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

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER & SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.623/Del/2025
(Assessment Year:2010-11)

ACIT, Circle-3 2nd Floor, HSHDC Building, Shankar Chowk, Gurugram, Haryana – 122001	Vs.	Perfetti Van Melle India Pvt. Limited, 47, Milestone Delhi Jaipur Highway Manesar Haryana - 122051
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAACP2626A		
Appellant	..	Respondent

Appellant by :	Sh. Anmol Anand, Adv. Ms. Sheetal Kandpal, Adv
Respondent by :	Ms. Pooja Swaroop, CIT (DR)

Date of Hearing	07.01.2026
Date of Pronouncement	05.03.2026

O R D E R

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 07.11.2024 of the Ld. National Faceless Appeal Centre (NFAC) (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in DIN &

Order No : ITBA/NFAC/S/250/2024-25/1070183338(1) arising out of the order dated 23.11.2017 u/s143(3) r.w.s u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by the DCIT, Circle-3, Gurgaon for AY: 2010-11.

2. Heard and perused the records. The Assessee is engaged in the business of manufacturing Candies, Gums, Jelly and proprietary Ayurvedic products from its factories located at Manesar (Haryana), Rudrapur (Uttarakhand) and Chennai (Tamil Nadu). Some of the products manufactured by the Assessee include Big Babol, Center Fresh, Center Fruit, Alpenliebe, Mentos, Happydent, Chlormint with Herbasol, etc.

3. As far as the year under consideration is concerned, i.e., the third year of production at the manufacturing unit at Rudrapur, Uttarakhand, the Assessee claimed a deduction of INR 90,90,45,413/- under section 80-IC of the Act in respect of the profits earned by the manufacturing unit at Rudrapur, Uttarakhand. However, since the deduction could not exceed the total income, the deduction claimed by the Assessee under section 80-IC of the Act was restricted to INR 80,77,02,717/- and accordingly, a NIL return

was filed by the Assessee for AY 2010-11. That apart, the Assessee furnished audit report in form no. 10CCB of the Act for AY 2010-11.

3.1 The case of the Assessee for AY 2010-11 was picked up for scrutiny, and a final assessment order dated 05.01.2015 was passed by the AO under section 144C(13) read with section 143(3) of the Act. In the said order, the AO accepted the eligibility of the Assessee to make a claim of deduction under section 80-IC of the Act. Thereafter, the Principal Commissioner of Income Tax, Gurgaon ("PCIT"), vide order dated 21.02.2017, passed under section 263 of the Act, set aside the order dated 05.01.2015 to the extent of the claim under section 80-IC of the Act and directed the AO to pass a fresh assessment order in the case of Assessee for AY 2010-11.

3.2 Pursuant thereto, the AO vide assessment order dated 23.11.2017 passed for AY 2010-11 disallowed the claim of INR 80,77,02,717/- under section 80-IC of the Act on the basis that the Assessee was not entitled to claim deduction on the articles such as "chewing gum", "candy" and "bubble gum" as the said products were not listed in the Fourteenth Schedule.

4. Ld. Counsel has submitted that this finding of the AO is in complete ignorance of the fact that the Assessee had claimed deduction under section

80-IC(2)(a)(ii) of the Act, which allows deduction in respect of all products which do not fall in the Thirteenth Schedule. Since none of the products that Assessee manufactures from its factory at Rudrapur fall within the Thirteenth Schedule, the AO ought to have allowed Assessee's claim.

4.1 Furthermore, the observation of the AO in the assessment order dated 23.11.2017 passed for AY 2010-11 is completely contrary to his own concession as has been duly recorded by the CIT(A) while passing the order dated 31.12.2018 in the assessee's own case for AY 2009-10. Therefore, based on the concession of the AO for AY 2009-10 alone, the present appeal deserves to be dismissed.

5. Ld. Counsel has submitted that be that as it may, the CIT(A) vide impugned order dated 07.11.2024, passed in the present case for AY 2010-11, set aside the disallowance made by the AO vide assessment order dated 23.11.2017 and while doing so, the CIT(A) observed that claims under section 80-IC(2)(a) and 80-IC(2)(b) of the Act are mutually exclusive and are different in scope. Whereas section 80-IC(2)(a) of the Act grants a deduction on the condition that the manufacturing facility should be in a designated area duly notified by the Government in the special category states, and further

that there should be no manufacture of any item listed in the Thirteenth Schedule. On the other hand, section 80-IC(2)(a) of the Act grants a deduction on the condition that the manufacturing facility specifically produces articles stated in the Fourteenth Schedule.

