IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH 'F', MUMBAI

BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER & SHRI VIVEK VARMA, JUDICIAL MEMBER

S.No	I.T.A. No.	A.Y	Appellant	Respondent
1	4775-M-11	1998-99	Asst. Commissioner Of I.T. 2(3), Mumbai.	Umesh Pencils Processors P. Ltd., 510, Himalaya House, 79, Palton Road, Mumbai 400001. PAN: AAACU0701F
2	4776-M-11	2000-01	ACIT 2(3), Mumbai.	Umesh Pencils Processors P. Ltd., Mumbai.
3	4777-M-11	2001-02	ACIT 2(3), Mumbai.	Umesh Pencils Processors P. Ltd., Mumbai
4	4778-M-11	2003-04	ACIT 2(3), Mumbai.	Umesh Pencils Processors P. Ltd., Mumbai
5	4779-M-11	2006-07	ACIT 2(3), Mumbai.	Umesh Pencils Processors P. Ltd., Mumbai
6	4780-M-11	2007-08	ACIT 2(3), Mumbai.	Umesh Pencils Processors P. Ltd., Mumbai

AND

S.No	I.T.A. No.	A.Y	Appellant	Respondent
1	4787-M-11	1998-99	Umesh Pencils Processors P. Ltd., Mumbai.	ACIT 2(3), Mumbai.
2	4788-M-11	2000-01	Umesh Pencils Processors P. Ltd., Mumbai.	ACIT 2(3), Mumbai
3	4789-M-11	2001-02	Umesh Pencils Processors P. Ltd., Mumbai.	ACIT 2(3), Mumbai

Department by	Shri O. P. Kant. (Sr. AR.)
Assessee by	Shri Vijay Mehta.
Date of hearing	18-06-2012.
Date of Pronouncement	04-07-2012.

O R D E R

Per Bench:

Six appeals are filed by the revenue covering assessment years 1998-99, 2000-01, 2001-02, 2003-04, 2006-07 and 2007-08. The assessee is also in cross appeals for the three years, covering assessment years 1998-99, 2000-01 and 2001-02. As the grounds covered in the six departmental appeals are common, for the sake of brevity we are passing consolidated order. Similarly, as the grounds are common in the assessee's appeals, we are passing a consolidated order therein. For the sake of convenience, we are passing common order covering all the nine appeals heard by us.

2. The grounds of appeal taken in all the six appeals by the department are common, which are as under:

> *1. On the facts and in the circumstances of the case and in law the Ld.CIT(A) erred in allowing the claim of deduction u/s 80IA & 80IB based on the decision of Hon'ble ITAT 'I' Bench, Bombay in the case of M/s. Hindustan Pencil Ltd.*
> *2. On the facts and in the circumstances of the case and in law the Ld. CIT(A) failed to appreciate that the judgment of M/s Hindustan Pencil Ltd. is based on the decision of Tribunal on M/s Patel Stationers P. Ltd. & M/s Kirti Stationers P. Ltd. where both have been challenged by the revenue before the Hon'ble High Court. Appeal should also be filed in line with the precedence of other assessment years in the same ground.*
> *3. On the facts and in the circumstances of the case and in law the Ld.CIT(A) erred in allowing assessee's claim of 80IA deduction in respect of Umergaon unit wherein it was conclusively proved that all the conditions laid down in sec. 80IA(2) were not fully adhered to.*
> *4. For these and other grounds that may be urged at the time of hearing, the decision of CIT(A) may be set aside and that of the AO restored.*

3. At the time of hearing, the Authorised Representative for the assessee made a preliminary objection on the maintainability of four out of the six appeals filed by the department, on account of tax effect for the purposes of the appeals filed before the ITAT. The AR placed a chart with the working of the tax effect in each of the six appeals filed by the department and pointed out that in assessment years 1998-99, 2000-01 2001-02 and 2003-04 the tax effect is less then Rs. 3,00,000/-

as per the instruction No. 3/2011 dated 09-02-2011 read with instruction No. 5/2008 dated 15-05-2008. Thus according to the chart, appeals filed by the department in assessment years 1998-99, 2000-01, 2001-02 and 2003-04 are non maintainable, falling within the purview of the aforesaid instructions and assessment years 2006-07 and 2007-08 are not in the purview of the said instructions.

4. The AR further pointed out that the basis of filing of the present appeals and keeping the issue alive in all the cases of the assessee, was that the department had filed appeals before the Hon'ble Bombay High Court against the decision of the co-ordinate Bench in the case of Patel Stationers Pvt. Ltd., which was followed by the CIT(A) in allowing relief to the assessee. The AR pointed out that vide order dated 21-02-2011, the Hon'ble Bombay High Court has dismissed the appeal filed by the department in the case of Patel Stationers (P) Ltd., meaning thereby that the order of the ITAT has become final.

