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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
27.
\+ **ITA 271/2016**

M/S. JAPNA EXPORTS ..... Appellant
Through: Mr. Shree Prakash Sinha, Mr. Rakesh Mishra and Mr. Yogesh Gel, Advocates.

versus

INCOME TAX OFFICER, WARD-25(1) ..... Respondent

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **26.04.2016**

CM No. 14800/2016 (for condonation of delay in re-filing the appeal)

1. For the reasons stated in the application, the delay in re-filing the appeal is condoned.

2. The application is disposed of.

ITA No. 271/2016

3. This is an appeal by the Assessee under Section 260A of the Income Tax Act, 1961 ('Act') against the impugned order dated 24th July 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 5719/Del/2013 for the assessment year ('AY') 2005-06.

4. The question sought to be urged before the Court is whether the ITAT

was in error in affirming the orders passed by the Assessing Officer ('AO') as well as the Commissioner of Income Tax (Appeals) ['CIT (A)'] holding that the Appellant was not carrying out the activity of manufacturing mosquito repellent machines at Kala Amb in Himachal Pradesh and, therefore, was not entitled to deduction under Section 80IC of the Act.

5. The concurrent finding of the three authorities i.e. the AO, the CIT (A) and the ITAT are that the substantial work of manufacturing the major components of the machine in question was undertaken in Delhi and not at the unit at Kala Amb. The cabinet and the main part of the machine was made in Delhi. The plug was made in moulding machines in Delhi and the pins in the plug were procured. The resistance wire and the LED were procured from Delhi. Only the assembling of the said components was done at Kala Amb. It has been noted that the main component of the mosquito repellant machine is the mould which gives shape to the plugs and heaters. In other words, no manufacturing activity of any nature was being carried out at Kala Amb.

6. Learned counsel for the Appellant sought to place reliance on the decisions in ***Commissioner of Income Tax, New Delhi v. Oracle Software India Ltd. (2010) 2 SCC 677***; ***Income Tax Officer, Udaipur v. Arihant Tiles & Marbles Pvt. Ltd. (2010) 2 SCC 699*** and ***Poonam Spark (P) Ltd. v. Commissioner of Central Excise 2015 SCC OnLine SC 665*** to urge that even a mere assembling of parts to produce the final product would amount to manufacturing.

7. In the considered view of the Court, the cases cited by the learned counsel for the Appellant are distinguishable on facts. Where a new product comes into existence as a result of an assembling it may be said that some manufacturing activity is undertaken. In the present case, however, all the components of the machine are already made outside Kala Amb and the mere putting together of those components cannot be said to constitute manufacturing for the purposes of Section 80IC of the Act.

8. The further facts that have weighed with the authorities are that during the years in question there was no substantial addition to the plant and machinery. Even the auditor's report did not comment on the value of the plant and machinery. Also the electricity consumption was insubstantial to justify any manufacturing activity.

9. In light of the concurrent factual findings of the AO, the CIT (A) as well as the ITAT, no substantial question of law arises for determination.

10. The appeal is dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 26, 2016
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