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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 134/2013

+ ITA 135/2013

CIT

..... Appellant

Through: Mr Sanjeev Sabharwal, Sr. Standing
Counsel with Mr Puneet Gupta, Standing
Counsel & Ms Gayatri Verma, Adv.

versus

GS PHARMBUTOR PVT LTD

..... Respondent

Through: Mr Salil Kapoor, Mr Vikas Jain,
Mr Sanat Kapoor & Mr Ankit Gupta,
Advs.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V.EASWAR

ORDER

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19.03.2013

These appeals, have been filed by the Revenue against the order dated 25.11.2011 in ITA Nos.4255 & 4256/Del/2011 relating to assessment years 2003-04 and 2004-05. The question before the Tribunal was whether the Commissioner of Income Tax (Appeals) and the Assessing Officer were justified in disallowing the assessee's claim for deduction under Section 80IB only for the reason that the assessee had failed to furnish the audit report in Form 10CCB along with the return of income filed by the assessee.

The Tribunal held in favour of the assessee and against the Revenue in the following manner:-

"8. In the present case, the audit report in Form No.10CCB was filed by the assessee during the reassessment proceedings completed under sec. 147 of the Act, during the course of which, the AO disallowed the assessee's claim of deduction under sec. 80-IB on the ground that the audit report was not



filed along with the return of income. The expression “assessment” includes re-assessment as defined in sub-sec.(8) of sec. 2 of the Act. In the present case, the relevant assessment order is the assessment made under sec. 147 of the Act during the course of which proceedings, the assessee has furnished the audit report in prescribed form. We, therefore, hold that the requirement of filing the audit report for claiming the deduction under sec. 80-IB has been satisfied by the assessee, and therefore, on this reason alone, the assessee’s claim of deduction under sec. 80-IB is not disallowable. We, therefore, delete the disallowance of assessee’s claim made under sec. 80-IB of the Act as the assessee has satisfied the condition of filing audit report during assessment proceedings initiated under sec. 147 of the Act. The Assessing Officer shall modify the assessment order accordingly.”

The Tribunal had arrived at the aforesaid conclusion after following decision of this Court in the case of CIT vs. Contimeters Electricals (P.) Ltd., (2009) 317 ITR 249 (Delhi). Though that decision was in respect of original assessment, its ratio equally applies to reassessment. Consequently, there is no merit in these appeals and no substantial question of law arises for our consideration.

The appeals are dismissed.


BADAR DURREZ AHMED, J


R.V.EASWAR, J

MARCH 19, 2013

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