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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **INCOME TAX APPEAL NOS. 509/2014, 510/2014 & 515/2014**

Date of decision: 12th September, 2014

COMMISSIONER OF INCOME TAX-IV

..... Appellant

Through Mr. Kamal Sawhney, Sr. Standing
Counsel.

versus

M/S. FAITH BIOTECH PVT. LTD.

..... Respondent

Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL):

CM No. 13629/2014 in ITA No. 510/2014
CM No. 13862/2014 in ITA No. 515/2014

Exemption applications are allowed, subject to all just exceptions.

INCOME TAX APPEAL NOS. 509/2014, 510/2014 & 515/2014

These appeals by the Revenue pertain to Assessment Years 2006-07, 2008-09 and 2009-10. The common issue raised is whether the respondent-assessee was engaged in manufacture of goods and things to claim deduction under Section 80-IC of the Income Tax Act, 1961 ('Act', for short). The claim was disallowed by the Assessing Officer, but stands

allowed by the Commissioner of Income Tax (Appeals), a finding affirmed by the Income Tax Appellate Tribunal ('Tribunal', for short).

2. The respondent-assessee was engaged in the business of manufacture of health care and surgical items and in the returns filed for Assessment Years 2006-07, 2008-09 and 2009-10 had declared taxable income of Rs.26,25,230/-, Rs.94,90,363/- and Rs.32,18,350/- respectively. The deduction claimed under Section 80-IC of the Act was to the tune of Rs.42,90,162/-, Rs.35,69,594/- and Rs.2,46,13,965/- respectively. The respondent-assessee had set up a manufacturing unit for manufacture of air purifier or air purification systems. The Assessing Officer held that the aforesaid activities would not qualify as 'manufacturing activity' as the respondent-assessee was a mere assembler and did not have requisite tools or machinery. He referred to the value of the fixed assets of about Rs.1,25,000/- and the assessee had produced bills worth Rs.1,00,000/- for purchase of tools, etc. Before the Assessing Officer, the respondent-assessee had given the following explanation:-

“Steri-Air air purification systems use multiple technologies like ozone gas, electrostatic precipitation, Ultra violet germicidal irradiation, multiple mechanical filters like synthetic pre filters, secondary filters, activated carbon filters, HEPA (High efficiency particulate arrestor) filets in various permutations and combinations. The combinations depend upon the need of the customer and the area of application. This is

probably for the first time in India that an array of technologies for air purification, which were available, has been combined into a single system for the highest efficiency. Apart from this in order to make the system user friendly we have incorporated programmable timers in the system so that the user can pre define the time of switching on and off and the time of running of the system. The system has been appreciated and well accepted by the health care industry workers. We have been promoting it aggressively all dyer the North Indian Market. Details regarding our marketing activities and already existing approvals have been given in the latter part of this report.

Steri-Air is a versatile system, which can be used in almost all areas of a hospital on a continuous 24x7 basis.

Manufacturing of Steri-Air is an assembly process, where we procure various parts/components of the system from different vendors and assemble the same at our facility in Roorkee. All the electronic and electrical components are received in the form of cards, with suitable connectors and all the required cards are connected using connectors".

3. The term ‘manufacture’ has been defined in Section 2(29BA) of the Act, which is as under:-

“2(29BA) “manufacture”, with its grammatical variations, means a change in a non-living physical object or article or thing,-

- (a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or
- (b) bringing into existence of a new and distinct object or article or thing with a different chemical composition

or integral structure;”

4. The finding of the appellate authorities, including the Tribunal is that the product produced and sold by the respondent-assessee was air purification system. For manufacturing the said product, the assessee had purchased parts like base motors, filters, UV lights etc. but the final product produced was entirely different from its constituents or parts. The product manufactured or produced, i.e. the air purifier or air purification system, was completely a new and an entirely different commodity having distinct name, character and use. The respondent-assessee had even filed photographs before the Assessing Officer to support his contentions on the manufacturing activities undertaken. The respondent-assessee had filed a flow chart of the manufacturing process. The manufacturing unit stood registered with District Industries Centre, Roorkee, Pollution Control Department, Commercial Tax Department, Uttaranchal, etc.

5. The Assessing Officer did not dispute or question the purchases of the parts used for manufacturing as well as the sale consideration received by the respondent-assessee from sale of the air purifiers but did doubt the purchases of the tools and implements required to undertake the manufacturing activities. It is not the case of the Revenue that the air purifiers were not actually manufactured or sold to third parties and there was bogus purchase of parts or transactions for sale of the manufactured goods. The stand of the respondent-assessee was that they had used simple

tools and testing equipments like frequency tester, multi meter, VV intensity meter, wires, CFM flow meter, ozone intensity monitor, nuts and bolts, hand drill, screw driver set, plier cutting set, etc. to carry out assembling and manufacturing of the air purifiers.

6. In view of the aforesaid factual findings, we do not think any substantial question of law arises for consideration in the present appeals. The appeals are thus dismissed.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

SEPTEMBER 12, 2014
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