<u>आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'आई' मुंबई ।</u>

IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI

सर्वश्री राजेन्द्र सिंह, ले.स. <u>एवं</u> श्री विजयपाल राव, न्या.स. के समक्ष ।
BEFORE SHRI RAJENDRA SINGH, AM & SHRI VIJAYPAL RAO, JM

आयकर अपील सं./ **ITA No.8254/Mum/2010**
(**निर्धारण वर्ष /** Assessment Years:2007-08)

DCIT 9(2),Mumbai-20.	Vs.	Jyoti Plastic Works P. Ltd., 94, Bombay Talkier Compound, Malad (W), Mumbai-400 064.
स्थायी लेखा सं./जीआइआर सं./PAN No. AAACJ 1381 Q		
(अपीलार्थी /**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

राजस्व की ओर से/ Revenue by **:** Mr. C.G.K.Nair
निर्धारिती की ओर से Assessee by**:** Mr. M.M.Golvala

सुनवाई की तारीख / **Date of Hearing :** 25th Sept., 2012
घोषणा की तारीख /**Date of Pronouncement :** 28th Sept, 2012

<u>आदेश / **O R D E R**</u>

***<u>PER VIJAY PAL RAO (J.M.)</u>*:**

This appeal by the revenue is directed against the order dated 23-9-2010 of CIT(A)-20, Mumbai for the assessment year 2007-08. The only ground raised by the revenue in this appeal is as under :-

> *"1. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in holding that the assessee is eligible for deduction u/s 80IB of the Income-tax Act, 1961, despite the fact that the assessee has not fulfilled the conditions of sections 80IB(2)(iii) and 80IB(2)(iv) of the Income-tax Act, 1961."*

2. We have heard the learned DR as well as learned AR of the assessee and considered the relevant material on record. The Assessing Officer has disallowed the claim of deduction under Section

80IB on the ground that the assessee has not employed minimum 10 workers in the undertaking and has hired contract labourers. Therefore, in view of the Assessing Officer, the assessee has failed to comply with the conditions laid down under Section 80IA/B(2)(iii) of the Income Tax Act.

3. On appeal, the learned CIT(A) has allowed the claim of the assessee by following the decision of this Tribunal in assessee's own case for the assessment year 1999-2000 to 2004-2005. Learned AR of the assessee has pointed out that the decision of this Tribunal in assessee's own case, has been upheld by the Hon'ble jurisdictional High Court in the case of **CIT Vs. Jyoti Plastic Works Pvt. Ltd., reported in 339 ITR 491.**

4. At the outset, we note that the issue of eligibility for deduction under Section 80IB with respect to the condition of employing minimum workers has been decided by this Tribunal vide its order dated 5-2-2010, in favour of the assessee. The order of this Tribunal has been confirmed by the Hon'ble jurisdictional High Court in the case of **Jyoti Plastic Works Pvt. Ltd.,** (supra) in para 17 & 18, which is as under :-

> *"No doubt that the decision of the Allahabad High Court in the case of Venus Auto P. Ltd. [2010] 321 ITR 504 (All) is in consonance with the arguments advanced by the Revenue. However, we find it difficult to subscribe to the views expressed by the Allahabad High Court in the aforesaid case. As held by this court in the case of Sawyer's Asia Limited [1980] 122 ITR 259 (Bom), the undertaking is not required to have ten or more regular workers and it may be said to have satisfied that requirement if the aggregate actual number of workers engaged* 17

in the manufacturing process, both regular and normal, is ten in number. Therefore, under section 80-IB(2)(iv), what is relevant is the employment of ten or more workers and not the mode and the manner in which the said workers are employed by the assessee. In other words, irrespective of the terms of employment, the condition of section 80-IB(2)(iv) would stand fulfilled if the assessee in aggregate employs ten or more workers in its manufacturing activity. The fact that the employer-employee relationship between the workers employed by the assessee differs cannot be a ground to deny deduction under section 80-IB of the Act so long as the workers employed by the assessee in aggregate exceed ten in number. Accordingly, we find it difficult to follow the decision of the Allahabad High Court in the case of Venus Auto P. Ltd. [2010] 321 ITR 504 (All).

In the result, in the facts of the present case, since the actual number of workers employed in the manufacturing process exceeded ten in number, the Tribunal was justified in holding that the condition of section 80-IB(2)(iv) have been fulfilled. Accordingly, the second question is also answered in the affirmative, that is, in favour of the assessee and against the Revenue." 18

5. Following the decision of the Hon'ble jurisdictional High Court in the assessee's own case, we decide this issue in favour of the assessee and against the revenue.

6. In the result, appeal of the revenue is dismissed.

परिणामतः राजस्व की अपील खारिज की जाती है ।

Order pronounced in the open court on 28th Sept., 2012 .

आदेश की धोषणा खुले न्यायालय में दिनांकः 28th Sept.,2012 को की गई ।

Sd/-	Sd/-
(राजेन्द्र सिंह)	(विजयपाल राव)
(**RAJENDRA SINGH)**	(**VIJAY PAL RAO)**
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 28th / Sept. /2012

प्र.कु.मि/pkm.नि.स./PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**