

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "H" NEW DELHI**

**BEFORE SHRI I.C. SUDHIR, JM
AND SHRI J.SUDHAKAR REDDY, AM**

**ITA No:3637/Del/2014
AY : - 2010-11**

Tejpal Singh Kohli,
Prop. Concept Industries,
H-3/18, Model Town-II,
New Delhi.
PAN AFXPK9227P

(Appellant)

Vs. CIT-XI
New Delhi.

(Respondent)

Appellant by :Shri Rajesh Mahna, Advocate
Respondent :Shri R.S. Meena,CIT (DR)

O R D E R

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the revenue directed against the order of the Commissioner of Income Tax passed u/s 263 of the Act on 29.5.2014 wherein the deduction granted u/s 80IC of Income Tax Act, 1961 in the assessment order passed u/s 143(3) on 8.3.2014 by the AO was held to have been wrongly granted. Ld. CIT held that the assessment order passed u/s 143(3) on 8.3.2013 was erroneous in so far as it is prejudicial to the interest of revenue.

2. Aggrieved the assessee is in appeal before us.

3. We have heard Shri Rajesh Mahna , Ld. Counsel for the assessee and Shri R.S. Meena, the Ld. CIT, DR on behalf of the revenue.

4. On a careful consideration of rival submissions we hold as follows :-

Ld. Commissioner of Income Tax in his notice u/s 263 dated 18.3.2014 stated that prima facie deduction claimed u/s 80IC of the Act by the assessee is not justifiable on the following grounds :-

- a) Assessee is assembling and trading LCDs and it is not carrying on manufacturing of goods.
- b) The unit of the assessee is not in a notified area

5. The assessee gave a detailed reply on 7.4.2014, inter alia mentioning that the very same issue of claim of exemption u/s 80IC of the Act for the earlier asstt. Year 2009-10 in the assessee's own case has come up before the Commissioner of Income Tax and that the Ld. CIT vide her order dated 31.10.2012 in appeal No. 222/2011-12 allowed the claim of the assessee. Many other contentions were raised including the jurisdiction of the Ld. CIT invoking its powers u/s 263.

6. Ld. CIT(A) rejected the contention of the assessee and came to the conclusion that the assessee is engaged only in assembling the LCD monitors and that the unit of the assessee is not located in the notified area and hence the assessee has wrongly claimed deduction u/s 80IC of the Act and the AO has wrongly granted deduction u/s 80IC of the Act.

7. Aggrieved the assessee is in appeal.

8. After hearing rival contentions we find that on merits the 'H' Bench of the ITAT in ITA No.362/Del/2013 for the asstt. Year 2009-10 the assessee's own case vide order dated 11th July, 2014 at para 7 and 8 held as follows:-

“7. Even before the ITAT, the assessee has filed details of various purchases made from various parties in the course of import or processing with relevant account and copies of which are at (pages 2 to 81); notification of Government of India, Ministry of Commerce & Ind. (pages 82 to 98); flow chart of assembling (pages 99 to 132); details of parties to whom sales were made with details of items (pages 133 to 150) form No. 1 issued by single window clearing agency, Department of Industry, Govt. Of Himachal Pradesh, Najfgarh (page 151); 10CCB Certificate (pages 152 to 158); qualification of service of engineering (page 159) and copies of written submissions made before the Learned CIT(Appeals) (pages 160 to 165).

8. Under these facts and circumstances, we fully concur with the findings of the Learned CIT(Appeals) that the assessee was very much eligible for the claimed deduction u/s 80IC of the Income-tax Act, 1961 which was wrongly denied by the Assessing Officer. Thus, he has rightly directed the Assessing Officer to pass a consequential order accepting the claim of the assessee for deduction u/s 80IC(2)(b)(ii) of the Act as per law. The same is upheld. The issue is, thus, decided in favour of the assessee.”

9. The AO on receipt of the order of the first appellate authority for the asstt. Year 2009-10 vide appeal No. 222/2011-12 order dated 31.10.2012 in the assessment order at para No. 3 page 1 observed as follows :-

“The assessee was asked to justify claim of deduction u/s 80-IC of the Act in view of the fact that activity carried out by the assessee is assembling. The assessee has furnished a detailed reply supported with various judicial pronouncements. Keeping in view the facts of the case and various judicial pronouncements it is seen that assessee brings into existence a new identifiable commercial product from various components. Accordingly deduction u/s 80-IC of the I.T. Act is allowed to the assessee. With these remarks income as returned is accepted.”

10. On perusal of the above paragraph in the assessment order, coupled with the facts that in the earlier assessment year the same AO denied the

exemption u/s 80IC to the assessee on the very same grounds and the facts that the Commissioner of Income Tax (Appeals) has reversed such addition, we are of the opinion that the AO has properly applied his mind and hence take a plausible view. Thus applying the proportions laid down by the Hon'ble Supreme Court in the case of CIT vs. Max India Ltd. (2007) 295 ITR 285(SC) and the proportions laid down in the case of Malbar Industries Co. Ltd. Vs. CIT 243 ITR 83 (SC) we conclude that order passed u/s 263 is bad in law.

11. The assessee filed a paper book running into 86 pages. The paper book consists of the documents filed before the AO in support of its claim of deduction u/s 80IC. These are the very same documents which were considered by the Ld. CIT(A) and the ITAT, while adjudicating the similar claim for the earlier assessment year. The Tribunal adjudicated the issue in favour of the assessee.

12. Consistent with the view taken therein we uphold the contention of the assessee that the AO has rightly granted deduction u/s 80IC and held that the order of the Ld. CIT(A) is bad in law.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 15th October, 2014.

sd/-

**(I.C. SUDHIR)
JUDICIAL MEMBER**

sd/-

**(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER**

Dated: the 15th October, 2014

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar