

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCHES, NEW DELHI  
(CIRCUIT BENCH AT MEERUT)**

**BEFORE SHRI I. C. SUDHIR, JUDICIAL MEMBER AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.7057/Del/2014  
(Asstt. Year: 2010-11)**

<p style="text-align: center;">Bal Kishna C/o. M/s. Malik &amp; Co. (Advocate) 305/7, Thapar Nagar, Meerut City, Uttar Pradesh PAN:AAYPK1788R <b>(Appellant)</b></p>	Vs.	<p style="text-align: center;">ITO, Ward-1(1), Meerut <b>(Respondent)</b></p>
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**ITA No.678/Del/2015  
(Asstt. Year: 2010-11)**

<p style="text-align: center;">ITO, Ward-1(1), Meerut <b>(Appellant)</b></p>	Vs.	<p style="text-align: center;">Bal Kishna C/o. M/s. Malik &amp; Co. (Advocate) 305/7, Thapar Nagar, Meerut City, Uttar Pradesh PAN:AAYPK1788R <b>(Respondent)</b></p>
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Date of hearing	17/12/2015
Date of pronouncement	15/03/2016
Assessee by:	Sh. Sanjay Malik, Adv
Revenue by:	Sh. Bharat Bhushan Garg, Sr. DR

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. These are appeals filed by the assessee and revenue against the order of Id CIT(A), Meerut dated 20.11.2014 for the Assessment Year 2010-11.
2. The assessee has raised the following grounds of appeal:-

1. *That the process of production employed by the Appellant fully established the claim that raw material i.e. menthol oil was converted into crystals and end product was different in nature than the raw material. Thus on facts and in law the appellant was fully entitled to deduction u/s 80 IB of IT. Act.*
  2. *That the Ld. CIT(Appeals) went wrong on facts and in law to affirm that no manufacturing activity has been undertaken by the appellant in the previous year relevant to the Assessment year 2010-11 thereby upholding the addition of Rs.9,62,780/-.*
  3. *The findings recorded by the Ld. Assessing Officer/CIT(Appeals) deserve to be quashed and cancelled being void, illegal and untenable on facts and in law and accordingly the deduction claimed U/s 80 IB of the IT. Act deserves to be allowed.*
  4. *That on facts and in law interest U/s 234B, 234C and 234D was not chargeable. The levy of interest under the said provision deserves to be quashed being void, illegal, without jurisdiction and untenable on facts and in law.”*
3. The revenue has raised the following grounds of appeal as under:-
- “1. *Whether in the light of facts and circumstances of the case, the Ld. CIT(A) has erred in law and facts in deleting the addition of Rs.18,25,000/- made by the A.O. on account of deemed dividend income u/s 2(22)(e) of the I. T. Act, 1961, holding that entire advance given by the payer company to the assessee, who is the Managing Director having substantial interest in the payer company, was in the nature of business advance by simply relying upon the version of the assessee and without examining the number and volume of such business transaction taken place vis-a-vis extent of advance given under the garb of said business transaction.*
  2. *Whether the Ld. CIT(A) erred in law in appraising the facts of the case when there was a detailed discussion of the said facts on record on the issue of addition of Rs. 18.25.000/- as deemed dividend u/s 2(22)(e) of the I. T. Act, 1961.*
  3. *Whether the Ld. CIT(A) erred in law and facts in not considering and ignoring the entire evidence marshaled by the A.O. during the assessment proceedings.”*
4. The brief facts of the case is that the assessee is an individual carrying business as proprietor of firm engaged in manufacturing of menthol under the name of M/s. Champion Flavors. He has also shown income from salary. He filed his return of income on 31<sup>st</sup> July 2010

showing income of Rs. 197180/- and agricultural income of Rs. 21,750/-. During the course of assessment proceedings it was found that the assessee has claimed deduction u/s 80 IB of the Act of Rs. 962780/- being profit derived from carrying on the manufacturing activity of menthol crystal. However ld. AO noted that the assessee has not undertaken any manufacturing activity during the year and therefore denied deduction u/s 80IB of the Act. Against this the assessee preferred an appeal before the ld CIT (A) who in turn upheld the action of AO holding that no manufacturing activity has been undertaken by the appellant for the previous year. During the course of assessment proceedings it was also found that the assessee has taken a loan of Rs.1825,000/- from M/s. Gabs Labs Pvt. Ltd. wherein the assessee is Managing Director and holding beneficiary shares of more than 20% in that company. Therefore the AO made an addition u/s 2(22)(e) of the Act of Rs. 1825,000/- as deemed dividend income of the assessee. On appeal before the ld CIT(A) the addition of Rs. 18 25000/- was deleted holding that amount of loan and advance is not chargeable to tax as deemed dividend in view of the loan given by the assessee to the company of the higher amount. Against the issue of denial of deduction u/s 80IB the assessee is in appeal before us and on deletion of addition u/s 2(22)(e) revenue is in appeal before us.

