

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 3943/Del/2018
(for Assessment Year : 2013-14)

DCIT Circle – 1, Haldwani PAN No. AACCH 0708 D (APPELLANT)	Vs.	Himalayan Auto Era (India) Pvt. Ltd., Plot No.61 & 68, Sector-IIDC, IIE, SIDCUL, Rudrapur, Uttarakhand-263 153 (RESPONDENT)
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Assessee by	Shri Amit Goel, C.A.
Revenue by	Shri Brij Mohan Singh, Sr. D.R.

Date of hearing:	03.03.2022
Date of Pronouncement:	11.03.2022

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the Revenue is directed against the order dated 08.03.2018 passed by the Commissioner of Income Tax (Appeals) - Haldwani relating to Assessment Year 2013-14.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company stated to be engaged in the business of manufacturing of motor vehicle parts. Assessee electronically filed its return of income for A.Y. 2013-14 on 29.09.2013 declaring Nil income after claiming deduction of Rs.3,21,71,012/- u/s 80IC of the Act. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 21.03.2013 and the total income was determined at Rs.3,22,15,310/- by denying the claim of deduction u/s 80IC of the Act. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 08.03.2018 in Appeal No.10029/CIT(A)/HLD/2016-17 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

1. *“That the Ld.CIT(A), Haldwani has erred in law and on fact in allowing relief u/s 80IC of the IT Act, against the disallowance of deduction of Rs. 3,21,71,012/-.*
2. *The Ld. CIT(A) has allowed a relief u/s 80IC of the I.T.Act, 2012-13 dated 19-12-2016 of Ld. CIT(A), Haldwani in assessee(s) own case without going into the real essence of the term ‘manufacturing’ activity available to the assessee, as per section 2(29BA) of the I. T. Act, 1961. Since, the assessee has done only job related works in raw materials which were shown as purchase through book entries could not falls under the ambit of ‘manufacturing’ activity as per section 2(29BA) of the I. T. Act, 1961. The decision implies that on the basis of process flow chart would automatically be deemed to be that once an object or substance is subjected to job related work had the transformation of the article in order to bring new article into existence and this activity would amount to ‘manufacturing’ and be eligible for deduction u/s 80IC of the I.T. Act, 1961.*

3. *That the order of the Ld. CIT(A), Haldwani is against the spirit of legislature and the order of the AO is liable to be restore.*
4. *That the appellant craves, leave to add, alter, amend or vary from the above grounds of appeal.”*

4. Before us, at the outset, Learned DR submitted that the sole controversy is with respect to the deletion of disallowance of deduction of Rs.3,21,71,012/- u/s 80IC of the Act.

5. During the course of assessment proceedings, AO noticed that assessee had claimed deduction of Rs.3,21,71,012/- u/s 80IC of the Act. He on perusing the details of purchase of raw material and sale of final product noted that the name of the goods purchase and goods sold were same. The assessee was asked to furnish and explain that as to what was the raw materials purchased, what process has been done on those raw materials and what was sold as final product. The assessee was also asked to justify in what way the company is manufacturing a new product. The submissions were made by the assessee but the same were not found acceptable to AO as he noticed that only drilling, turning and boring related works was done on the material in order to convert it as saleable item and which according to AO was part of job work and not manufacturing activity. Assessee was thereafter asked to explain as to why the claim of deduction u/s 80IC of the Act not be denied in the absence of manufacturing activity to which AO has noted that

assessee had submitted that it was engaged in the same work since 2008 and CIT(A), Dehradun had allowed the appeal of the assessee in previous years on identical facts. The submissions of the assessee was not found acceptable to AO. AO concluded that the assessee was not engaged in the manufacturing activity and was merely engaged in fine tuning a product and not manufacturing of any new product. He also noted that against the order passed by CIT(A) in assessee's favour in earlier years, Revenue has preferred second appeal before the Tribunal. He therefore held that the assessee was not eligible for the claim of deduction u/s 80IC of the Act and accordingly denied the claim of deduction amounting to Rs.3,21,71,012/-.

6. Aggrieved by the order of AO, assessee carried the matter in appeal before the CIT(A). CIT(A) noted that in A.Y. 2012-13, his predecessor has allowed the appeal of the assessee. He noted that the facts in the year under consideration were identical to that of earlier years. He thus following the order of his predecessor held that assessee was eligible for deduction u/s 80IC of the Act and accordingly directed the AO to allow the claim of deduction.

7. Aggrieved by the order of CIT(A), Revenue is now before us.

8. Before us, Learned DR supported the order of AO.

9. Learned AR on the other hand reiterated the submissions made before the lower authorities and supported the order of CIT(A). He further submitted that identical issue arose in assessee's own case in A.Y. 2009-10 and 2010-11 wherein the claim of deduction u/s 80IC of the Act was denied by the AO. When assessee carried the matter before CIT(A), CIT(A) decided the issue in favour of the assessee. He submitted that against the order of CIT(A), Revenue carried the matter before the Hon'ble Tribunal and the Tribunal in ITA No.5787/Del/2012 for A.Y. 2009-10 and ITA No.4521/Del/2013 for A.Y. 2010-11 vide order date 16.08.2017 decided the issue in favour of the assessee by upholding the order of CIT(A). He therefore submitted that in the absence of any change in facts, no interference to the order of CIT(A) is called for.

10. We have heard the Learned DR and perused the material available on record. The issue in the present ground is with respect to the denial of claim of deduction u/s 80IC of the Act. The claim of deduction u/s 80IC of the Act was denied by the AO for the reason that according to him assessee was not engaged in the business of manufacturing of any new product but was engaged in job work. We find that CIT(A) by following the order of his predecessor for A.Y. 2012-13 held the assessee to be engaged in the business of manufacturing and held that assessee to be eligible for deduction u/s 80IC of the Act. We further find that identical issue about the claim for deduction u/s 80IC of the Act

arose in assessee's own case in A.Y. 2009-10 & 2010-11 wherein the Co-ordinate Bench of Tribunal vide order dated 16.08.2017 held the assessee to be eligible for deduction u/s 80IC of the Act. Before us, Revenue has not placed any material on record to demonstrate that the facts in the case in the year under consideration and that of A.Y. 2009-10 & 2010-11 are different and distinguishable and further no material has been placed by the Revenue to demonstrate that the decision rendered by the Tribunal in assessee's own case for A.Y. 2009-10 & 2010-11 has been stayed/ set aside/ overruled by higher judicial forum. In such a situation, we find no reason to interfere with the order of CIT(A). **Thus ground of the Revenue is dismissed.**

11. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 11.03.2022

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 11.03.2022

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI