IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH 'SMC' , NEW DELHI]

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 507/Del/2019
Assessment Year: 2014-15

Bharat Sons [HUF] 15, Abul Fazal Road, Bengali Market, New Delhi - 110 001. **PAN : AACHB5699E**	Vs	ACIT, Circle : 46 (1) New Delhi
(APPELLANT)		**(RESPONDENT)**

Revenue by	Shri Pradeep Singh Gautam, Sr. D. R.;
Assessee by	Shri Gautam Jain, Adv.; & Shri Lalit Mohan, C.A.;

Date of hearing:	**02/03/2020**
Date of Pronouncement:	**02/06/2020**

O R D E R

PER PRASHANT MAHARISHI, AM:

1) This appeal is filed by the assessee, a Hindu undivided family through its Karta against the order of CIT (Appeals)-16, New Delhi, dated 12.12.2018 raising the solitary ground of appeal

wherein the deduction under Section 80IC of the Income Tax Act, 1961 (the Act) denied by the ld. Income Tax Officer, Ward 46(5), New Delhi, [the Ld. AO] of Rs. 44,86,232/- denied by him as per assessment order passed under Section 143(3) of the Act on 30th December, 2016, is confirmed by the CIT (Appeals).

2) The solitary ground of appeal is ground No. 2, which is as under:-

> "That the learned ITO Ward 46(5) has erred in law as well as on the facts of the case while denying the of rebate of Rs.44,86,232/- claimed under section 80IC of the Income Tax Act, 1961 to the appellant on absurd grounds without going into the facts and circumstances of the case and also not considering the fact that the rebate was being allowed to the appellant from year to year after thorough scrutiny u/s 143(3) for all the years since Assessment Year 2008-09."

3) The brief facts of the case are that assessee filed its return of income on 30th November 2014 for Assessment Year 2014-15 at 'NIL'. In the return of income, assessee has claimed deduction under Section 80IC of the Act amounting to Rs.44,86,232/-. This was examined by the learned Assessing Officer. On detailed examination, he held that

a. the machinery available with the assessee does not support the claim of the assessee

b. electric consumption cannot support the claim of the quantum of production and
c. Evidences produced by the assessee for movement of goods are insufficient to support the claim in absence of toll tax receipts.

Therefore, the ld. AO held that the claim under Section 80IC of the Act is not sustainable. Thus, assessment order under Section 143(3) of the Act was passed on 30th December, 2016 and total income of the assessee was assessed at Rs. 45,18,120/- wherein deduction under Section 80IC of the Act was disallowed amounting to Rs.44,86,232/-.

4) Assessee aggrieved with the order of the ld. Assessing Officer preferred an appeal. He decided the issue holding that the quantum of production in unit-III at Paonta Saheb is not in consonance with the plant and machinery installed, electricity consumed and the labour used for manufacturing. He further held that sanctioned electricity load for that unit was just 19KW which was bill mandated load of 225KW for a small enterprise. He further confirmed that the bills for purchase of the machinery are held to be non-genuine by the Assessing Officer based on enquiries conducted during the course of assessment. The notices issued under Section 133(6) of the Act requiring personal deposition of the suppliers of plant and machinery was not complied with. He further confirmed that transfer of manufactured goods to New

Delhi for sale has also been dis-approved in absence of proper evidence. Thus, he confirmed the disallowance of deduction under Section 80IC of the Act.

5) Assesse is in appeal before us. The assesse submitted the detailed written submissions which are as under:-

a. Production Unit-Ill at Paonta Sahib, Himachal Pradesh as discussed by the Ld A.O., started production on dated 30/03/2010. Evidence in respect to commencement of production from excise department/Department of Industries and Vat Department is submitted. It is further respectfully submitted that for the AY 2010-11, 2011-12, 2012-13 and 2013-14, all the cases were selected in scrutiny and the respective assessment orders have been passed U/s 143(3) of Act, after examination of records, justification of claim of deduction U/s 80IC and detailed investigation of the documents as evident from the copies of the assessment orders and balance sheets enclosed (Page Nos 14 to 49). In the orders thus framed the respective AO have allowed deduction U/s 80IC after due examination under the provisions of the Income-tax Act, 1961.

b. In Himachal Pradesh, it is essential to get clearance from Excise department for machinery purchased. The clearance form Excise department is on page nos 62 to

63. From the copy of bill/invoice, it is evident that various machinery is purchased from Modern Engineering Works, Modern Rubber and Plastic Works etc having different bill no/serial no of booklet and of different dates issued. The supplier has also charged VAT/CST on above bills. The invoices are genuine having complete address, phone no, their factory address and other. The mode of transportation, Lorry no has also given on the invoices. The assessee has also discharged his liability through banking channel. The evidence to this effect is also enclosed on page nos 64 to 83. From the said above it is evident that new plant and machinery was purchased by the assessee for production in Unit III and not by splitting up or reconstruction of the business. He submitted that for the small defects in the bills produced by the assessee such as name date amount involves et cetera for these reasons the learned assessing officer is rejecting that assessee uses the machinery for the manufacturing of goods.

