

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. N. K. Saini, AM and Ms. Suchitra Kamble, JM

ITA No. 5856/Del/2011 : Asstt. Year : 2007-08

ITA No. 4277/Del/2012 : Asstt. Year : 2008-09

ITA No. 5744/Del/2012 : Asstt. Year : 2009-10

ITA No. 2506/Del/2013 : Asstt. Year : 2010-11

IMSI India Pvt. Ltd., C/o Luthra & Luthra Law Offices, 103, Ashoka Estate, Barakhamba Road, New Delhi-110001	Vs	Deputy/Assistant Commissioner of Income Tax, Circle-2, Dehradun, Uttranchal
(APPELLANT)		(RESPONDENT)
PAN No. AABCI1797A		

**Assessee by : Sh. Ashwani Kumar, Sh. Sudhindra Jain
& Sh. Alok Kumar Jain, CAs**

Revenue by : Sh. Amrit Lal, Sr. DR

Date of Hearing : 15.09.2017	Date of Pronouncement : 27.10.2017
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ORDER

Per N. K. Saini, AM:

This appeal by the assessee for the assessment year 2007-08 is directed against the order dated 03.10.2011 of ld. CIT(A)-II, Dehradun and the other appeals of the assessee are directed against the separate orders dated 09.02.2012, 20.12.2011 and 30.11.2012 passed by the ld. CIT(A)-I, Dehradun for the assessment years 2008-09, 2009-10 and 2010-11 respectively.

2. Since the issue involved is common in all these appeals which were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance, we will deal with the appeal in ITA No. 5856/Del/2011 for the assessment year 2007-08. Following grounds have been raised in this appeal:

“1. The Learned Commissioner of Income Tax (Appeals) - II, Dehradun (“Ld. CIT(A)”) has erred on facts and in law in disallowing the claim of the appellant for deduction u/s 80-IC of the Income Tax Act, 1961 (“the Act”) and confirming the assessment at income of INR 1,66,45,050 as made by the Learned Deputy Commissioner of Income Tax, Circle-2, Dehradun, (“Ld. AO”).

2. The Ld. CIT(A) has erred in law and on facts in admitting the additional evidence submitted by the ld. AO holding that the ld. AO has not exceeded the mandate of the remand made by the Ld. CIT(A).

3. The Ld. CIT(A) has erred on facts in not appreciating the business model of the appellant and holding the appellant is engaged in the business of manpower recruitment and supply.

4. The Ld. CIT(A) has erred on facts and law in holding that the appellant is not rendering services in the field of Information and Communication Technology (ICT) industry as required for claiming deduction u/s 80-IC.

5. The Ld. CIT(A) has erred in law and on facts in holding that the business of the appellant is not carried out within the State of Uttarakhand as required for claiming deduction u/s 80-IC of the Act.

6. The Ld. CIT(A) has erred in law and on facts in holding that the appellant has merely undertaken a reconstruction of its existing business and is therefore, not allowed to claim deduction u/s 80-IC.

7. The Ld. CIT(A) / Ld. AO have erred in law and on facts in levying interest u/s 234B of the Act.

8. The above grounds of appeals are independent and without prejudice to one another.

9. The appellant craves leave to add / withdraw or amend any ground of appeal at the time of hearing.”

4. Ground Nos. 8 & 9 are general in nature so these ground do not require any comments on our part while the grievance of the assessee vide Ground Nos. 1 to 6 relates to the confirmation of disallowance of the claim u/s 80IC of the Income Tax Act, 1961 (hereinafter referred to as the Act) made by the AO.

5. The facts related to this issue in brief are that the assessee was mainly engaged in development, repair & maintenance of software and providing consultancy services in the field of software development, maintenance, desktop support, both on or off line and both in house and

at client's site etc., it was also engaged in development of IT business park in Dehradun. The assessee e-filed its return of income on 31.10.2007 declaring an income of Rs.83,67,706/-. Later on, the case was selected for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee had claimed deduction u/s 80IC of the Act amounting to Rs.82,77,348/- and had set off brought forward loss (unabsorbed depreciation) of Rs.3,51,250/-. The AO asked the assessee to justify the claim of deduction u/s 80IC of the Act. In response, the assessee had given the following explanation:

“Entitlement for deduction of profits u/s 80IC:

1. Activities of the company are covered under point 13 of Part C of the Fourteenth Schedule as mentioned in Sub-Section 2(b) of section 80IC. The said point reads as under:

"information and Communication Technology Industry, Computer Hardware, Call Centres."

