आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA.No.1640/Ahd/2009
निर्धारण वर्ष/Asstt.Year : 2006-2007

ITA.No.957/Ahd/2011
निर्धारण वर्ष/Asstt.Year : 2007-2008

AND

ITA.No.1109/Ahd/2013
निर्धारण वर्ष/Asstt.Year : 2005-2006

ITO, Vapi-Ward-4 Daman.	Vs	M/s.Padmavati Arts 105, 1st Floor Survey No.336/2(6) Silicon Compound Kachigam, Nani Daman PAN: AAHFP 2732 P

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Revenue by :	Shri Alok Kumar, Sr.DR
Assessee by :	Shri T.P. Hemani, AR

सुनवाई की तारीख/**Date of Hearing : 16/02/2017**
घोषणा की तारीख /**Date of Pronouncement: 20/02/2017**

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER

Present three appeals are directed at the instance of Revenue against the orders of the ld.CIT(A) dated 31.12.2012, 27.2.2009 and 31.12.2010 passed in the Asstt.Years 2005-06 to 2007-08 respectively. Since common issues are involved in all these appeals, therefore, we heard them together and deem it appropriate to dispose of them by this common order.

2. Sole common grievance of the Revenue in all these three years is, that the ld.CIT(A) has erred in allowing deduction under section 80IB of the Income Tax Act, 1961 ("the Act" for short). Facts on all vital points are common in these three assessment years. The ld.CIT(A) has passed order for Asstt.Year 2006-07 first, and thereafter followed this order in other two years. Therefore, for the facility of reference, we take up the facts from the Asstt.Year 2006-07.

3. Brief facts of the case are that the assessee has filed its return of income on 5.10.2006 declaring NIL income after claiming deduction of Rs.92,49,373/- under section 80IB of the Act. Similarly, returns in the Asstt.Years 2005-06 and 2006-07 were filed on 24.10.2005 and 26.10.2007. The assessee has claimed deduction of Rs.62,31,421/- and 90,86,929/-. The assessee at the relevant time was engaged in the business of manufacturing and selling of silver art jewellery, fancy *bindi* and bangles. The assessee firm had started its business activities before 31.3.2004 and its unit was located in Union Territory of Daman, which is a backward area as specified in VIIIth Schedule of the Act. Assessment in A.Y.2005-06 was made under section 143(3) on 28.12.2007 and deduction under section 80IB was allowed. However, while scrutinizing return for Asstt.Year 2006-07, same officer in the seat of ld.AO did not agree with his conclusion in the Asstt.Year 2005-06 and disallowed the claim of the assessee. Thereafter, the assessment in Asstt.Year 2005-06 was reopened by issuance of notice under section 148 on

12.5.2009 and accordingly followed his assessment order in A.Y.2006-07. He disallowed claim in Asstt.Year 2005-06 also.

4. On appeal, the ld.CIT(A) has re-appreciated facts and circumstances and allowed claim of the assessee by recording the following finding:

> *"6.6 I have considered the contentions of the appellant firm as well as the observation of the AO in the assessment order. I have also considered the peculiar facts of the case and the peculiar nature of product, raw material used and the manufacturing process of the appellant. After pursuing the detailed submission of the AR of the Appellant as well as observations of the AO in the assessment order, I find that there is no reason to deny the benefit of deduction u/s.80IB to the appellant especially when the same has been granted in the regular assessment framed u/s.143 (3) of the Act, for the Asstt. Year 2005-06 after ensuring that the Appellant has fulfilled all the conditions prescribed in the provisions of Sec.80IB of the income Tax Act, 1961, There is a force in the contention of the appellant and as reconciled in the submission with the detailed working of consumption of electricity of each machine as per process flow chart showing that the use of machines is minimum and the work of artisan or manual skilled labour work is a major factor in manufacturing the article of the appellant and even with the number of workers that are deployed, the manufacturing is possible. It cannot be denied that the item manufactured has high monetary value due to use of costly raw material and therefore the turnover is reflecting high monetary value as against the small amount of overheads like electricity and wages. There is a force in the contentions of the appellant that the AO should have brought out on record that if at all according to the suspicion of the AO. the 100% of manufacturing activity was not carried out by the appellant at Daman works during the year under reference, then the AO should have unearthed that where else such activity were actually carried out. There are no such findings to suggest that the appellant has carried out manufacturing elsewhere. There is a force in the contention of the appellant that the AO has erred in denying the benefit of deduction U/S.80IB based on suspicion and presumption. There are no cogent evidences to deny the claim for deduction u/s.801B as the appellant has filed all the evidences that ensure that all the conditions precedent were fulfilled for the claim of deduction u/s.80IB. There is no plausible reason to reject the contention and claim of the appellant that process of making or manufacturing jewellery, is a labour intensive job or an*

artisan's job and in such products, the use of machining is minimum and therefore the consumption of electricity would not be a major cost factor. The appellant's explanation is quite palatable from the facts and figures submitted that even the cost structure of (he product i.e. jewellery manufactured is such that because of the use of costly raw material like silver and other alloy involved, the monetary sale value of the product would be normally high and the value addition made by the labour would be comparatively low and therefore the contention that with this peculiar nature of manufacturing activity undertaken by the appellant major portion of the sales turnover is attributable to the material cost and therefore correlating the wages and electricity consumption with the sales value without taking into consideration the peculiar nature of manufacturing process or nature of product of the appellant firm is not justified. Secondly, as the averaged daily sales or cost of production worked out is quite reasonable and acceptable with the employment of 12 workers, there is no plausible reason to doubt the contention of the appellant that such production can be achieved even with the set of small man power and efficient machine available with the appellant. It cannot be denied that the Appellant firm had during the course of assessment proceedings of the year under appeal as well as the preceding year i.e. Asstt. Year-2005-06, furnished necessary evidences showing that it had started manufacturing activity before the prescribed date and all other conditions specified in sec.80IB of the Act are fulfilled as detailed below:

(a) the appellant is a Small Scale Industrial undertaking,
(b) the appellant is not formed by splitting of nay existing industrial undertaking,
(c) the appellant is not formed by the transfer to new business of machinery or plant previously used for any purpose,
(d) the undertaking / unit of the appellant is located in the specified backward area,
(e) the appellant has commenced production before 31/03/2004,
(f) the appellant is not producing any items specified in the XI th Schedule to I.T. Act,1961.

The AO has allowed the deduction U/s.80IB of the Act, based on the finding that the appellant has fulfilled all the above conditions in the regular assessment for the Asstt. Year-2005-06 framed u/s.143(3) of the Act. The facts of the appellant's case are covered by the legal precedent in case of Saurastra Cement & Chemical Industries Ltd, v/s CIT 123 ITR 669 (Guj) where in the Hon.ble Gujarat High Court has held that but without disturbing the relief granted in the earlier year, the AO

cannot examine the question again and decide to withhold or withdraw the relief which has been already once granted in the earlier year. The benefit of any deduction already granted cannot be withdrawn in a subsequent year without disturbing the relief granted in the earlier year. I am therefore inclined to agree with the contention of the appellant that as the appellant firm did satisfy all the necessary conditions specified in sec.80IB and the same were not violated in the subsequent year, the claim of deduction u/s.80IB is allowable. Therefore, the AO is directed to allow the claim for deduction U/S.80IB of the Act of Rs. 92,49,373/- to the appellant. The appellant's Ground Nos.2. 3 and 4 are Allowed."

5. This order was followed in Asstt.Years 2005-06 and 2007-08. The ld.DR while impugning orders of the ld.CIT(A) took us through the assessment order and contended that the ld.AO has raised questionnaire during the assessment proceedings, and this questionnaire was not specifically replied by the assessee. He took us through the finding of the AO recorded in para-5 on page no.2 to 5 of the assessment order. He pointed that the ld.AO has appreciated the facts and circumstances and arrived at a conclusion that with the help of 12 workers with meager consumption of electricity of Rs.13,205 does not practically possible to achieve a turnover of Rs.3.18 crores. Thus, the AO has rightly doubted activity of the assessee and has rightly disallowed this claim.