5.1 Ld. Counsel submitted that ld. CIT(A) has rightly held that Assessee was eligible to claim deduction under section 80-IC(2)(a) of the Act, since its manufacturing facility was located in a notified area and it did not produce any item stated in the Thirteenth Schedule.

5.2 Ld. Counsel relied the observation of ld. CIT(A) that the disclosure made by the Assessee in Form 10CCB for AY 2010-11 in respect of Chlormint with Herbasol (Proprietary Ayurvedic Medicine), in Column 25 of the said Form was a mandatory requirement, and the same did not suggest that the Assessee was only making a claim under section 80-IC(2)(b) of the Act.

6. Ld. DR however submits that the order of the Tribunal in AY: 2009-10 (supra) determines nothing specifically in favour of the assessee with regard to its eligibility and as to if assessee manufactures any product which forms in the negative list specified in 13th Schedule.

6.1 Ld. DR has contended that Tribunal has not given any finding with regard to claim of deduction u/s 80-IC(2)(a)(ii) of the Act vis-à-vis claim u/s 80-IC(2)(b)(ii) of the Act and rather it has referred to findings of the TPO and has restored the matter to the TPO for re-examination about applicability of Schedule 13. It was submitted that assessee has negated the provisions of Section 80-IC as a choice between the 13th & 14th Schedule which is incorrect view. It was submitted that though assessee has mentioned in Form 10CCB that its manufacturing item listed in the 14th Schedule as assessee has chosen to taken benefit pertaining to only to the 13th Schedule which is not in conformity with the provisions of the Act. As the assessee is the manufacturing items mentioned in that 14th Schedule and has no item in the 13th Schedule, therefore, provision of Section 80-IC(2)(b) pertaining to the 14th Schedule shall prevail.

6.2 Ld. DR has submitted that it is pertinent to distinguish between the negative list mentioned and Schedule 13th which prohibit item of manufacturing for the purpose of claiming deduction u/s 80-IC of the Act and 14th Schedule is a specific list which specified items for purpose of claiming deduction u/s 80-IC of the Act and objection are not mutually exclusively and

they need to be read in consonance with. It was submitted that any item had has to be first 'not' be in the negative list specified in 13th Schedule and thereafter it needs to be seen whether it is specified in the 14th Schedule or not. If item is not in 14th Schedule then provision of 80-IC(2)(a) shall prevail. If item is in the 14th Schedule then provision u/s 80-IC(2)(b)shall prevail. As assessee is manufacturing items mentioned in 14th Schedule and as no item in 13th Schedule is manufactured, there for provision u/s 80-IC(2)(b) pertaining to the 14th Schedule shall prevail and thus, it is not a matter of choice. It was contended that though in Form 10CCB assessee mentions that it is manufacturing item listed in 14th Schedule but has 'chosen' to take benefit pertaining to only to 13th Schedule which is not in conformity with the provision of the Act.

7. We have given thoughtful consideration to submissions and material on record. It is an undisputed position in the present case that the factory in Rudrapur (Uttarakhand) is located at Khasra No. 214, Village Phoolbagh, Tehsil Kichcha, which is a notified eligible area for the purposes of claiming deduction under section 80-IC(2)(a)(ii) of the Actvide Notification No. 177/2004 [SO 741] [F.No.142/47/2003-TPL], dated 28-6-2004 issued by the

Central Board of Direct Taxes ("CBDT"). The Assessee had commenced production at the above-notified area Nagar, Uttarakhand (Approval No. 1213-14/commercial production/DIC/2008-09 dated 27.08.2008. The Assessee was manufacturing sugar confectionery, ayurvedic medicine, etc., at the above-mentioned premises, as per the statutory verification report issued by the Excise Department. The Assessee was not manufacturing any item listed in the negative list, as provided for in the Thirteenth Schedule of the Act.

8. Then it is matter of fact that the claim of the Assessee under section 80-IC(2)(a)(ii) of the Act has already been accepted by the Assessing Officer ("AO) for AY 2009-10. In this regard, we refer to the extract of the report dated 29.05.2017 furnished by the AO as contained at para 4.5 at internal pages 11-13 of the order dated 31.12.2018 passed by the Commissioner of Income Tax (Appeals) in the Assessee's own case for AY 2009-10, wherein the following concession of the AO has been recorded:

> *"From the information submitted by the AR, it can be concluded that based on the above evidences, the assessee has a manufacturing unit in the notified area of Uttarakhand to be a unit eligible under section 80-IC(2) (a) of the Act.*

…….