Activities of the company have been elaborated in Annexure A of our reply dated 14.09.2009 which are covered as above;

2. Operations of the company commenced after 7th Jan 2003 and before April 2012; Thus provisions of 80IC (2)(b)(ii) stand complied with;

3. Our works/operations are covered under point 13 of Annexure II as Thrust industries as per letter No. 1(10)/2001 - NER of Ministry of Commerce & Industry dated 07.01.2003;

4. *Our unit is located at Majra, Subhash Nagar (Opp. Transport Nagar), Dehradun;*

5. *Building map has been approved by MDDA as Cyber City IT;*

6. *The unit is registered with District Industries Centre, Dehra Dun and Software Technology Parks of India, Dehradun.*

7. *Audit Report u/s 80IC on Form 10CCB, has already been submitted.*

As regards the assessee's claim that its activities are covered under point 13 of Part-C of the Fourteenth Schedule as mentioned in sub section 2(b) of section 80IC, it is noticed that the above category envisages the category of eligible activity or article or thing or operation to be "Information and Communication Technology Industry, Computer Hardware, Call Centre."

6. The assessee also summarized the process of acquiring the work contract as under:

RESPONSE TO POINT No. 18

Note on the process of getting contracts

"The process of soliciting business is by floating the company's work and experience profile to other companies who deploy IT Technology services and require, support services in that field. Industry references are used to validate our experience and satisfaction with services provided.

A careful search is conducted of companies who are looking for expertise possessed by IMSI and who have current projects

needing IMSI resources. Both Domestic and International work is reviewed for bidding.

Once the company/project is short-listed based on our assessment of the company's need for our expertise, our business development unit pursues key executives and seeks business based on our credentials and expertise and complies with vendor registration procedure of the company.

After registration, and upon meeting company qualification requirements, we receive an invitation for any work requirements floated by them.

Thereafter, after submitting technical proposal, a commercial proposal work is awarded. Company confidentiality Agreements are Frame Agreements are signed with the Company.

Copies of purchase Orders, Work Orders and Frame Agreements received from a few companies are attached herewith.”

7. The AO after considering the submissions of the assessee observed that the copies of agreements of the assessee entered into with its clients revealed that the assessee had provided services on contract basis by supplying personnel having skills in the field of Computer - Operations and such personnel known as Contractor was required to work on projects and assignments as may be derived by the assessee's client on time and material basis on off shore as well as on onsite assignments and the services of such contractor were provided by the assessee to its

client after it signed a specific agreement which was called "Work Order" for each instance of a contractor being retained by the assessee's client for a period as agreed upon the assessee with its client and such contractor was required to perform tasks for the client in areas related to the Computer Software, Engineering and Consultancy. He further observed that those tasks would include (but may not be limited to) : software requirements study, systems analysis, systems design, system modeling, software development, software adaptation, test plan preparation, test data preparation, software testing, system quality assurance, documentation, systems development, training, systems maintenance and systems and as per the contract, the assessee had to make the payment of salaries and all related taxes for the contractor would be responsibility of the assessee. It was also agreed upon by the assessee's client that on selection of a contractor for an onsite assignment, the relevant work permit/visa will be applied for by the assessee and that the charges for professional services payable to the assessee by the client were payable on monthly basis, on time and material basis. The AO discussed the payment schedule in the case of Tech Mahendra Ltd. as under:

"General Skills:

<i>Jr. Programmer Exp. (0 to 2 yrs)</i>	<i>Programmer (exp. 2 to 4 yrs)</i>	<i>Analyst (exp. 4 to 6 yrs)</i>	<i>Project Leader (exp 6 to 8 yrs)</i>
<i>Rs. 35,000/- + Service Tax as applicable</i>	<i>Rs. 45,000/- + Service Tax as applicable.</i>	<i>Rs. 60,000/- + Service Tax as applicable.</i>	<i>Rs. 70,000/- + Service Tax as applicable.</i>

Premium Skill.