6. On the other hand, the ld.counsel for the assessee took us through submissions made by the assessee before the ld.CIT(A) and pointed out that the ld.AO failed to appreciate nature of business and how its machinery did not consume electricity. He specifically took us through page nos.24 to 27 of the paper book and pointed out that the assessee has explained each and every objections raised by the AO. This aspect has been pleaded in the written submissions made before the ld.CIT(A), and the ld.CIT(A) has noticed the activity of the assessee by way of flow-chart on page nos.10 and 11 of the

impugned order. He took us through the orders of the ld.CIT(A) in this connection.

7. We have duly considered rival contentions and gone through the record carefully. Section 80IB of the Act has a direct bearing on the controversy, therefore, it is imperative upon us to take note of the relevant of clauses of this sections. They read as under:

> *"Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.*
>
> *80-IB. (1) Where the gross total income of an assessee includes any profits and gains derived from any business referred to in sub-sections (3) to (11), (11A) and (11B) (such business being hereinafter referred to as the eligible business), 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 of an amount equal to such percentage and for such number of assessment years as specified in this section.*
>
> *(2) This section applies to any industrial undertaking 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 industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial 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;*
>
> *(iii) it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India :*
>
> *Provided that the condition in this clause shall, in relation to a small scale industrial undertaking or an industrial undertaking*

referred to in sub-section (4) shall apply as if the words "not being any article or thing specified in the list in the Eleventh Schedule" had been omitted.

Explanation 1.—For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely :—

(a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;

(b) such machinery or plant is imported into India from any country outside India; and

(c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

Explanation 2.—Where in the case of an industrial undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with;

(iv) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

(3) The amount of deduction in the case of an industrial undertaking shall be twenty-five per cent (or thirty per cent where the assessee is a company), of the profits and gains derived from such industrial undertaking for a period of ten consecutive assessment years (or twelve consecutive assessment years where the assessee is a co-operative society) beginning with the initial assessment year subject to the fulfilment of the following conditions, namely :—

(i) it begins to manufacture or produce, articles or things or to operate such plant or plants at any time during the period beginning from the 1st day of April, 1991 and ending on the 31st day of March, 1995 or such further period as the Central

Government may, by notification in the Official Gazette, specify with reference to any particular undertaking;

(ii) where it is an industrial undertaking being a small scale industrial undertaking, it begins to manufacture or produce articles or things or to operate its cold storage plant [not specified in sub-section (4) or sub-section (5)] at any time during the period beginning on the 1st day of April, 1995 and ending on the 31st day of March, 2002.

(4) The amount of deduction in the case of an industrial undertaking in an industrially backward State specified in the Eighth Schedule shall be hundred per cent of the profits and gains derived from such industrial undertaking for five assessment years beginning with the initial assessment year and thereafter twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains derived from such industrial undertaking :

Provided that the total period of deduction does not exceed ten consecutive assessment years (or twelve consecutive assessment years where the assessee is a co-operative society) subject to fulfilment of the condition that it begins to manufacture or produce articles or things or to operate its cold storage plant or plants during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2004 :"

8. A perusal of the section would reveal that it contemplates that where gross total income of an assessee includes any profit and gains derived from any business referred to sub-section 3 to 11, 11A and 11B, then such an assessee would be entitled to claim deduction under this section subject to fulfillment of conditions enumerated in sub-sections (2), (3) and (4). A conjoint reading of all these clauses would indicate that in order to claim deduction under section 80IB, the assessee should fulfill following conditions:

(a) It should be a new undertaking i.e. not formed by splitting up, or the reconstruction, of a business already in existence.

(b) It should not be formed by transfer of machinery or plant previously used for any purpose. However, two exceptions are prescribed under the Act.

(c) It should not manufacture or produce articles specified in the Eleventh Schedule.

(d) It must start manufacturing during October 1,1994 and March 31,2004 as notified vide notification No.714(E), dated October 7,1997.

(e) It should employ 10 worker with the aid of power or 20 worker without the aid of power.

In support of its claim, the assessee has filed a report in Form No.10CCB. The AO did not dispute with regard to fulfillment of the conditions contemplated under section 80IB of the Act. His area of grievance is whether the assessee has actually carried out this activity or not. He made reference to circumstances, and according to his understanding, these circumstances goads him to disbelieve the activity of the assessee. He raised a query at the fag-end of the assessment proceedings, and he made reference to this questionnaire in the impugned assessment order. In order to evaluate justification of the reasoning given by the AO, we deem it pertinent to take note of these objections. They read as under:

"

(i) *How 12 workers can produce goods of Rs. 3.18 crores and how it is possible to manufacture goods of Rs. 3.18 crores with the electricity charges of Rs. 9,857/-*

(ii) What is the capacity of manufacturing of goods of each machine?

