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

\+ ITA 545/2013 & ITA 556/2013

COMMISSIONER OF INCOME TAX-IV ..... Appellant

Through Mr. N.P. Sahni with Mr. P. Roychaudhari and Mr. Nitin Gulati, Advocates.

versus

M/S DIXON TECHNOLOGIES (I) PVT LTD ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA .

O R D E R

% 18.12.2013

1. These two appeals by Revenue relate to Assessment Years 2004-05 and 2006-07. We have earlier disposed of and decided ITA Nos.550/2013 and 554/2013 on 9.12.2013, in the following terms:-

"ITA 550/2013 & ITA 554/2013

1. These two appeals by the Revenue which pertain to the Assessment Years 2008-09 & 2009-10 challenge the impugned order granting deduction under Section 80IC of the Income Tax Act, 1961 on two grounds.
(i) that the respondent assessee was not manufacturing or producing articles or things.
(ii) The units in question were not located in notified areas as per the scheme framed by the Central Government for the State of

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Uttranchal.

2. On the first aspect, we are surprised at the stand of the Revenue because the plea taken is that the manufacture or assembly of air-conditioners and microwave oven, from different parts supplied or procured from third parties did not amount to production of articles or things or manufacturing. The factum is that the end product manufactured or produced by the respondent assessee was entirely different from the parts and was distinctly known as a separate commodity and marketed as such. This position is not disputed. Section 80IC is applicable to both manufacture and production of articles or things. The finding of the Tribunal is clear and lucid in this regard and requires no interference.

3. On the second aspect, we have examined the assessment order in respect of the Assessment Year 2008-09. The Assessing Officer has referred to the three units and the evidence produced. The three units, it is apparent, were located in village Selaqui, Selakui Industrial Area, Dehradun, Uttranchal and Central Hope Town Industrial Area, Selaqui, Dehradun, Uttranchal. The khasra numbers were also mentioned in the assessment orders as 262M, 992/2 and 263. Before the Assessing Officer, the assessee had filed notification issued by the Central Excise vide No.50 of 2003. The Assessing Officer, however, did not conduct verification but recorded that it was not clear, whether the notification was issued by the competent authority. Thereafter the Assessing Officer referred to the khasra numbers and expressed his doubt stating that he was not

sure and clear whether the khasra numbers were mentioned in the list available for deduction under Section 80IC of the Act. It was the obligation and duty of the Assessing Officer to examine, check and verify and not deny relief without inquiry, on mere doubt or suspicion. It is clear from the assessment order that documents and papers in support were filed but were not verified.

4. The Commissioner (Appeals) accepted the stand of the respondent assessee and on the question of area or location has recorded:-

> "The appellant's Unit-I is located in Khasra No.262M, Industrial Area, Selakui, Dehradun, Uttranchal (refer **pages 102-109 of the paperbook** for Form 10CCB). The AO has alleged that the said unit does not appear in the list of notified areas and therefore disallowed deduction for Unit-I At the outset, the appellant wishes to submit that the CIT(A)-XVIII in assessment year 2007-08, vide order dated 15.10.2010 (refer **pages 245 to 262** of the paperbook), while allowing in favor of the appellant, held, that Unit – I of the appellant, located at Khasra No.262Mi, Central Hope Town, Selakui Industrial Area, Tehsil Vikas Nagar, District Dehradun, lies within area notified by the CBDT and is therefore area eligible for deduction under section 80-IC of the Act.

It is further respectfully submitted that in coming to the erroneous conclusion as aforesaid, the AO has glossed over the following critical facts:

a) In terms of Notification No.177 dated 28.06.2004, Selakui and Central Hope Town [both falling under Tehsil Vikas Nagar, District Dehradun] have been defined at separate serial nos. Further, in terms of Notification No.283 dated 03.10.2006 Khasra No.262Mi, Central Hope Town, District Dehradun has been notified as an area eligible for deduction under that section.

b) That Selakui Industrial Area is an Industrial Area falling under the Central Hope Town, Tehsil Vikas Nagar, District Dehradun and, therefore, if Khasra No.262Mi, Central Hope Town is notified by CBDT, then automatically, Khasra No.262Mi, Selakui Industrial Area becomes a notified area. The complete address of the appellant's unit being Khasra No.262Mi, Central Hope Town, Selakui Industrial Area, Tehsil Vikas Nagar, District Dehradun. This fact is evidenced from the auditor's report in Form 10CCB in respect of the aforesaid unit, wherein the address has been mentioned as "Khasra No.262Mi Central Hope Town, Industrial Area, Selaqui, District

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Dehradun."

c) The Patwari has, also, certified that the appellant's unit is located in Khasra No.262Mi Central Hope Town, Selaqui Industrial Area, Tehsil Vikas Nagar, District Dehradun which, admittedly, is notified by the CBDT as a backward area, eligible for deduction under section 80-IC of the Act. A copy of the Patwari's certificate is attached herewith at **pages 135-140 of the paperbook**

d) That apart, vide Notification No.115, dated 26.04.2006, the CBDT had revised entry no.11 in Notification No.177 (supra) and instead of only Selakul, even Central Hope Town and Camp Road were included under the same entry apart from Village Selakui. As a corollary, Khasra No.262Mi falling under Central Hope Town, Selakui Industria Area, Tehsil Vikas Nagar, District Dehradun has been notified as area eligible under section 80-IC of the Act.

e) That the appellant's units were subject to inspection by the Addl. Commissioner of Income-tax and the Ld. ADIT, during the assessment for AY 2004-05. However, in its report dated 29.12.2006, the Ld. ADIT, after physical verification of the premises did not record any such finding. The claim of deduction

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under section 80-IB/IC in this regard having been accepted in the year in formation, it is not possible to deny deduction in the succeeding years, without seeking to revise the initial order."

5. Aggrieved, the Revenue preferred an appeal before the Tribunal on the said aspect. The Tribunal in the impugned order has observed:-

"The next objection of the Assessing Officer is about the geographical location of the assessee's unit. We have perused the record carefully and find that learned Assessing Office failed to construe the revenue record in right perspective. He has compared the khasra number with a restricted approach. It has been demonstrated before us that the Board has extended the scope of industrial estates by the last notification bearing No.115 dated 26.4.2006 which is applicable from earlier period also. The Board has simplicitor removed the confusion. In the latest notification, larger area has been shown as a industrial estates which includes khasra number 262 MI Selokni. The area according to the new notification includes the areas which were already notified plus Central Hope down. The learned counsel for the assessee has placed on record report of the Patwari, wherein he has submitted that khasra No.262 MI is part of khasra No.262. Learned Assessing Officer was considering khasra No.262 and 262 MI as

independent khasra number. The copy of the site plan available in the revenue record, exhibiting the geographical location of each killa number and khasra number was also filed before the Learned CIT (Appeals) along with patwari's report and this document has been placed before us also. Therefore, we are convinced that there is no confusion about the location of the assessee's units. They are situated within the notified area.

15. Learned Assessing Officer has not raised any other objection. The basis conditions for allowability of deduction under sec. 80IB are also similar. Learned Assessing Officer except pointing out that these two objections has not pointed out any other objection in assessment year 2004-05 also. Therefore, after taking into consideration the orders of the Learned CIT (Appeals) in all the assessment years, we do not find any error in them on the issue of granting deduction under sec. 80IB/80IC of the Income-tax Act, 1961. We reject all these grounds of appeal in all the years."

6. The aforesaid findings recorded by the Tribunal are factual in nature.

7. Learned Standing Counsel for the Revenue submits that the Commissioner (Appeals) has relied upon certificate issued by the Patwari but it is not clear whether the said certificate

was filed before the Assessing Officer. Uncertainty cannot be a ground. It is also not averred in the present grounds of appeal i.e. the grounds of appeal filed before us that the assessee had filed a fresh or new certificate before the Commissioner (Appeals) and the said certificate should not have been admitted in evidence. A perusal of the assessment order reveals that the assessee had filed a certificate of the Tehsildar giving details including the khasra numbers. Moreover from the order passed by the Tribunal it is apparent that the entire industrial township in question was located in village Selaqui i.e. Selaqui Industrial Area and Central Hope Town Industrial Area were notified. No such plea was taken before the Tribunal.

8. Before us, the learned Standing Counsel for Revenue has produced two notifications dated 26.04.2006 but the earlier notification has not been produced. It is not possible to decipher from the said notifications any fact which contradicts the factual findings recorded by the Tribunal. At item No.(e) against column No.11, it is mentioned that village Selaqui, Central Hope Town and Camp Road shall be substituted. In case, the Tribunal had recorded wrong factual finding, the Revenue should have ascertained true and correct facts and examined the exact notification which was issued in 2003 and substituted by notification dated 26.04.2006. It cannot be assumed that the finding of the Tribunal is perverse without specific evidence or material being produced on record and specifically adverted to and relied. The Commissioner, i.e. the appellant has not examined the 2003 notification and the factual position, but has

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averred that the factual finding recorded by the Tribunal is perverse. Even papers/documents referred to in the order of the Assessing Officer, Commissioner (Appeals) and Tribunal have not been filed or referred to in the grounds of appeals. In the absence of any material and evidence, we cannot state or hold that the findings of the Tribunal are perverse.

9. For the Assessment Year 2009-10, the factual position remains the same.

10. In view of the aforesaid position, we are not inclined to issue notice on these appeals and the same are dismissed. At the request of the counsel for the appellant, we clarify that we have not examined the position prior to the issue of notification dated 26.04.2006."

2. The questions raised in the present appeals are:-

(i) that the respondent assessee was not manufacturing or producing articles or things.

(ii) the units in question were not located in notified areas as per the scheme framed by the Central Government for the State of Uttranchal.

3. On the first aspect of manufacture, we record that the respondent in the years in question was manufacturing air conditioners after procuring parts from third parties. Air conditioners are different from the procured parts and are distinct marketable products. The reasoning given in our order dated 9.12.2013 will apply.

4. On the second question, learned counsel for the appellant submits that in the two assessment years in question, earlier Notification No.177/04 [So 741] F.No.142/47 203-TPL dated 28.06.2004 will apply and the subsequent notification No.115/2006 dated 26.04.2006 will not apply. He submits that in the present case, the khasra in which the units of the respondent assessee were located has been recorded as 262Mi. He further submits that "Mi" stands for "Min" and 262Mi is neither specifically mentioned in the Notification dated 28.06.2004 nor in the second Notification No.115/2006 dated 26.04.2006. It must be noted that in our earlier order, we had referred to Notification No.115/2006 dated 26.04.2006 as it was applicable to the said case.

5. We have considered the said contention but, do not find any reason to take a different view. In Notification dated 28.06.2004, village Selakui was mentioned in column No.2 and in column No.3 several khasra numbers including khasra No.262 was mentioned. "Min" stands for part and the said word is used when only a part of the khasra is covered. In the present case, in column No.3, entire Khasra No.262 was mentioned. Therefore, entire land in the said khasra including any part of Khasra No.262 would be covered by Notification dated 28.06.2004. Khasra 262Mi will be part Khasra No.262. Contention of the revenue is not correct.

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6. The appeal has no merit and is accordingly dismissed.

SANJIV KHANNA, J

SANJEEV SACHDEVA, J

DECEMBER 18, 2013
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