<i>Programmer (Exp. 3 to 5 yrs.)</i>	<i>Analyst (exp. 5 to 8 yrs.)</i>	<i>Project Manager (Exp. 8+)</i>
<i>Rs. 50,000/- + Service Tax as applicable.</i>	<i>Rs. 70,000/- + Service tax as applicable.</i>	<i>Rs. 80,000/- + Service tax as applicable.</i>

8. The AO also pointed out that as per the agreement between the assessee and client, the assessee will raise invoice at the end of the month with relevant time sheets. According to the AO, the assessee was engaged in contractual supply of skilled computer personnels to work on the sites of clients which may be offshore as well as overseas. Thus, the assessee's role was to recruit such personnels and supply them to the clients as per terms and conditions of the contract entered into by the assessee with its client and that the assessee itself had not undertaken any service/operation itself which could be said to be services/operations in the field of Information & Communication Technology Industry. He further observed that whatever services in the field of Information & Communication Technology Industry, if any, were done, the same were done by the assessee's clients for which it might have utilized skilled computer personnels provided by the assessee. The AO analyzed the category 13th of Part C of the Fourteenth Schedule to the Income Tax Act, 1961 by applying the theory of exclusion and stated that the assessee had not contended that its activities or operations fell in the category of call centre or computer hardware. Thus, the only category which was left for examination in the 13th item of Part C of Fourteenth Schedule to the Income Tax Act, 1961 was Information &

Communication Technology Industry which implied that it had to be an industry of Information & Communication Technology. He also pointed out that the term industry had not been defined in the scheme of Section 2 of the Act, however, various courts have interpreted the meaning of the term 'industry' differently, depending upon the context in which the term had been used, a reference was made to the judgment of the Honorable Supreme Court in the case of M/s Misco. Pvt. Ltd. Vs Union of India AIR (1985) (SC) 76 and 79 (Customs Act (52 of 1962) S-11N Notification dated 15.07.1977, wherein word 'industry' has been defined as the place where the process of manufacture or production of goods is carried on and it did not in any event include hospitals, dispensaries or nursing homes. The AO was of the view that the supply of labour being computer skilled personnel by the assessee could not be held to be an industry in the sense it has been used in category 13 of Part C of the Fourteenth Schedule of the Act. He further observed that the language used in Section 80IC of the Act, more particularly in clause (b) of Section 80IC of the Act clearly mandates that manufacture/production or commencement of operation as specified therein has to be in the State of Himachal Pradesh or the State of Uttaranchal which means that Information and Communication Technology Industry has to be commenced in the State of Uttaranchal, whereas the assessee's operations, if that can be called to so by the stretch of wild imagination, are taking place at various sites of the clients which are not only outside

the State of Uttaranchal but also it can be outside India and most of the operations which were conducted in the State of Uttaranchal were the ground operations like raising invoices and running assessee's establishment in connection with the operations conducted by the assessee's employees on the locations directed by the assessee's client and moreover, the charging of service tax in the invoices raised by the assessee on its clients further confirmed that the assessee is only providing services to its clients, so it cannot be called an industry.

9. As regards to assessee's reliance on the Notification No. 11521 dated 26.09.2000 issued by the CBDT, the AO observed that the said instructions were in respect of Section 10B of the Act which deals with the term "Information & Technology" whereas the term in the assessee's case was "Information & Communication Technology Industry" and that in fact, drawing analogy from Chapter VIA of the Act in which section 80IC of the Act finds place would be more appropriate. As regards to the reliance placed by assessee on Circular No. 694 dated 22.11.1994 issued by the CBDT, the AO observed that the said Circular had been issued in the context of Section 10A & 10B of the Act where the legislature was concerned for augmenting 100% export oriented undertakings whereas Section 80IC of the Act is meant to boost the economy of the States specified in the Section itself which in the case of the assessee, is the State of Uttaranchal. The AO was of the view that the assessee was not

engaged in any manufacture or production or operation as envisaged in Section 80IC of the Act but only provided services by supplying computer skilled personnel to its clients under contract and did not find any control over the work done by its employees because the said work was done at the venue of the client as per their instructions and under the absolute control of the assessee's client. Accordingly, deduction claimed u/s 80 1C of the Act by the assessee was denied.

10. Being aggrieved the assessee carried the matter to the Id. CIT(A) and furnished the written submission which has been summarized by the Id. CIT(A) in para 4.2 of the impugned order which is reproduced verbatim as under:

“(i) The appellant is engaged in the field of providing service to the Information and Communication Technology. Its personnel are engaged to work with the clients at premises of their choice for efficiency and maintaining confidentiality. The personnel so engaged are employees of the appellant in every respect, and they are deployed on the basis of contractual relationship between appellant and I.T. Company/ client (and not due to any contract between the I.T. Company/ client and the personnel deployed). The Id. AR has illustrated his point by referring to various contracts, copies of which have been placed on record.