1) Excise Returns for FY 2008-09 - The excise returns filed by the assessee for FY 2008-09 has been examined and it can be noted therefrom that the assessee has manufactured the following products at its Rudrapur (Uttarkhand) unit during the subject year:

- *Big Babol (Bubble gum)*
- *Centre Fresh (Chewing gum)*
- *Centre Fruit (Chewing gum)*
- *Cream Fills (Hard boiled candy)*
- *Alpenliebe Fills (Hard boiled candy)*
- *Chlormint with Herbasol (Proprietary Anyurvedic Medicine)*

Further, Thirteenth schedule was explained along with production of the assessee at notified area and claim of the assessee that the manufacturing of all the aforesaid items (including Chloramint with Herbasol) are not covered under the negative list of Thirteenth schedule was verified.

Form the above evidences submitted by the assessee it can be concluded that the assessee was producing confectionery products like Big Babool, Centre Fresh, Chlormint etc. which do not fall in the list of products mentioned in the Thirteenth Schedule.

The Ld. CIT (A) would therefore like to form an opinion on the claims by the Assessee of the deductions u/s 80 IC(1)(a) and 801C(2)b) of the

Act which is on the basis additional evidence and which may be considered on merits.

In view of the above facts and observations submitted your kind information in compliance to the requirement as per letter dated 01.05.2017 by your Ld. Office.

Further, Thirteenth Schedule was examined along with production of the assessee at notified area and claim of the assessee that the manufacturing of all the aforesaid items."

9. Then we find that reasoning adopted by the CIT(A) in the impugned order is identical to the order of the CIT(A) in the Assessee's case for AY 2009-10.

10. We find that all the contentions raised by ld. DR are actually dealt and considered by the CIT(A) in its order for AY: 2009-10 and for convenience we reproduced para 4.8 to 4.11 as follows:

"4.8 I have carefully considered the appellant's submissions and the report of the Assessing Officer. I have also perused the order of the Hon'ble ITAT in appellant's own case for A.Y. 2011-12. The only issue to be considered in this case is whether the appellant is eligible for deduction under section 80IC(2)(a) as claimed by the appellant or under section 80IC(2)(b) as held by the Assessing Officer. The provisions of section 80IC(2)(a) and 80IC(2)(b) have been reproduced above. It is seen from the provisions of the two sections that it is not optional for any person to claim deduction under section 80IC(2)(al) or under section 80IC(2)(b). There are

separate conditions prescribed for claiming deduction under either of the two sections. The deduction u/s 80TC(2)(a) is eligible only for units located in the notified areas of the states of Sikkim, Himachal Pradesh, Uttarakhand and North Easter States. Whereas the deduction u/s 80IC(2)(b) is allowable in the case of units located anywhere in the states of Sikkim, Himachal Pradesh, Uttarakhand and North Eastern States, Further, the deduction u/s 80IC(2)(a) is allowable on manufacturing of any product except the articles listed in Schedule Thirteen where as the deduction u/s 80IC(2)(b) is limited only to the articles listed in Schedule Fourteen. Therefore, the deduction w/s 80IC(2)(a) is allowable on the units located in notified areas even if they are producing articles listed in Schedule Fourteen or not listed in Schedule fourteen as long as they are not producing any article listed in Schedule Thirteen of the IT Act.

4.9 The Hon'ble Jurisdictional ITAT, Delhi had considered a similar issue in appellant's own case for A.Y. 2011-12 in ITA no. 789/Del/2016. In this order dated 28.04.2016, the Hon'ble ITAT held as under:-

> *"..As relates to benefit of deduction under section 801C the same was claimed only for the unit situated in Rudrapur (Vitrakhand). There is net loss in the units of Manessar (Haryana) & Chennai (Tamilnadu) and there is a net profit in Rudrapur Unit. The TPO has only disallowed this claim as the assessee was not involved in manufacture of any item covered by Schedule XIV, where as the assessee has referred Schedule XIII and submitted that it is not considered by the TPO. After verifying Schedule XIII & XIV it is pertinent to note that the assessee's location at Rudrapur is coming under the scope of 80/C but the address was not properly verified by the TPO. Therefore, this needs to be verified. We therefore, remit this issue back to the file of the TPO to examine the same as relates to the applicability of the Schedule XIII. Needless to say the assessee will be*

allowed a reasonable opportunity of being heard in such fresh proceedings. Therefore, ground No. 14 to 25 is partly allowed for statistical purpose."