c. With respect to the movement of the goods, assessee submitted that goods are produced at Unit III and sent to Delhi and other branches for all supplies to various government departments and other buyers. Goods are transported from the manufacturing units at Ponta sahib to transport through truck of the assessee after

due entry and clearance from the Excise Department. The assessee has already submitted Excise get passes where the Lorry numbers trucks numbers et cetera are mentioned, when the goods are moving out of the factory. Therefore, there was complete compliance by the assessee. The AO only rejected it because of the non-availability of toll receipt of Delhi border. The assessee has submitted that sale of goods in Delhi is not possible unless goods are duly transferred from the manufacturing unit where assessee has provided VAT form no 26A which shows that the trucks crossed Himachal Pradesh – Haryana border at the Bharal Check post. He submitted that merely because the assessee does not have TOLL tax receipt it could not be said that goods have not been transported from the manufacturing unit to the Delhi. He submitted that assessee has conclusively proved by submitting the VAT form 26A that goods have moved from the factory.

d. With respect to the electricity consumption, he specifically mentioned that the notice under section 133 (6) have been issued to the Senior executive engineer who in turn replied that no electricity metre was ever issued in the name of unit III and the metre is always issued in the name of unit number II, which was converted in the name of unit number III. Assessee submitted that it is manufacturing high-capacity large

containers which require use of heavy machinery and hence, there is more electric consumption in UNIT II, where as in unit number III, assessee has produced small containers as per the requirement of the government department and others which need fabrication from small machine, cutters, welding machines, drilling machines, cutting machines et cetera, which requires minimal electricity. Thus the electric consumption and use of machinery between these two units are not at all comparable.

6) In view of above submission denial of deduction by the assessee and confirmation of the same by the learned CIT – A is not correct.

7) The ld. Departmental Representative vehemently supported the orders of the lower authorities by extensively referring to each of the facts, which proves that the claim of the assessee is bogus.

8) We have carefully considered the rival contention and perused the orders of the lower authorities. The only dispute in the present appeal is with respect to deduction under section 80 IC in respect of the unit number III situated in Ponta Sahib, which was set up on 30 March 2010. Assessee claimed deduction of Rs. 4486232/– for this Ay, which was denied by the AO and confirmed by the learned CIT Appeal. Assessee is engaged in the business of trading in pipes and manufacture of waste disposal bins and containers for

onward sales to various government agencies and Municipal Boards on tender basis. During the year under consideration the business of the assesse was carried out from the manufacturing units at Unit-II, Village Puruwala, Paonta Sahib, and Unit-Ill, Village Puruwala, Paonta Sahib, and trading units at Sonepat, Ghaziabad and Patna. The assessee claimed deduction U/s 80IC in respect of activity of manufacture of disposal bins and containers in Unit-Ill situated at Paonta Sahib. Admittedly, production at Unit-Ill at Paonta Sahib, Himachal Pradesh as discussed by the Ld A.O., started on 30/03/2010. Evidence in respect to commencement of production from excise department/Department of Industries and Vat Department is placed by the assessee. Therefore, it is apparent that this is not the first year of the claim of deduction under section 80 IC of the income tax act. Assessee has submitted that for the A.Y. 2010-11, 2011-12, 2012-13 and 2013-14, all the cases were selected in scrutiny and the respective assessment orders have been passed U/s 143(3) of Act, after examination of records, justification of claim of rebate U/s 80IC and detailed investigation of the documents as evident from the copies of the assessment orders. Thus, so far as the eligibility conditions with respect to the letter of permission et cetera issued in favour of the assessee, the manufacturing process, machinery installed , electricity consumption, electricity capacity have all been tested in the initial. In those

year even after examining the case under section 143 (3) of the act such issues did not arise, as arising in the present case. No doubt, we are of the view that in the initial years if the deduction is allowed then, AO cannot disturb that as far as eligibility of the unit is concerned but the measurement of the profit can always be tested on a year-to-year basis. Therefore, the issue of machinery and the installation of power meters were already examined by the AO in the initial years. There is no objection by the revenue on granting the deduction under section 80 IC of the income tax act to the assessee on these two issues in earlier years. Thus, the AO could not have raised the issue of non availability of machinery, unless the original machinery installed at the time of the setup have been transferred by the assessee and are not available during the year. Similarly, the issue of the lesser capacity of electricity meter also could not be raised. We leave it at that only but deal with them. With respect to the power consumption, assessee has already explained that Unit III was established during the assessment year 2010-11 to manufacture Wheel barrows - body made from Plastic and metal frame, Plastic Containers of various sizes made from plastic - covered under item No 39.25 as per Excise classification and Dust bins where the frame is fabricated with steel and the body is made from plastic. All the above-mentioned goods were fabrication items. The assessee has submitted that the comparison of the power consumed with

unit II is unjustified as unit number II is producing high-capacity large containers, which require use of heavy machinery, and therefore it requires more electrical consumption. Further, regarding the production, the learned assessing officer has stated that consumption of the electricity did not substantiate the amount of production that has been shown by the assessee. However, assessing officer has not produced any report or any other evidence that how the assessee was producing in the last year when the deduction under section 80 IC was given on what changed during this year. Merely consumption of the electricity without any comparative analysis of without any further evidence, it cannot be said that goods have not been manufactured by the assessee more precisely when in the last year it has been accepted. The learned assessing officer should have further investigated the facts that how assessee is able to produce the goods with lesser number of units consumed during this year with a special investigation on the product mix, the production process and machine hours. In absence of the basic enquiry, merely rejecting the explanation of the assessee without obtaining further evidences, AO could not have rejected the production of the assessee. With respect of the transportation of goods, only reason mentioned by the learned assessing officer is that assessee could not produce Toll tax receipt. However, the AO himself has admitted that the assessee has provided VAT form 26A which shows that

trucks crossed Himachal Pradesh Haryana border at Bahral Check post. In form number 26A, under VAT laws, there is a complete detail of the goods transported, lorry numbers, quantity of the goods, the time of removal from the factory of those goods et cetera. This also can be examined from the excise records. Therefore, it was not denied that goods were removed from the factory. Merely because the assessee could not produce the toll tax receipt, it cannot be said that the goods did not transfer from Bharal Check post to Delhi. It is not the case of the assessee that goods have been procured from outside agency and shown, as goods manufactured in the factory of the assessee, Goods travelled at Bahral Check post were those goods and not goods manufactured at Unit III. In these circumstances, when the goods removed from the factory have not been disputed, it cannot be said that goods that transported to barhal Check post did not go to Delhi, as it is not supported by toll tax receipts. Coming to the issue of the machinery, objections of ld AO are that CST VAT has been charged in the invoices but no details of such CST VAT are available on the invoices, amount in words is not mentioned on the invoices, details of delivery date, delivery channel number, mode of transport, lorry receipt number, transporter name, vehicle number are not mentioned in the invoices, details of terms and conditions of purchases are not mentioned, jurisdiction is not mentioned price per unit rate of the machinery is not mentioned, all the invoices are of

the same date i.e. 30-3-2010. The AO has also attached the photocopies of the bills of the machinery. Alarmingly all these bills pertain to financial year 2009 – 10 when the original unit was set up. These bills are not pertaining to this year i.e. assessment year 2014 – 15. In the original assessment year, the 80 IC benefit is already granted in 143 (3) of the act by the assessing officer himself. In those years, these machineries were purchased. Naturally, the bills would have been of the date of 30 March 2010 because on that date the unit III was set up. After that almost 4 years have passed. If assessing officer wants to prove that bills of machineries purchased by the assessee in March 2010 are bogus, he should have first disturbed the assessment year 2010 – 11. That year at present remains undisturbed. In view of this, whole exercise by the assessing officer is useless. Even otherwise, not mentioning something in the bills does not make purchases of goods through those bills bogus. It leads to making a larger allegation on flimsy grounds. In view of this, we do not find any merit order of the assessing officer disallowing the deduction under section 80 IC of The Income Tax Act of Rs. 4486232/–. We also do not agree with the order of the learned CIT – A which did not deal with any of the submissions of the assessee in proper perspective. The learned CIT – A has considered many judicial precedents however unless the facts are marshaled, they do not help the case of either parties. Our view is also supported by the

various assessment orders passed in the case of the assessee for earlier years where the 80 IC deductions have already been allowed. In view of this we reverse the order of the learned assessing officer as well as the learned CIT – A and direct the learned assessing officer to grant deduction under section 80 IC of The Income Tax Act to the assessee for unit number III situated at Ponta Sahib. In the result ground number two of the appeal of the assessee is allowed.

9) As that was the only effective ground in the appeal, we allow the appeal of the assessee.

Order pronounced in the open court on : **02/06/2020.**

Sd/-	**Sd/-**
(SUCHITRA KAMBLE)	**(PRASHANT MAHARISHI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Date : **02/06/2020.**

MEHTA

Copy forwarded to:

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	02.06.2020.
Date on which the typed draft is placed before the dictating Member	02.06.2020.
Date on which the typed draft is placed before the Other member	02.06.2020.
Date on which the approved draft comes to the Sr.PS/PS	02.06.2020.
Date on which the fair order is placed before the Dictating Member for Pronouncement	02.06.2020.
Date on which the fair order comes back to the Sr. PS/ PS	02.06.2020.
Date on which the final order is uploaded on the website of ITAT	03.06.2020.
Date on which the file goes to the Bench Clerk	03.06.2020.
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order.	