(ii) The Id. AR objects to the AO's contention that the appellant activities cannot be termed as an “industry”. He has relied on the cases of National Union of Commercial Employees vs. M.R. Meher and Bangalore Water Supply &

Sewerage Board vs. A. Rajappa reported in 38 CT 207 (SC). The Id. AR has also distinguished the case of MSCO (P) Ltd. vs. UOI reported in AIR 1985 SC 76, 79, relied upon by the AO. The Id. AR has also relied upon a document issued by the Department of Information Technology (IT.), Govt. of India to canvass the view that for the IT. Sector 'industry' would include all the services envisaged for this sector and that the term 'industry' cannot be confined to production or manufacture of goods. It has also been mentioned that NASSCOM also tends to use the term 'industry' for activities peculiar to the I.T. Industry. Thereafter extracts from KPMG's paper on the I.T. Industry prepared for CII in 2008 have also been mentioned for claiming that the activities associated with the I.T. Industry are 'industry'. In similar vein several other papers from reputed organizations have also been cited.

(iii) The Id. AR has cited the Notification No. SO890(E) dated 26.09.2000 issued in respect of sections 10A, 10B and 80HHE of the Act to canvass the view that broadly the activities of the appellant are in line with activities envisaged for the I.T. Sector through this Notification. The Id. AR has also attempted to dissect the Id. AO's arguments and has concluded his averments by citing some well known authorities on the subject that beneficial provision should be liberally construed.

(iv) The Id. AR has reacted to the Id. AO's contention that most of the appellant's activity is carried out outside the state of Uttarakhand. He has stated that business activities have commenced in the state as required u/s 80IC of the Act and personnel have been deployed at the sites of various I.T. companies/ clients for performing assigned I.T. tasks under the control of the appellant. In proof of the appellant's infrastructure available at Dehradun the Id. AR has averred

that several documents like electricity bills, proof of broadband connection, registration with STPI, Dehradun, etc. are available to prove the extent of operations being carried out. Ld. AR has also relied on Circular No.694 dated 23.11.1994 issued by CBDT to define the scope of software operations eligible for tax holiday u/s 10A, 10B and 80HHE of the Act as including on site operations also.”

11. The Id. CIT(A) also asked the remand report from the AO who furnished the same vide report dated 07.07.2011 which has been incorporated by the Id. CIT(A) in para 4.3 of the impugned order, for the cost of repletion, the same is not reproduced herein. The assessee in his rejoinder protested the finding in the remand report by challenging the action of the AO and relied on the certain case laws. The Id. CIT(A) dealt with the contention of the assessee in para 4.4 of the impugned order which is reproduced verbatim as under:

“(i) The contention that the Id. AO should have confined herself to offering comments on the documents and written contentions filed by the Id. AR and not carry out any enquiry is misplaced since the first appellate authority, or for that matter any category of appellate authority, is duty bound by law to assess the correct taxable income of any assessee. Towards this end, without violating the principles of natural justice, result of any fact finding may be utilized. It may be pertinent to mention that the report of the Id. AO was also handed over to the Id, AR for his comments. The Id, AR has utilized the opportunity provided to file detailed submissions on the same on two occasions on 25.08.2011 and 22.09.2011. Thus, nothing has been done behind the appellant's back and

all findings by Id, AO have been shared with the appellant.

(ii) The Id. AR has also contended that fresh material has been unearthed by the AO which was not before the AO while passing the assessment order, thus, this new material should not be relied upon in appellate proceedings. The Id. AR has relied upon the following cases in support of his contention which may be discussed:-

(a) CIT vs. Buildwell Assam (P) Ltd. 133 ITR 736 (Gauh):
In this case, the Court had observed that the directions by the superior authority to subordinate authorities must be firm and clear and the subordinate authorities must carry out the directions. From this case law, no infirmity on the part of the AO can be inferred and the Id. AR's contention that the AO exceeded her brief through a more rigorous approach than what was allegedly warranted, is hard to accept since this case law does not intend to fetter the subordinate authority in carrying out the directions of the superior authority.