(iii) It was also requested to produce records of manufactured goods by each worker.

(iv) But was the records maintained for production day to day by each worker.

(v) To produce copies of challans and LARs of raw materials received at factory premises at Daman.

(vi) Also produce copies of bills raised by the transporters."

9. Before we embark upon an inquiry on the alleged objections raised by the AO vis-à-vis defence given by the assessee, we deem it appropriate to take note of the explanation given by the assessee and reproduced by the ld.CIT(A). In these explanations, the assessee has highlighted its manufacturing process, types of machineries used and how total turnover was achieved. It can be appreciated in a better way by taking note of the following observations of the CIT(A):

"(i) For manufacturing of sets:-

Silver Ghat (Machining)
Shouldering / Jointing (Machining as well as Manual)

Cleaning (Manual)

Fitting & Fixation of stones / pearls / ghoogri / Zalar
(as per requirement of design) (Manual)

Finished set of requisite design

(ii) *Payal and similar loose items:-*

Raw payal (ready input)

Fixation of Ghoogri (Manual)

Fitting of stones in (Manual)

Oxidized by hand brush (if required) (Manual)
Final Product

(iii) *When Raw silver jewellery is purchased:-*

Raw jewellary in different pieces

Fitting /jointing of 2 or 4 pieces into one (Machining)

Fitting & Fixation of stones / pearls / ghoogri / Zalar (Manual)

(as per requirement of design)

finished set of requisite design

The AR further argued that the AO should have reconciled the consumption of electricity from the actual bills of electricity filed before him. The AR furnished the reconciliation of consumption of electricity in correlation with the user of machines. The relevant reconciliation filed by the appellant is re-produced below:-

Types of Machines used and its electricity consumption reconciliation:-

1) Grooving Machine 2 Nos.
2) Mini-steam Generators 1 No.
3) Casting Machine 1 No.

One machine on and average consumes 210 watt per hour (approx)

One machine consumes 2 to 2.5 units per hour (approx)	*Units consumption (approx)*
Average usage of Grooving Machine 2.5 to 3 hours per day	*7*
Average usage of other Machines 2 to 2.5 hours per day	*6*
i. e. Total consumption per day	*13 units*
For full year consumption considering 300 working days	*3900 units*
*Amount of electricity consumption considering Rs. 2.50 per unit (3900 * 2.50)*	*Rs. 9750/-*
Appellant's actual consumption of electricity for manufacturing process reflected in the books of the year under	*Rs.9587/-*
Appellant's actual consumption of electricity for general lighting like bulbs, fan, tube light, etc.	*Rs,3348/-*
Total Cost of electricity as per bills	*Rs. 13,250/-*

Consumption break-up as reflected in the electricity bills:-

Period	***Units consumed***	***Amount (Rs.)***
April -05	*706*	*1,765.00*
May-June-05	*1,016*	*2,540.00*
July - Aug - 05	*1,059*	*2,647.50*
Sept - Oct. - 05	*809*	*2,022.50*
Nov-Dec-05	*775*	*1,937.50*
Jan-Feb-06	*701*	*1,752.50*
March-06	*216*	*540.00*
TOTAL	*5,282*	***13,205.00***

The AR argued that from the above reconciliation, the merits of the appellant's case are proved beyond doubt and the facts of the case are well substantiated with the actual working of the consumption as per bills of electricity in reality. The AR further argued that the AO should have appreciated that as against the high rates of electricity in Maharashtra and Gujarat, the rates per unit in Union territory of Daman is Rs.2.50/- only, which makes it possible to manufacture such items of jewellery at low cost. The AR further argued that the following facts and figures reflects that the production of jewellery even with such low cost of Electricity and Wages is possible:

1. Total turnover	*Rs. 318 lacks*	
2. Total purchase	*Rs. 219 lacks*	
3. Average sale per day	*Rs. 1,06,046/-*	
4. Average purchase per day	*Rs. 73,077/-*	
5. Total Wages & Salary	*Rs. 4,67,761/-*	*(12 Workers)*
6. Silver sets manufactured	*15 to 20 per day*	

The AR argued that being high value range product, the value of 15 to 20 number of sets manufactured are of approx Rs. 95000 to 110000/- and average workers employees are 12 being skilled workers are capable of producing above quantity."

