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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 382/2012

CIT Appellant
Through Mr. Sanjeev Sabharwal, Advocate

versus

MALBRO APPLIANCES PVT LTD Respondent
Through None

CORAM:**HON'BLE MR. JUSTICE S. RAVINDRA BHAT****HON'BLE MR. JUSTICE R.V.EASWAR****ORDER**

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18.07.2012

1. This appeal is directed against the judgment of the ITAT in ITA NO. 947/Del/2011 dated 16th November, 2011. The Revenue contends that the Tribunal fell into error in upholding the direction to grant the assessee's claim for the benefit under 80 IC of the Income Tax Act for the relevant assessment year 2007-2008.
2. The assessee which was involved in manufacturing and trading of LPG gas stove and rubber pipes started a new unit at Parwanoo, H.P., which is manufacturing gas stoves by using machinery. It accordingly claimed deduction under Section 80 IC of the Act. The amount claimed in this regard was Rs.1,88,61,595/-. This was dis-allowed stating that the assessee had admitted that its existing unit at Delhi had shifted to Parwanoo. The assessee's further claim for enlistment expenses to the extent of Rs. 10 lacs was also dis-allowed. The assessee's appeal to the CIT(A) was allowed. The matter was carried in appeal by the Revenue to the Tribunal. The Tribunal by its impugned order, allowed the appeal, holding as follows :-

"9. We have heard both the parties and have perused the material on record. We find that while allowing the claim of 80IC of the Act, the CIT(A), k has duly taken the attending facts into consideration. The facts are that the assessee had indeed set up a new unit in Parwanoo, which setting up is amply proved from the documentary evidences produced on



record. This evidence comprises of the rent agreement, showing that a factory premises was taken on lease where the new unit was set up and production started in September, 2006, the certificate and receipt from the Electricity Department showing the obtaining of a new power connection, details of employees and particulars of their domicile establishing them to be local residents of Parwanoo and thereabouts declaration filed with the Excise Department for seeking excise exemption qua the new unit and list of notified areas substantiating that deduction u/s. 80IC of the Act was available for new industrial undertaking set up in the concerned area. The Assessing Officer was swayed by a non-existent alleged admission by the assessee that its Delhi unit had been shifted to Parwanoo. The relevant portion of the assessment order in this regard as follows:

“.....The AR of the assessee by letter dated 12.10.2009 submitted that the assessee company, has shifted its unit during the year to Parwanoo.....”

A copy of the said letter dated 12.10.2009 has been placed on record before us, at Assessee's Paper Book (APB) 29-31. The relevant portion of the said letter reads as follows :-

DETAILED NOTE ON BUSINESS AT DELHI AND PARWANOO

90/1, 1st floor, Sector-04, Ambota, Old Kasoli Road, Parwanoo, Distt. Solan, Himachal Pradesh.

The company was involved in manufacturing of IP Gas Stoves and Rubber House as its Delhi Unit up to September, 2006. After that, the assessee entered into a tie up with HPCL, BPCL, and OIC. These three companies had developed a consortium Brand called “Suraksha”. The assessee company then started manufacturing “Suraksha” Rubber House at its Delhi Unit and LP Gas stoves at its Parwanoo unit. The Gas Stoves manufacturing from this unit is supplied to Gas outlets maintained by BPCL, HPCL and IOC.

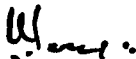
We have perused the letter in its entirety. Nowhere in this letter has the assessee admitted/submitted having shifted its unit from Delhi to Parwanoo. Rather the afore-quoted portion of the letter categorically shows that the company had two units, one at Delhi and the other having been started at Parwanoo.

In view of the above, there being no merit therein, ground no.2 raised by the department is rejected. “



3. In view of the above, findings which are based entirely on the facts, this Court is satisfied that no substantial question of law arises for consideration. The appeal is accordingly rejected.


S. RAVINDRA BHAT, J


R.V.EASWAR, J

JULY 18, 2012

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