(b) M/s Prime Telesystems Ltd, vs. ACIT (ITA No.630/Del/2010/AY 1999-2000):-
In this case, the AO wanted new evidence to be filed which was admittedly difficult for the assessee to adduce. Due to this fact the ITAT held that the AO had no right to call for new evidence from the assessee which was difficult to gather by it. It is seen in the present case that there is no evidence adduced which was forcibly extracted from the assessee or for that matters, an adverse view has been recommended due to any evidence which could not be filed by the assessee due to any difficulty whatsoever. Thus, this case also cannot help the Id. AR.

(c) Mohinder Singh Gill and Anr. Vs. Chief Election Commissioner, New Delhi & Ors. Reported in AIR SC 851 and the case of Kalyan Kumar Gogoi vs. Ashutosh Agnihotri reported in AIR 2011 SC 760:-

Right at the outset, it needs to be emphasized that Court judgments have to be read in the context in which they have been delivered. These judgments do not pertain to the Taxing Statutes, hence no inference can be drawn for the issue at hand.

*(d) Abdul Razak vs. CIT reported in 3 ITR 361 (Patna):-
In this case, the AAC had directed the AO to verify certain calculations and in this context, the AO paid a surprise visit to the assessee's premises and on finding certain books of account, included the findings from them in his report. The appellant pleaded denial of opportunity to explain the books of account on which issue the Hon'ble Court agreed with the assessee. In the present case, the visit by the AO was not a surprise visit and the appellant has been given ample opportunity to rebut the findings of AO. Thus, this case also does not help the appellant.*

Similarly also in the case of Kishin Chand Chellaram vs. CIT AIR 1980 SC 2117 (relied upon by the Id. AR) the issue was of denial of opportunity to the appellant. Since in this case, as has been mentioned above, there is no denial of opportunity, this case also does not help the appellant.”

12. The Id. CIT(A) held that the AO had not exceeded her brief. The Id. CIT(A) incorporated the written submissions of the assessee on the allowability of the claim u/s 80IC of the Act and also on the issues

raised by the AO in the remand report, in para 4.4 of the impugned order, for the cost of repetition, the same is not reproduced herein. On merit of the case, the assessee furnished the written submission which has been incorporated by the ld. CIT(A) in para 5 of the impugned order which read as under:

“4. THE APPELLANT IS ENGAGED IN INFORMATION & COMMUNICATION TECHNOLOGY INDUSTRY OPERATIONS /ACTIVITIES

4.1 The Assessing Officer has contended that the appellant is providing services in the nature of 'Manpower Recruitment and Supplier' relying upon the data available gathered from a variety of sources such as website of the appellant company, Form No. 3CD of the Audit Report of the relevant financial year, website of the Ministry of Corporate Affairs and service tax registration of the appellant company.

4.2 It is respectfully submitted that the appellant company is engaged in the business of providing 'information and communication technology services' and services related thereto which consist of inter alia, application development and support services, technical help desk support services, on call support services etc. The target clients of the appellant are telecom and software companies such as Nokia Siemens Networks, Westing House, Wipro Technologies Ltd. Wipro InfoTech Ltd, Tech Mahindra. Further the appellant company provides services to Telecom Service Providers (Wireline and Wireless) vendors. The clients of the appellant company also include companies operating in manufacturing and service sectors which use information technology and information

technology related services for their business operations, such as Covansys Nortel India Ltd and Covansys.

4.3 The appellant company is providing services that are in the nature of information and communication technology, development and support services. The Assessing Officer has, in the remand report, relied upon a Taper on Value Addition and Employment Generation in ICT Sector in India 'issued by Centre Statistics Office, National Statistical Organization, Ministry of Statistics and Programme Implementation, Government of India, and concluded that the appellant is not carrying on any of the services mentioned under the head of 'Information and Communication Technology' (ICT). Your Honor's kind attention is invited to page 3 of the remand report wherein the services falling under the head ICT services have been listed to include (a) computer programming services, (b) information technology consultancy services, (c) facilities management services and (d) other information technology service activities. From the aforesaid it is clear that the service activities carried out by the appellant can be easily classified under one or more of the aforesaid heads of activities as specified in the said Paper issued by Government of India. Therefore, it is respectfully submitted that the Assessing Officer has failed to appreciate the nature of services provided by the appellant and the scope of services covered by the above Paper issued by the Government of India.

4.4 The Assessing Officer has alleged that the appellant company is carrying on the activity of 'Manpower Recruitment and Supplier'. It is respectfully submitted that the aforesaid allegation is misconceived and has arisen due to incorrect appreciation of the business model of the appellant company. As slated in paragraph 4.1 and 4.2

above, the appellant company provides different types of ICT services to its clients. The clients of the appellant company engage the appellant company for undertaking various projects in the field of ICT. The employees of the appellant meeting the specifications provided by the clients are assigned to various ICT related projects. The remuneration for the services provided by the appellant company is charged not in terms of per man hours or man days spent but on a fixed fee basis per month based upon level of personnel working on the project. Attention in this regard is invited to page 4 of the Assessment Order where the Assessing Officer has reproduced the details of professional services charges.

4.5 The Assessing Officer's finding that the appellant company is engaged in supply of computer skilled personnel is based on a misreading of the services provided by the appellant company to their clients. It is respectfully submitted that merely because specific employees are assigned to work on a particular project, it cannot be concluded that the appellant is engaged in the business of supplying personnel. It would be appreciated that the personnel working on the projects are employees of the appellant company, and not of the clients of the appellant. As already submitted, the appellant is recognized as the employer of such employees, and is therefore responsible to undertake all compliances under various labour laws such as the Employees State Insurance Act, Employees Provident Fund Act, Family Pension Fund Act, Payment of Bonus Act, Payment of Gratuity Act, etc. in respect of these employees. It is the appellant who is fulfilling the obligations of the employer under the said legislations with respect to the personnel hired by it. (Please refer to paragraph 1. to 1.11 of the Grounds of Appeal in our submissions dated 14.12.2010. wherein detailed submissions have been made in this regard).

4.6 The personnel receive their compensation from the appellant, and not from the ultimate client for whom the services are performed. The consideration for the services rendered to the clients is paid by such clients to the appellant, and not to the personnel of the appellant.

4.7 It is respectfully submitted that the appellant company bears all the risk under the service agreements entered into with the clients. It would be appreciated that it is the appellant company and not its individual employees working on client projects that is responsible for defaults committed by its employees. Once the project is completed the employees of the appellant revert back to the appellant and the client has no lien over any of the personnel. The fact that the employees of the appellant are technically skilled employees working on projects with clients of the appellant and thereby providing ICT service to the clients has not been disputed either in the Assessment Order or in the remand report. In view of the aforesaid, it is respectfully submitted that the appellant is not providing services of 'Manpower Recruitment and Supplier'.

4.8 The appellant is a company engaged in providing ICT services through technically skilled personnel. The employees of the appellant are, as per the practice followed in ICT industry, required to maintain confidentiality and are therefore often required to provide on-site services to their clients. Further, the employees also work on projects involving various teams, and therefore, in order to maintain compatibility the appellant company is required to direct its employees to work as per specified parameters. This is the common practice prevailing in the ICT industry. It is respectfully submitted that the fact that the appellant provides onsite information and communication technology

services cannot be interpreted to mean that the appellant is engaged in the business of 'body shopping' or is acting merely as a 'staffing agency'.

4.9 The fact that such skilled personnel are required to work on-site at the clients' premises can by no means be taken to imply that the company is 'supplying' such personnel to its clients. ICT services by their very nature have to be rendered through deployment of personnel possessing requisite skills. The fact that such personnel are often required to work on-site at the clients ' premises does not change the nature of the services provided by the appellant company. Such services remain ICT services regardless of whether they are rendered through personnel working from the appellants' premises, or through personnel deployed at the clients site.

4.10 The Assessing Officer has in paragraph 5.1.2 of the remand report relied upon the website of the appellant company and concluded that the appellant merely acts as a 'Master Staffing Supplier'. It is most respectfully submitted that in order to derive the true intent and colour of any document, the contents of the documents are to be read in its entirety. It would be appreciated that the website of the appellant company clearly provides that the appellant provides several services relating to the 'Information and Communication Technology Industry'. However, the same has been completely ignored by the Assessing Officer. The profile of the appellant company clearly states that the appellant is in the business of providing services relating to Information Systems using commercial project management software, providing training for project management processes, and BPO/Call Centres/PMO support to provide complete & full service support. These are services in the nature of 'Information and Communication Technology' as

provided for under Item 13 of Part C of Schedule XIV of the Act.

