by the survey party. They prepared separate lists of raw material and finished goods for both Units. This was possible since the raw material as well as stock of finished goods were identifiable separately, with separate markings. In his statement Mr. Sandeep stated that entries of stock are in separate register. APB-1, pages 156-234 shows different registers. APB-1, pages 107-109, i.e. list of books and documents impounded shows separate inward material and outward material registers being maintained by both the Units. APB-1, pages 133-138 contain the separate list of stocks for both Units.

9.8 In view of the above, the overwhelming documentary evidence was illegally ignored by the Ld. CIT(A) while making unsustainable observations in this regard. Such documentary evidence stands unrebutted all through. In view of this, finding no force therein, the observations of the Ld. CIT(A) on this issue are rejected.

## 10. **Common Employees**

10.1 The Ld. CIT(A) observed that it was evident from the statement, that the employees of the already existed Unit-I were working for the assessee also; that the details about the employees, as were provided before the AO, did not match with the contents of the statement, for instance, for F.Y. 2011-12, in the list supplied before the AO, the name of Shri A.R. Naqvi S/o Shri Q. R. Naqvi, R/o VPO Sirsi, Dist. Moradabad was included in the Unit-II employees, whereas in replies to Question Nos. 2 & 3 of his statement, he stated that he was working as General Manager at M/s Shri Ram Cylinders since 2008 and that he was the overall technical incharge of this place for both the units since 2008. The Ld. CIT(A) observed that the Ld.AR of the assessee had failed to rebut this before him.

10.2 The statement of the assessee in this regard has been, and this is not rebutted, that there are separate employees for both the independent Units, but in case of emergencies and exceptional circumstances, some workers work for both Units. There is no contradiction in the list of employees which was submitted in the assessment proceedings and the statement recorded during the survey. The survey was conducted on 26/27.02.2014. The year under reference is A.Y. 2012-13. The AO rejected the list of employees working during the A.Y. 2012-13 without any further verification /

observation, only on the basis of the statement of some employees, recorded on 26/27.02.2014. Even as at the time of the survey, both the Units had separate employees working for them. Shri A.R. Naqvi was working as an employee of Shri Ram Cylinders till December 2009. It was subsequently that he got employment with Unit-II, from January 2010. This is the deposition of Shri A.R. Naqvi, before the survey team at the time of survey. Evidently, there is no contradiction interse between this statement and the list of employees. Otherwise, he being an employee of Unit-II at the relevant time, inclusion of his name in the list of employees for the period from 01/04/2011 to 31/03/2012, considering Unit-1 cannot be said to be incorrect. All these facts, as available from the record, have not been objected to, nay successfully contradicted at the hands of the department before us. Moreover, the use of some employees of the other Unit by the assessee Unit in emergency and exceptional circumstances does not alter the position that the manufacturing facility of both the Units are independent of each other and there is no interlacing interse which was detrimental to the claim of deduction. Further, even otherwise, it is not unlikely that some employees might simultaneously be working at the same time in the two different Units. In the assessment orders (supra), of Unit-I for A.Y's. 2012-13, 2014-15, the deduction under section 80IC was allowed. There was disallowance of 50% of the salary

of Shri A.R. Naqvi and Shri Makhan Lal , the AO being of the view that they were working for both the Units, for A.Y. 2012-13 and 2013-14.

10.3 For the above discussion, based on cogent documentary evidence, which remains unrebutted, the conjectural and surmistical observations made by the Ld. CIT(A) qua this issue are rejected.

#### 11. **Use of Common facility**

11.1 The Ld. CIT(A) confirmed the conclusion of the AO that office premises, gate pass lounge, computers, kitchen, canteen, staff quarters, accountant, telephone, trucks, land and building are shared by both the Units, as in the books of Unit-I, and that no payment is being made by Unit-II(the assessee) to Unit-I. Now, undisputedly, these are merely supporting services. They have no direct connection with the manufacturing process of cylinders, as carried out by both the Units. Land & Building, however, may be acquired on rent. Thus, non payment of rent of the supporting services does not disentitle the assessee to its claim of deduction under section 80IC, the manufacturing activity of the assessee, as considered hereinabove, being entitled independent of the manufacturing activity of Unit-I. In the assessment orders (supra) of Unit-I, for A.Y 2012-13 to 2014-15 , the deduction was allowed. The additions of minor discrepancies were made. The presumptive addition was made on account of rent. This

cannot form the basis for disallowance of deduction claimed under section 80IC.

11.2 So, even with regard to this issue, the order of the Ld. CIT(A) is found to be unsustainable and qua this issue also, the disallowance made is rejected.

11.3 In “Textile Machinery Corporation Ltd. Vs. CIT”, (1977) 107 ITR 0195 (SC), it has been held that reconstruction of business involves the idea of substantially the same persons carrying on substantially the same business in order to be entitled to the benefit [(under section 15C of the 1922 Act) (Section 80J of the 1961 Act)]. The assessee would have to establish investment of substantial fresh capital in the industrial undertaking setup, employment of requisite labour therein, manufacture or production of articles in the said undertaking, earning of profits clearly attributable to the said new undertaking and above all, a separate and distinct identity of the industrial set up.

11.4 Our elaborate decision on the four issues raised by the Ld. CIT(A) clearly brings the assessee within the parameters laid down by the Hon’ble Supreme Court in case of ‘Textile Machinery Corporation Ltd. Vs. CIT’ (supra). This decision was followed by the Hon’ble Supreme Court in case of ‘CIT Vs. M/s Indian Aluminium Co. Ltd.’, (1977) 108 ITR 0367 (SC). ‘Textile Machinery Corporation Ltd. Vs. CIT’

(supra) has been followed by the Hon'ble Jurisdictional Punjab & Haryana High Court in case of 'M/s Oswal Woollen Mills Ltd. Vs. CIT', (1982) 138 ITR 0338. The Coordinate Chandigarh Bench of the Tribunal has also followed 'Textile Machinery Corporation Ltd. Vs. CIT' (supra) in case of 'ITO, Baddi Vs. M/s Yash International Inc.', vide order dt.23/11/2012 (assessee's case law paper book pages19-29), for A.Y. 2007-08, in ITA No. 1012/Chd/2011. Further, in 'CIT Vs. Metropolitan Springs(P) Ltd.', (1991) 191 ITR 0288 (Bom), while, under similar circumstances, holding the assessee to be entitled to deduction under section 80J, it was observed that the mere fact that a part of the premises used by the old undertaking was used for the new industrial undertaking also, or that some members of staff were common does not make any material difference in the situation.

11.5 No contra decision has been cited before us on behalf of the Department.

11.6 In view of the above, finding the grievance sought to be raised by the assessee to be justified, the same is hereby accepted. The order under appeal is hereby set aside and cancelled.

12. In the result, the present appeal of the Assessee is allowed.

13. Both the parties fairly submitted that the facts and circumstances of the cases in ITA nos. 603 to 605/Chd/2019 are identical and, therefore, our findings and direction in ITA No. 602/Chd/2019 shall apply *mutatis mutandis* to these appeals and the appeals of the assessee are allowed.

Order pronounced on 21/10/2024

**Sd/-**

**(VIKRAM SINGH YADAV)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(A.D.JAIN )**  
**VICE PRESIDENT**

“AG”

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

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

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar