IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD

BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER
AND SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA Nos. 1147 & 1157/Hyd/2014
Assessment Years : 2009-10 & 2008-09

Dy. Commissioner of Income-tax, Circle – 1(2), Hyderabad	M/s Coromandel International Ltd., Hyderabad PAN – AAACC 7852K
(Appellant)	(Respondent)

C. O. Nos. 52 & 53/Hyd/2014
(In **ITA Nos. 1147 & 1157/Hyd/2014**
Assessment Years : 2009-10 & 2008-09)

M/s Coromandel International Ltd., Hyderabad PAN – AAACC 7852K	Dy. Commissioner of Income-tax, Circle – 1(2), Hyderabad
(Cross Objector)	(Respondent)

Revenue by	Shri D. Sudhakar Rao
Assessee by	Shri R. Vijayaraghavan
Date of hearing	10-11-2014
Date of pronouncement	21-11-2014

O R D E R

PER SAKTIJIT DEY, J.M.:

These appeals of the department and C.Os. of assessee are directed against the consolidated order dated 14/03/2014 passed by learned CIT(A)-II, Hyderabad pertaining to AYs. 2008-09 and

2009-10. Since facts are identical and issues are common, the appeals and COs are clubbed together and disposed of by this consolidated order for the sake of convenience.

ITA Nos. 1147 & 1157/Hyd/2014

2. The effective grounds raised by the department, which are common in both the appeals, read as under:

> "2. *The learned CIT(A) erred in holding that the excised duty refund is entitled for benefit of 80IB deduction as the same is directly related to manufacture of goods.*
>
> *3. The learned CIT(A) ought to have confirmed the disallowance whether the issue in question is covered by the Apex Court's decision in the case of Liberty India Ltd., 317 ITR 218."*

3. Briefly, the facts relating to the aforesaid issue are, assessee a company is engaged in the manufacture and sale of pesticides and fertilizers. Assessee for the purpose of manufacturing pesticides has set up a unit in Jammu and Kashmir (in short J&K). Government of India declared a new industrial policy holding out various concessions and incentives for the state of J&K vide notification No. 1(13)2000-NER, dated 14/06/2002 for enabling state of J&K to develop an environment for industrial development, improving availability of capital and increase in market access to provide fillip to private investment in the State. Pursuant to the said industrial policy of Government of India various incentives like capital subsidy, interest subsidy, insurance subsidy, etc. were announced for new units to be set up in the state of J&K. As part of the overall incentives to be provided for the new units to be set up in state of J&K, excise duty subsidy was also announced by Central Excise Department vide Notification NO. 56/02-CE dated 14/11/02 on the goods manufactured at the

undertaking situated in specified areas of J&K. As per the said notification, assessee became entitled to claim excise duty refund on account of duties paid other than those through CENVAT credit of the goods manufactured. As per the procedure laid down in the aforesaid notification, the manufacturer has to submit a statement of duties paid (other than those settled through CENVAT credit) to the excise authorities by 7th of next month in which such duties have been paid. Excise authorities after due verification would refund duties paid to the manufacturer by 15th of next month. Where there is likely delay in the verification, excise authorities would refund duties paid by manufacturer on a provisional basis and thereafter make necessary adjustments from the refund accruing subsequently. In terms with the exemption notification, assessee claimed refund of excise duty and after verifying assessee's claim, central excise authorities granted refund of excise duty paid in terms with the industrial policy as well as notification issued by the central excise department amounting to Rs. 4,01,41,625 for AY 2008-09 and Rs. 3,58,56,467 for AY 2009-10. In the returns filed for the aforesaid assessment years, though, assessee treated excise duty refunded as income, but, at the same time, it claimed deduction u/s 80IB on the said income.

4. AO in course of assessment proceeding for the AY 2009-10, while examining the accounts of assessee noticed that assessee has included excise refund of Rs. 3,58,56,467 for the purpose of computation of deduction u/s 80IB. When the AO proposed to disallow 80IB deduction on the excise duty refund by relying upon the decision of Hon'ble Supreme Court in case of Liberty India, 316 ITR 218 on the ground that such income is not attributable to profit derived from the eligible business, assessee objected to such disallowance. However, AO overriding the objections of assessee

excluded the excise duty refund of Rs. 3,58,56,467 from the business profits while computing deduction u/s 80IB. Similarly, though in the assessment order passed u/s 143(3) of the Act for the AY 2008-09, AO had allowed deduction u/s 80IB by treating excise duty refund as business profit. Subsequently, on 15/06/2012, AO passed an order u/s 154 of the Act withdrawing deduction u/s 80IB on the excise duty refund of Rs. 4,01,41,625. Being aggrieved of the disallowance of deduction u/s 80IB on the excise duty refund, assessee preferred appeals before ld. CIT(A).

5. Learned CIT(A) after considering the submissions of assessee in the context of various decisions placed before her allowed assessee's claim of deduction u/s 80IB on excise duty refund. The finding of the learned CIT(A) on this issue is reproduced hereunder:

> *5. The appellant is engaged in the business of pesticides and fertilizers. It had set up its manufacturing unit in Jammu & Kashmir which is the backward area. As per the Government Notification No. 1(13)/2000-NER dated 14.06.2002,the assessee is entitled for refund of Excise Duty of 100% for period of 10 years. This Notification was issued by Government of India to promote industrial development, to improve availability of capital and to increase market access in the backward State of Jammu & Kashmir. The mechanics of this exemption is, the manufacturer would submit a statement of Excise Duty paid to Excise authorities by 7th of the following month in which the Excise Duty was paid. The authorities, after due verification, would refund the Excise Duty to the manufacturer by 15th of the following month. In the instant case, the Excise Duty paid during the relevant year was Rs.6.06 crores. The sales do not include Excise Duty. Correspondingly the Excise Duty paid was also not debited to Profit and Loss Account. During the year the appellant got Excise Duty refund of Rs.4.01 crores. The Assessing Officer disallowed deduction u/s.80IB on Excise Duty refund based on the decision of Hon'ble Supreme Court in the case of Liberty India Ltd. (cited supra). The Hon'ble High Court of Jammu & Kashmir in the case of Shree Balaji Alloys*

(cited supra) had analyzed the issue in great detail considering the new industrial policy on Jammu & Kashmir and the Notification issued by the Government of India and held that the industrial policy had two fundamental objectives, namely, i) Acceleration of industrial development in the State of Jammu & Kashmir, ii) Generation of employment in the State of Jammu & Kashmir, and therefore, held the subsidy as capital subsidy. It is also pertinent to mention that the case of Liberty India (SC) was not considered in this case. In any case, relying on judicial precedents mentioned at 4(c), holding that the Excise Duty refund is entitled for the benefit of 80-IB deduction, as Excise Duty refund is directly related to manufacture 'of goods, so is the refund. In result, the Assessing Officer is directed to allow 80-IB deduction on Excise Duty refund."

6. The learned DR relying upon the decision of Liberty India Ltd. (supra) submitted that as excise duty refund is not connected with the business of the assessee, it cannot be treated as part of business income for allowing deduction u/s 80IB.

7. The learned AR submitted as per accounting policies of the assessee, which is also in conformity with Accounting Standard Interpretation (ASI) 14 excise duty collected from customers forms part of gross sales. Hence, the same needs to be excluded. The corresponding excise duty payment on goods removed are also not shown in the profit and loss account as a charge. However, when excise duty refund is received from the Central Excise Department same is shown as income. It was submitted as excise duty refund is a part of sale price it is to be treated as profit derived from eligible business. Ld. AR submitted, as excise duty has direct nexus with the manufacturing activity of the assessee, same has to be considered as part of profit derived from eligible business, hence, eligible for deduction u/s 80IB. In support of such contention ld. AR relied upon the following decisions:

1. CIT Vs. Dharam Pal Prem Chand Ltd., 317 ITR 353 (Del.)
2. CIT Vs. Meghalaya Steels Ltd., 332 ITR 91 (Gauhati)

3. M/s J.K. Aluminium Co., ITA No. 3303/Del./2010
4. Diamond Tool Industries Vs. DCIT, ITA No. 2080/Mum/11
5. Addl. CIT Vs. Total Packaging Services, ITA No. 5346/Mum/09

8. Having considered rival submissions and perused the orders of revenue authorities as well as other materials on record and after having applied our mind to the decisions relied upon by the parties, we do not find any infirmity in the order of ld. CIT(A) in allowing benefit u/s 80IB to assessee on excise duty refund for the following reasons.

9. It is clear from the assessment order that AO has denied 80IB deduction on excise duty refund for the sole reason that it cannot be treated as income derived from eligible business of the undertaking. However, as can be seen from the facts brought on record, there is no dispute that assessee has paid the excise duty on the goods manufactured and sold and as such it forms part of the sale price of assessee. Therefore, payment of central excise duty is integrally connected with the manufacturing and sale of goods produced by assessee. It is also not in dispute that as per the industrial policy resolution declared for the state of J&K and consequent to Central Excise Department Notification, assessee became eligible for refund of excise duty paid after set off of CENVAT credit. Therefore, in sum and substance, it is only a refund of an amount already paid by assessee and reduced from the sale price while computing the profit. Therefore, when assessee gets refund of an expenditure already incurred the same has to be deemed to be the profits and gains of business or profession carried on by assessee in terms of section 41(1)(a) of the Act. In that view of the after, excise duty refund received by

assessee has to be treated as part of the business profit, hence, eligible for deduction u/s 80IB of the Act. Otherwise also, as payment of excise duty is directly linked with the manufacturing of goods, refund of excise duty has to be treated as income derived from eligible business as provided u/s 80IB. In the aforesaid view of the matter, assessee will be eligible to claim deduction u/s 80IB on the income accruing from refund of excise duty. So far as the ratio in case of Liberty India Vs. CIT (supra), the facts are clearly distinguishable and do not apply to the facts of the present case. In case of Liberty India, the hon'ble Supreme Court was considering the profits derived from sale/transfer of DEPB/Duty Draw Back Benefits. DEPB/Duty Draw Back Benefits, is given under a scheme framed under the Customs Act and it is transferable, in other words, it is a marketable commodity. Excise duty refund by assessee in the present case is neither a marketable commodity nor transferable. It is only a refund of expenditure already incurred by assessee, hence the decision of the Hon'ble Supreme Court in case of Liberty India (supra) will not apply. In the aforesaid view of the matter, we uphold the order of ld. CIT(A) by dismissing grounds raised.

10. In the result, appeal of the Department for both the assessment years under consideration are dismissed.

C.O. Nos. 52 & 53/Hyd/2014

11. Grounds raised by assessee in C.O. for AY 2009-10 are as under:

> "*1. Excise duty rebate being an incentive granted to the Respondent in the State of Jammu and Kashmir, pursuant to the notification issued under the industrial policy of the State Govt. of Jammu and Kashmir for attracting/setting up of new*

industries in the state and increasing the employment in the state, is a capital receipt not liable to tax.

2. The learned CIT(A) has erred in not adjudicating the ground relating to excise duty rebate received by the Respondent in pursuance of notification issued under the industrial policy of the State Government of Jammu and Kashmir, for attracting/setting up of new industries in the state and increasing the employment in the state, is capital receipt and not liable to tax."

12. Grounds raised by assessee in C.O. for AY 2008-09 are as under:

"*1. Excise duty rebate being an incentive granted to the Respondent in the State of Jammu and Kashmir, pursuant to the notification issued under the industrial policy of the State Govt. of Jammu and Kashmir for attracting/setting up of new industries in the state and increasing the employment in the state, is a capital receipt not liable to tax.*

2. The learned CIT(A) has erred in not adjudicating the ground relating to excise duty rebate received by the Respondent in pursuance of notification issued under the industrial policy of the State Government of Jammu and Kashmir, for attracting/setting up of new industries in the state and increasing the employment in the state, is capital receipt and not liable to tax.

3. That the learned AO erred in passing rectification order u/s 154 dated 15 June 2012 to disallow deduction u/s 80IB of the IT Act, 1961 on the excise duty rebate received by the Respondent without appreciating that it is a debatable issue which cannot be subject to rectification proceedings u/s 154 of the Act.

4. CIT(A) has erred in not adjudicating the additional ground relating to order passed by AO u/s 154 of the IT Act, 1961 dated 15 June 2012 denying deduction u/s 80IB of the Act on the excise duty refund as the same is a debatable issue which cannot be subject to rectification proceedings u/s 154 of the Act."

13. As can be seen from the grounds, the first issue, which is common in both the assessment years, excise duty refund granted

under industrial policy is in the nature of capital receipt, hence, not taxable. In support of such contention, learned AR has relied upon a decision of Hon'ble J&K High Court in case of Shri Balaji Alloys Ravenbhel Healthcare (P) Ltd. Vs. ACIT, 333 ITR 335.

14. We have heard the parties and perused the orders of revenue authorities as well as other material on record. Undisputedly, assessee has not only treated excise duty refund as a revenue receipt in its books of account but has also shown it as income in the return of income filed for the impugned assessment years. This issue was never raised by assessee at the assessment stage. Though, before the first appellate authority assessee raised this issue by way of an additional ground, but, the learned CIT(A) neither examined nor considered the issue by making a detailed analysis. Since for arriving at proper conclusion as to whether excise duty refund is in the nature of capital or revenue, factual aspects relating to industrial policy resolution and notification granting incentives have to be looked into, which has not been done either by AO or by ld. CIT(A), we are not inclined to enter into this issue at this stage. Moreover, the aforesaid issue is of mere academic interest considering the fact that we have confirmed the order of ld. CIT(A) allowing assessee's claim of deduction u/s 80IB. Accordingly, grounds raising this issue having become infructuous are dismissed.

15. In AY 2008-09, assessee has raised one more ground challenging the validity of proceeding initiated u/s 154 of the Act. It was submitted by learned AR that in the assessment proceeding, AO after examining all details allowed assessee's claim of deduction u/s 80IB. Therefore, exercise of jurisdiction u/s 154 of the Act for withdrawing benefit u/s 80IB in respect of excise duty

refund is not valid as it is a debatable issue. In support of such proposition, assessee has relied on a number of decisions which have been referred to by learned CIT(A).

16. Though, in principle, we agree with ld. AR that powers u/s 154 cannot be invoked for rectifying mistakes arising out of debatable issues, however, considering the fact that we have upheld CIT(A)'s order granting benefit u/s 80IB to assessee for the impugned assessment year, this issue is of mere academic interest. Accordingly, the grounds raised having become infructuous are dismissed.

17. In the result, department's appeals as well as assessee's COs are dismissed.

Pronounced in the open court on 21/11/2014.

Sd/-	**Sd/-**
(B. RAMAKOTAIAH)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad, Dated: 21st November, 2014

kv

Copy to:-

1) DCIT, Circle – 1(2), 4th Floor, Aayakar Bhavan, Hyderabad
2) M/s Coromandel International Ld., 1-2-10, Coromandel House, SP Road, Secunderabad.
3) CIT(A)-II, Hyderabad
4) CIT-I, Range – 3, Hyderabad
5)The Departmental Representative, I.T.A.T., Hyderabad.