4.11 Similarly, the Assessing Officer has. in paragraph 5.1.1 of the remand report, placed reliance on Form No. 3CD of the Auditors Report for the relevant financial year to allege that the nature of business or profession of the appellant is 'Manpower Recruitment'. In this regard attention of your Honour is invited to Column No. 25(f) of Form No. 10CCB of the Audit Report for the relevant financial year, wherein it has been provided that the appellant is providing 'Information Technology & I.T. Enabled Services including Software Development and Maintenance'. Therefore, no inference adverse to the appellant can be drawn from the allegations made by the Assessing Officer on a partial reading of the documents. Similarly reliance has also been placed on Form TR-6 for payment of service tax. It is respectfully submitted that such reliance is misplaced The registration under service tax is not determinative of the fact whether the appellant is entitled to claim deduction under Section 80IC of the Act or not. It is settled law that the definitions of terms in other statutes / enactments cannot be employed out of context for construction of the scope of such terms in another statute. This is particularly so, when the statute in question itself provides guidance for understanding the scope of the relevant term. In the present case, the Act read with the notification issued thereunder provides the scope information technology enabled products or services, as herein below. Hence, the treatment under other enactments cannot be resorted to.

4.12 The Assessing Officer has in paragraph 5.1.3 of the remand report placed reliance upon the website of the Ministry of Corporate Affairs and the Memorandum

Association of the company wherein the object of the company is 'to establish, provide, perform and render technical and consultancy services relating to information technology enabled services of multidisciplinary character in all areas including human activities in or outside India and to act as advisors or consultants on all matters, aspects and to provide all types of services consequential or incidental thereto'. On the basis of the said clause, the Assessing Officer has concluded that the assessee company 'itself is not engaged in IT services, it is merely providing consultancy services to others'. In this regard, it is humbly submitted by the appellant that a conjunctive reading of the entire 'Object Clause' as cited by the Assessing Officer clearly shows that the appellant is providing 'technical and consultancy services of a multidisciplinary character relating to information technology'. It is respectfully submitted that the conclusion reached by the Assessing Officer is based on incomplete and selective reading of the 'Object Clause' and is, therefore, bad in law. It is respectfully submitted that 'Object Clause' of a company lays down the various activities which a company may undertake. However, it is not necessary that the company should undertake all the activities/objects specified in the 'Objects Clause'. It is respectfully reiterated that the appellant is engaged in providing information and communication technology services to its clients. The appellant has also filed a copy of the various agreements entered into with various clients to substantiate that the appellant is carrying on the aforesaid services.

4.13 Section 80IC of the Act provides for deduction in respect of any profits and gains derived by an undertaking or an enterprise from, inter alia, any activity related to ICT Industry, computer hardware and call centre as specified in Part C of Schedule XIV of the Act. Similarly, Section 10A

also provides deduction in respect of profits and gains derived by undertakings from export of computer software. As per sub-section (5) of section 80IC, if deduction under Section 80IC has been claimed in respect of profits and gains of an undertaking, no further deduction shall be allowed under Section 10A of the Act in respect of profits and gains of such undertaking while computing the total income. Clause (i) of Explanation 2 under section 10A provides the definition of computer software as:

(i) "computer software" means -

(a)

(b) any customized electronic data or any product or service of similar nature, as may be notified by the Board... "

Attention at this point is invited to the Notification No. SO 890(E), dated 26.09.2000, issued by the Central Board of Direct Taxes (CBDT), wherein the Central Board of Direct Taxes has specified the following Information Technology enabled products or services, for the purpose of the said section:

- (i) Back-office Operations;*
- (ii) Call Centres;*
- (iii) Content Development or Animation;*
- (iv) Data Processing;*
- (v) Engineering and Design;*
- (vi) Geographic Information System Services;*
- (vii) Human Resource Services;*
- (viii) Insurance Claim Processing;*
- (ix) Legal Databases;*
- (x) Medical Transcription;*
- (xi) Payroll;*
- (xii) Remote Maintenance;*
- (xiii) Revenue Accounting;*

- (xiv) *Support Centres, and*
(xv) *Web-site Services.*

In view of the above, it is respectfully submitted that the appellant is engaged in the business of providing ICT services for manufacture of computer software. (Please refer to paragraph 2.15 to 2.17.3 of our submissions, dated 14.12.2010 wherein detailed submissions have been made in this regard).