4.10 It is therefore seen that there are specific conditions for claiming deduction under section 80IC(2)(a) in as much as the units claiming such deduction should be located in the notified areas of the specified states. This claim of deduction cannot be decided on the basis of the details of articles mentioned in audit report in form - 1OCCB. As seen from the report of the Assessing Officer, the appellant's: unit on which deduction under section 80IC has, been claimed is located in the notified areas as prescribed in the section 80IC(2)(a) and the appellant is not manufacturing any article listed in Schedule 13 of the Income Tax Act. In these circumstances the appellant is eligible for deduction under section 80IC(2)(a) and as such the claim of deduction was not to be limited to the articles mentioned in Schedule 14 of the Income Tax Act.

4.11 Keeping in view the facts of the case and the report of the Assessing Officer, the disallowance of deduction under section 80IC on account of production of articles other than those listed in Schedule 14 of the Income Tax Act is deleted. The Assessing Officer is directed to allow the deduction under Section 80IC(2)(a) in accordance with the provision of law. These grounds of appeal are allowed."

11. In fact, co-ordinate bench vide judgment dated 20.10.2022 passed in appeal preferred by the Revenue against the order passed by the CIT(A) for AY 2009-10 also held as follows:

"ITA No. 1715/Del/2019 (Departmental Appeal)

7. In the instant case, the assessee has claimed deduction u/s 80-IC(2)(a) from the profits of the manufacturing unit in a notified area located in Rudrapur, Uttarakhand. The items manufactured are big babool, centrefresh, chlormint which as per the verification report of the Excise authority are not in the negative list as per notification No. 50/2003-CE which are the same as the list mentioned in the 13th Schedule of the Income Tax Act, 1961.

8. The Id CIT (4) allowed the claim of deduction after going through the remand report of the Assessing Officer which contains CBDT notification No. 177/2004 mentioning the area notified as industrial area for the purpose of Section 80-IC(2)(a) of the Act. The authorities below have also gone through the lease deed entered into with State Industrial Development Corporation of Uttaranchal (SIDCU) and verification report of the Excise Department indicating that the assessee is producing sugar confectionary and eligible for availing of exemption under Excise Notification No. 50/2003 dated 10.6.2003. In addition, the Assessing Officer has examined the certificate issued by the Chief Manager District Industrial Centre, Udham Singh Nagar, Uttaranchal showing the commencement of production at the above notified area vide approval No. 1213-14/CP/DIC/2008-09 dated 27.08.2008. After examination of the much relevant documents along with Excise returns proving the production of approved goods at the notified area, the Id. CIT(A) has allowed the deduction under Chapter - VIA Section 80-IC.

9. Having gone through the entire evidences and hearing the arguments of both the parties, we find no reason to interfere with the order of the ld. CIT(A). In the result the appeal of the revenue stands dismissed."

12. We thus, find no force in the contention of ld. DR that as assessee is manufacturing any of the items mentioned in the 14th Schedule and has no item in the 13th Schedule, therefore, provision of Section 80-IC(2)(b) pertaining to 14th Schedule shall prevail. As a unit of assessee is located in notified area for the purpose of claiming deduction u/s 80IC then the relevant factors was to consider if assessee at all was manufacturing any of the item which fall under the 13th Schedule of the Act, which admittedly assessee is not manufacturing. Only because assessee is manufacturing certain items which fall in 14th Schedule of the Act would not make provision of Section 80IC(2)(b)(ii) of the Act applicable and it is not out of choice assessee is entitled to benefit of Section 80IC (2)(a)(ii) but the fulfillment of eligibility arising out of location of the factory in notified eligible area and the production as commenced between the period 07.1.2003 & 01.04.2012, assessee is entitled to benefit of 80IC (2)(a)(ii) of the Act.

13. In the light of aforesaid circumstances we find that the impugned order of ld. CIT(A) deserves no interference. The ground raised by the department have no substance. The appeal of the revenue is dismissed.

Order pronounced in the open court on 05.03.2026

Sd/-	Sd/-
(Manish Agarwal)	(Anubhav Sharma)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated 05.03.2026
Rohit, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI