IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "F", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

	I.T.A. No. 3616/DEL/2014	
	A.Y. : 2010-11	
INCOME TAX OFFICER, WARSD 15(3), NEW DELHI ROOM NO. 206-B, CR BUILDING, IP ESTATE, NEW DELHI – 110002	VS.	M/S RESISTOFLEX DYNAMICS PVT. LTD., B-15, FRIENDS COLONY (WEST), NEW DELHI – 110 005
(APPELLANT)		**(RESPONDENT)**

Department by : Sh. FR Meena, Sr. DR

Assessee by : Sh. Somil Agrawal, Adv.

ORDER

PER H.S. SIDHU : JM

The Revenue has filed this Appeal against the impugned Order dated 11.4.2014 passed by the Ld. CIT(A)-XVIII, New Delhi relevant to assessment year 2010-11.

2. The grounds raised in the Revenue's Appeal read as under:-

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing deduction u/s. 80IC of the Act by relying on the Hon'ble ITAT judgment for AY 2009-10 in assessee own case without appreciating the fact that the matter is sub-judice as the Revenue has preferred an appeal in the

Hon'ble High Court, Delhi against the said order of the ITAT.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact that the assessee is engaged in the activity of assembling and not in manufacturing or production activities.

3. The appellant craves to be allowed to add any fresh grounds of appeal and / or delete or amend any of the grounds of appeal.

3. The brief facts of the case are that the return of income decalring an income of Rs. 21,38,883/- and deduction u/s. 80IC of Rs. 4,39,93,235/- was filed by the assessee company on 23.9.2010 and the same was processed u/s. 143(1) of the I.T. Act, 1961. The tax was paid u/s. 115JB on Book Profit of Rs. 4,80,81,051/-. The case was selected for scrutiny. Notice u/s. 143(2) of the I.T. Act was issued on 30.8.2011 by the DCIT 15(1). The assessment records were later on transferred to this office on 27.9.2012. Subsequently, notice u/s. 142(1) of the I.T. Act alongwith questionnaire were issued. In response, the AR of the assessee company, attended the assessment proceedings from time to time and filed the requisite details and produced the requisite documents called for. Books of accounts were produced by the AR of the Assessee and the same was verified on test check basis. Thereafter, the AO re-computed the income of the

assessee at Rs. 4,62,04,506/- u/s. 143(3) of the I.T. Act, 1961 vide his order dated 14.3.2013.

4. Against the said order of the AO, assessee appealed before the Ld. CIT(A), who vide impugned order dated 11.4.2014 has partly allowed the appeal of the assessee.

5. Aggrieved with the aforesaid order of the Ld. CIT(A), Revenue is in appeal before the Tribunal.

6. Ld. DR relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal and stated that the Ld. CIT(A) has wrongly deleted the additions. He further emphasized that Ld. CIT(A) has erred in allowing deduction u/s. 80IC of the Act by relying on the ITAT judgment for AY 2009-10 in assessee's own case without appreciating the fact that the matter is sub-judice as the Revenue has preferred an appeal in the Hon'ble High Court of Delhi against the said order of the ITAT.

7. On the contrary, Ld. Counsel of the assessee relied upon the order of the Ld. CIT(A). During the hearing, he filed the copy of the Hon'ble Delhi High Court Order dated 19.12.2016 in the case of CIT vs. Resistoflex Dynamics (P) Ltd. (AY 2009-10) and stated that the Hon'ble Delhi High Court has dismissed the appeal of the Revenue in assessee's own case in which the Revenue went in appeal before it,

which was referred by the Revenue in the grounds of appeal as well as during the hearing before the Bench.

8. We have heard both the parties and perused the relevant records available with us, especially the orders of the revenue authorities. We find that Ld. CIT(A) has elaborately discussed the Issues in dispute vide para no. 7 to 7.1 in the impugned Order which reads as under:-

> "{7} Grounds of appeal Nos. 2 to 4 are taken together as these are inter-linked and have been taken against action of Assessing Officer by which Assessing Officer has disallowed claim under section 80IC of the Income Tax Act, 1961. In this regard, during the course of appellate proceedings, learned Authorized Representative of the appellant attended and filed copy of decision of Hon'ble Income Tax Appellate Tribunal in appellant's own case for Assessment Year 2009-10, wherein Hon'ble Income Tax Appellate Tribunal 'F' Bench, Delhi, has decided the issue in appellant's favour by observing in relevant paragraph No. 15 of the order as under:-
>
> > *"15. From the above, it is amply clear that the assessee is engaged in manufacture and production of an article or thing named air spring assembly. The assessee imports (a) air*

spring component (fitted in the top plate) and (b) emergency air spring component (fitted in the emergency spring and calibrated with the bottom plate). These items are imported from Germany from M/s ContiTech Luftfedersysteme GmbH (Hannover, Germany). Rest all other goods /raw materials required in the manufacturing process are procured from India and employed by the Appellant in the manufacturing process at the Paonta Sahib Unit.

16. The description of manufacturing process above amply proves that the imported materials as well as local materials are used in a manufacturing process which results in a final product which is quite distinct from the components used, and has distinct usage too.