5. Firstly we take the appeal of the revenue.
6. The quantum of addition that is being contested by the revenue is Rs.1825000/- and therefore Ld AR of the assessee contested that the tax effect involved in the appeal of the revenue is less than Rs.10 lacs therefore as stated in the Circular No.21/2015 dated 10<sup>th</sup> December 2015 where tax effect in the appeal of the revenue is less than Rs.10 lacs same are required to be withdrawn unless they fall into certain exceptions. Ld. DR also agreed to that proposition and no such

exception has been pointed out by the Id DR. We find that the Central Board of Direct Taxes; hereafter the 'Board' has issued the circular no. 21/2015 dated 10-12-2015 clearly envisaging therein that department's pending appeals before the tribunal/high courts are to be withdrawn/not pressed as per the above stated circular. The same has been declared to be having retrospective effect in other words. We take into consideration the above stated Board's circular and dismiss the instant appeal accordingly. Hence in view of the above circular the appeal of the revenue in ITA No.678/Del/2015 is dismissed on account of low tax effect.

7. Now we come to the appeal of the assessee which is against denial of deduction u/s 80IB of the Act. We have heard the rival contention. The assessee is carrying on manufacturing activity of menthol crystal. The brief process chart submitted before us shows that raw methanol oil is the raw material and which freezed into low temperature and then from their flakes, crystals are produced after process of drying and packaging. From the process where raw material is menthol oil and final product is a crystal which is distinct, different, independently marketable commodity it amounts to manufacturing. It was also submitted before us that the deduction u/s 80IB is being granted to the assessee in all preceding years and therefore same should have been allowed to the assessee for this year also. Before us as per Form No.10CCB filed shows initial Assessment Year for which the deduction is first granted is assessment year 2008-09 and subsequently only in this year the deduction is denied. The main reason for denial of deduction by the Id AO was that during the year no raw material was purchased and there is no opening stock of raw material, very small amount of expenditure is incurred and only one single sale has been made by the assessee that too to its sister concern. Therefore

according to the AO there is no manufacturing units into existence during the year hence, there is no question of any deduction u/s 80IB. the Id CIT(A) also confirmed the disallowance on the same reasoning. It was submitted that there is an opening stock of finished goods of Rs.6654850/- and a sale of finished goods of Rs.2415000/- during the year as per profit and loss account of M/s. Champion Flavours. The sale of goods has been made out of the opening stock of finished goods carried forward as opening stock which is arising out of manufacturing activity of the assessee. The sales made by the assessee to its sister concern are neither stated to be ingenuine nor had generated more than ordinary profit. Though during the year there is no manufacturing activity carried out by the assessee but the profit has been derived by the assessee from the manufactured goods by the assessee himself from the legible undertaking and not from any other activity such as trading etc. As 'initial year' in which deduction granted to the assessee is Assessment Year 2008-09 and then it was found that unit is engaged in the manufacturing activity entitled to deduction u/s 80 IB Therefore according to us the conditions said out in section 80IB is required to be verified in the initial year only and if the profit is derived from the manufacturing activity carried out by the assessee then he is eligible for the deduction. There is no such allegation that the goods sold are not manufactured by the assessee in the eligible industrial undertaking. Revenue has not alleged that any conditions of section 80 IB is not fulfilled by the assessee except manufacturing not carried out during the year. Therefore according to us assessee is eligible for deduction u/s 80 IB of the act on profit derived by the assessee on sale of goods manufactured by the eligible undertaking which were lying in the opening stock as all other conditions of that sections are complied

with. Hence we reverse the finding of the Id CIT(A) and allow the appeal of the assessee.

8. In the result the appeal of the revenue is dismissed on account of low tax effect and the appeal of the assessee is allowed.

**Order pronounced in the open court on 15.03.2016.**

-Sd/-

**(I.C. SUDHIR)**  
Judicial Member

Dated: 15.03.2016

\*Ajay Kumar Keot

*Copy of order forwarded to:*

(1) *The appellant*  
(3) *Commissioner*  
(5) *Departmental Representative*

(2) *The respondent*  
(4) *CIT (A)*  
(6) *Guard File*

*By order*

*Assistant. Registrar*  
*Income Tax Appellate Tribunal*  
*Delhi Benches, New*  
*Delhi*