10. Let us evaluate the evidence. First ground of the assessee for claiming the deduction under section 80IB was that it had started production in Asstt.Year 2004-05. Asstt.Year 2006-07 is the third year. Deduction under section 80IB was granted in Asstt.Year 2005-06 in a scrutiny assessment. The ld.CIT(A) while considering this aspect made reference to the decision of the Hon'ble Gujarat High Court in the case of Saurashtra Cement & Chemical Industries Ltd. vs. CIT, 123 ITR 669 (Guj) and has observed that without disturbing relief granted in the earlier years, the AO cannot examine the question again and decide to withhold or withdraw the relief which has already been granted in the earlier year. We are conscious of the fact that assessment in Asstt.Year 2005-06 was reopened and in re-assessment, this deduction was denied. But it is pertinent to note that assessment was reopened for the reasons that deduction in A.Y.2006-07 was denied to the assessee. It was not reopened that something new was found and came to the possession of the AO. He has re-appreciated these very circumstance on the strength of the finding recorded in Asstt.Year 2006-07. Apart from the above, let us examine objections of the AO. First suspicion in the mind of the AO was that how 12 workers can produce goods of Rs.3.18 crores, and how it is

possible to manufacture goods of this magnitude with the electricity charges of Rs.9857/-. The stand of the assessee was that it was engaged in manufacturing of all types of fancy, artificial, silver jewellery. The assessee has demonstrated in the detail that major components and raw-material was of silver, which is a valuable metal. The assessee has demonstrated that 15 to 20 silvers sets were manufactures and it was possible by 12 workers. It also pointed out its manufacturing and minimum use of machinery. The assessee has placed on record a copy of the letter written by the machinery supplier. This letter is available at page no.27 of the paper book. It contemplates that machinery used in this activity consume approx. 210 WATT of electricity per hour. Thus, the assessee has demonstrated that electricity consumption was very less on this machinery and maximum work was manual. This aspect has been highlighted before the AO in the explanation of the assessee and also before the CIT(A). The ld.AO failed to appreciate this peculiar nature of the assessee's business. The explanation of the assessee is being noticed by us in page 11 of this order. This explanation justifies the consumption of low electricity. This fact can be cross verified with the letter of machinery manufacturer at page no.27 of the paper book.

The second reason assigned by the AO is that the assessee failed to give capacity of manufacturing of goods of each machine. In this connection, it was pointed by the assessee that major work was manual and number of art jewelleries was solely not depended upon machinery though assistance of machinery was required. As far as objection of the AO with regard non-production of day-today production register is concerned, it was pointed out by the assessee that in this line of business it was not possible to maintain such details. The assessee-firm was not manufacturing proto-type of jewellery. It has produced variety of items containing numerous designs,

shape, size and specification. It is not feasible or possible to maintain any quantitative records on daily basis.

11. With regard to non-production of challans and transport bills are concerned, the assessee pointed out to the AO that jewellery by its nature is a very small item and it is not being transported through transporter. These items were carried out by its employees or by the purchasers. Help of transporter would not be required in this line of business. It is also pertinent to observe that the AO wants to prove certain negative facts, i.e. to demonstrate how 12 persons can produce jewellery having value of Rs.3.18 crores. Now, it is very difficult situation for any assessee to explain. The assessee has submitted all its details and pointed out how it has produced. Before the ld.CIT(A) detailed written submissions were made which have been noticed exhaustively, and thereby the ld.CIT(A) has accepted the claim of the assessee. After going through the detailed finding of the ld.CIT(A) we do not see any reason to interfere in it. Accordingly, all the appeals of the Revenue are dismissed.

12. In the result, all appeals of the Revenue are dismissed.

Order pronounced in the Court on 20th February, 2017 at Ahmedabad.

Sd/-	Sd/-
(AMARJIT SINGH)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 20/02/2017