17. In the background of the etoioseio discussions and precedents, we set aside the orders of the authorities below and hold that the assessee was engaged in manufacturing of air spring assembly and is hence eligible for deduction u/s. 80IC for the manufacturing activity undertaken at its Paonta Sahib unit."

7.1 In this regard, it is also observed that claim of deduction under section 80IC of the Income Tax Act, 1961 has been allowed by Assessing Officer in 2 preceding Assessment Years i.e. 2007-08 and 2008-09. So, this is a

case where Assessing Officer has not followed rule of consistency. In view of the above discussion and putting reliance on the Hon'ble Income Tax Appellate Tribunal judgement for Assessment Year 2009-10 as discussed above, it is held that appellant is eligible for deduction under section 80lC for its Paonta Sahib Unit, Himachal Pradesh. In view of the above discussion, grounds of appeal Nos. 2 to 4 are allowed."

8.1 On perusing the above finding of the ld. CIT(A), we note that Assessing Officer has disallowed claim under section 80IC of the Income Tax Act, 1961. In this regard, during the course of appellate proceedings, learned Authorized Representative of the assessee attended and filed copy of decision of Tribunal, Delhi Bench in assessee's own case for Assessment Year 2009-10, wherein the Tribunal, 'F' Bench, Delhi, has decided the issue in assessee's favour by observing in relevant paragraph No. 15 to 17 of the order which read as under:-

"15. From the above, it is amply clear that the assessee is engaged in manufacture and production of an article or thing named air spring assembly. The assessee imports (a) air spring component (fitted in the top plate) and (b) emergency air spring component (fitted in the

emergency spring and calibrated with the bottom plate). These items are imported from Germany from M/s ContiTech Luftfedersysteme GmbH (Hannover, Germany). Rest all other goods /raw materials required in the manufacturing process are procured from India and employed by the Appellant in the manufacturing process at the Paonta Sahib Unit.

16. The description of manufacturing process above amply proves that the imported materials as well as local materials are used in a manufacturing process which results in a final product which is quite distinct from the components used, and has distinct usage too.

17. In the background of the etoioseio discussions and precedents, we set aside the orders of the authorities below and hold that the assessee was engaged in manufacturing of air spring assembly and is hence eligible for deduction u/s. 80IC for the manufacturing activity undertaken at its Paonta Sahib unit."

8.2 In this regard, we also note that the claim of deduction under section 80IC of the Income Tax Act, 1961 has been allowed by Assessing Officer in the preceding Assessment Years i.e. 2007-08 and 2008-09. So, this is a case where Assessing Officer has not followed rule of consistency. In view of the above discussion and putting reliance on the Tribunal' decision in assessee's own case for

Assessment Year 2009-10 as discussed above, it was rightly held that assessee is eligible for deduction under section 80IC for its Paonta Sahib Unit, Himachal Pradesh. Hence, the in view of the above discussion, grounds of appeal were rightly allowed in favour of the assessee, which does not need any interference on our part, hence, we uphold the order of the Ld. CIT(A) on the issue in dispute and accordingly, we dismiss the grounds in dispute raised by the Revenue.

8.3 Even otherwise, we note that the ground taken by the Department that Ld. CIT(A) has erred in allowing the deduction u/s. 80IC of the Act by relying on the ITAT decision for the AY 2009-10 in assessee's own case without appreciating the fact that the matter is sub-judice as the Revenue has preferred an appeal in the Hon'ble Delhi High Court, against the order of the Tribunal does not survive, because the Hon'ble High Court of Delhi vide its Order dated 19.12.2016 in the ITA No. 872/2016, CM No. 45075/2016 filed by the Department in assessee's own case, against the order of the Tribunal dated 06.12.2013 passed in ITA No. 2554/Del/2013 for the AY 2009-10, has dismissed the Appeal of the Revenue by observing as under:-

> "The present appeal under section 260A of the Income Tax Act, 1961 seeks to impugn an order of the Income Tax Appellate Tribunal (ITAT) dated

06.12.2013 in ITA No. 2554/Del/2013 for the Assessment year (AY 2009-10).

At the outset, we notice that the Revenue has filed this appeal after an inordinate delay of 646 days. The reason for the delay has not been properly explained. A general explanation that the process of e-filing required several procedural compliances which could not be fulfilled within the time and that the defects pointed out by the Registry too could not cured since there was overload of work on the part of the Revenue, is not sufficient cause to warrant condonation of delay.

Besides, on merits too, the Court notices that the question of law urged – whether assembling of the ultimate product i.e. air springs- for use by the railways, which conformed to exact specifications – amounted to process of manufacture or amounted to manufacture. The ITAT concluded that the process was manufacture. It also relied upon the clearances given by various other authorities including the Central Excise Authorities on the self saying issue. Furthermore, the ITAT took note of the fact that for

the previous year, same question had been gone into and a finding was rendered in favour of the assessee.

For the above reasons as well as on the ground of delay, no interference is called for with the order of the ITAT. The appeal is dismissed."

9. In the result, the Appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on 13/04/2017.

SD/-	**SD/-**
[PRASHANT MAHARISHI]	**[H.S. SIDHU]**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Date 13/04/2017

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY By Order,

Assistant Registrar,
ITAT, Delhi Benches