5. The AR, therefore, submitted that under both circumstances, the appeals filed by the department need to be dismissed.

6. The DR relied on the order of the AO.

7. We have heard the AR, both on the preliminary objections and the merits and have also perused the case of Patel Stationers (P) Ltd. We find merit on both the grounds and we agree with the AR that so far as assessment years 1998-99, 2000-01, 2001-02 and 2003-04 are concerned, the department's appeals fail under both the circumstances, i.e. maintainability and dismissing of the appeals by the Hon'ble Bombay High Court u/s 260A filed against the base order of

Patel Stationers (P) Ltd. and so far as assessment years 2006-07 and 2007-08 are concerned, the appeals fail on account of dismissing of the appeal u/s 260A filed by the department in the case of Patel Stationers (P) Ltd.

8. In the result, all six appeals filed by the department are dismissed.

<u>ITAs No. 4787, 4788 & 4789/Mum/2011 (appeals by the assessee)</u> :

9. The appeals are filed by the assessee, covering assessment years 1998-99, 2000-01 & 2001-02, wherein deduction u/s 80IA in respect of assembly of sharpness has not been allowed.

10. From the order of CIT(A), we find that the assessee has satisfied other conditions for becoming eligible for the claim of deduction, as provided u/s 80IA(2)(v), therefore, the only issue is whether the *"assembly"* of sharpeners would qualify for the deduction. From the assessment order, we find that the AO has reproduced the assembly process for the making of the sharpeners, which is as under:

> In Umergaon Unit, the assessee is also engaged in the assembling of sharpeners. For assembling of sharpeners, the process involved and the finished products emerges, are as under:

Activity	*Assembling of Sharpeners*
TYPES OF MATERIAL	*Sharpener Body* *Sharpener Blades* *Sharpener Screws*
DETAILED PROCESS OF ASSEMBLING AND PACKING	*1) Sharpener Body, blades & screws are sent to the Assembly Department.* *2) The worker assembles the screws & blades with the body:* *3) Then the sharpener is tested with pencils & sent to the Packing Dept.* *4) Each single sharpener is packed in a sleeve.*

	5) Then the sleeves are packed in inner.
FINISHED PRODUCT	*Sharpeners*

The assembling of sharpener is a totally manual process and no machinery is required for the same.

11. The position is now clear not only from the import of certain case laws cited by the AR also from inclusion of the definition of the word *"manufacture"* in the statute books. The A.R. placed before us, the copy of judgment of Hon'ble Madras High Court in the case of CIT v/s Chiranjjeevi Wind Energy Ltd. reported in 243 CTR 195, wherein the Hon'ble Madras High Court has held (Headnote), *"The different parts procured by the assessee by themselves cannot be treated as a windmill. Those different parts bear distinctive names and when assembled together, thereafter it gets transformed into an ultimate product which is commercially known as a "windmill" There can, therefore, be no difficulty in holding that such an activity carried on by the assessee would amount h manufacture" as well as 'production" of a thing or article as set out Ii? S. 80-113(2) (iii) In such circumstances the conclusion of the Tribunal in accepting the plea of the assessee cannot be found fault with".* The A.R. also cited the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Shri Mahesh Chandra Sharma reported in 308 ITR 222, wherein the Hon'ble High Court has held (Headnote), *"…….(ii) That the assessee assembled the wheels from the raw material/components which were rim, tyre, tube, bearing, drum, spoke, nipple and collar by different processes. The "wheel" was certainly a different item from the components which*

were used in the process. The assessee was entitled to special deduction under section 80IB". We, find from the production process chart, as reproduced by the AO in the assessment order that the *"final marketable product"* can be procured, only after going through a production line, which is different from the individual pieces of raw materials that have to be put together. We find no merit in the argument of the DR that it is a *"simple manual process"*, which does not qualify for the deduction. It is so, because a manufacturing process shall always remain a manufacturing process even if that *"simple process"* brings into existence a distinct marketable product, and once a distinct product comes into being, *by way of name, character and use*, it would definitely qualify to come under the definition of *manufacture*. It must be added here that to include simple manufacturing process within the ambit of section 80IA, the legislature has provided one of the conditions, i.e. where the production is done manually and not guided with the help of power, subject to certain conditions which need to be fulfilled.

12. On these observations, respectfully following the decisions cited by the AR, we are inclined to agree with him and allow the appeals. We, therefore, set aside the order of the CIT(A) in all the three impugned years on this issue and direct the AO to allow the claim of deduction u/s 80IA , as claimed by the assessee. The appeals filed by the assessee for assessment years 1998-99, 2000-01 and 2001-02, are therefore, allowed.

In the result, Department's appeals in

I.T.A. No.4775/M/11
I.T.A. No 4776/M/11
I.T.A. No 4777/M/11
I.T.A. No 4778/M/11
I.T.A. No 4779/M/11 &
I.T.A. No 4780/M/11 are dismissed; and

Assessee's appeals in
I.T.A. No. 4787/M/11
I.T.A. No. 4788/M/11 &
I.T.A. No. 4789/M/11 are allowed.

Order pronounced in the open Court on this day of 04/07/2012.

Sd/-	Sd/-
(B.RAMAKOTAIAH)	**(VIVEK VARMA)**
ACCOUNTNAT MEMBER	**JUDICIAL MEMBER**

Mumbai: 04/07/2012.
P/-*