4.14 Without prejudice to the submission of the appellant that the appellant is engaged in the business of providing ICT services, it is respectfully submitted that even if it is assumed that the appellant is engaged in the business of providing 'Human Resource Services' for its clients in the ICT Industry, the appellant would still be eligible to claim deduction under Section 80IC of the Act. It would be appreciated that 'human resource services' is one of the categories of services which have been expressly included within the definition of 'computer software' given in Section 10A of the Act vide Notification No. SO 890(E) dated 26.09.2000 issued by the Central Board of Direct Taxes (CBDT)."

13. The reliance was placed on the following case laws:

- *ITO vs. Accurum India (P) Ltd. 128 TTJ 249 (Chen)*
- *M. L. Outsourcing Pvt. Ltd. Vs. ITO (ITA No. 1204/Del/2011)*

14. The Id. CIT(A) also reproduced the submissions of the assessee on the issues raised by the AO in his remand report at pages no. 18 to 21 which read as under:

"5.1 In paragraph 6 of the remand report, the Assessing Officer has contended that the appellant is

not eligible to claim deduction under Section 80/C of the Act as the appellant has merely shifted its accounting operations to the State of Uttarakhand in order to claim tax benefits. The appellant humbly submits that these are fresh grounds raised by the Assessing Officer for sustaining disallowance of deduction under Section 80IC of the Act. Such grounds were not relied upon by the Assessing Officer for disallowing the deduction while passing the impugned Assessment Order. Hence, it is humbly submitted that there are no special or new circumstances under which the Assessing Officer may be allowed to adduce additional grounds with respect to issues that have already been deliberated upon during the course of the assessment proceedings where there was adequate opportunity to address these issues. However, without prejudice to the same, the appellant humbly submits the following:

5.2 The Assessing Officer has stated at paragraph 6.1 of the remand report that the auditor of the appellant has falsely reported that the appellant has commenced its operations in Dehradun from January, 2006. In this regard it is respectfully submitted that the appellant company was incorporated in 1986. However till the financial year 2003-04 the appellant had negligible operational presence in India, It was only in the year 2003-04 that there was change in the management of the company and efforts were initiated to expand operations in the field of ICT industry. Substantial investments were made in the subsequent financial years to establish the undertaking. In January 2006, the Software Technology Park Unit (STPU) at Dehradun commenced operations. It would

be appreciated that the undertaking at Dehradun is a duly registered STPU providing ICT services. The registered office of the appellant was shifted to Dehradun as per the provisions of the Companies Act, 1956. It is respectfully submitted that the Assessing Officer has misconstrued this to mean shifting of the accounting operations to Dehradun in order to claim tax benefits under Section 80IC.

5.3 The Assessing Officer has, at paragraph 6.2 & 6.2.1 of the remand report, also contended that the appellant is in effect providing rented floor area to other information technology companies. In this regard it is also humbly submitted by the appellant that it has obtained license from the appropriate authorities in order to be registered as a STPU and is adequately carrying out the services in the nature of 'Information and Communication Technology Industry'. The appellant does not dispute the fact that in the STPU setup by it, a proportion of the area has been rented out to other IT companies and the income derived there from is in the nature of 'Income from House Property'. However, as is evident from the Assessment Order dated 23.12.2009, the appellant has not claimed deduction in respect of such income, and the same has been adequately offered for tax under the appropriate head. It is also submitted that a proportion of the area in the STPU is also being used by the appellant for rendering its services to the clients. This fact has also been accepted by the Assessing Officer in the remand report. It is reiterated that the services rendered by the appellant are services relating to the 'Information and Communication Technology Industry', and it is the

income derived from such services which has been submitted for deduction under Section 80IC of the Act. In its submissions dated 14.12.2010, the appellant had referred to the details such as invoices, electricity bills, employees recruited, and other such facilities being utilized for rendering such services filed before the Assessing Officer during the assessment proceedings in response to the queries raised during the hearing held by the Assessing Officer on 10.12.2009. The Assessing Officer has neither rebutted nor denied any of the submissions made by the appellant in this regard. Therefore, it is respectfully submitted that the above submissions may be deemed to have been accepted by the Assessing Officer.

5.4 The Assessing Officer has, at paragraph 6.2,2 of the Remand Report, alleged that the only activity being carried on by the employees of the appellant is in the nature of accounting, and not ICT services. The aforesaid allegation is based upon the information gathered from some persons said to be employees of the appellant company during the course of a visit made by the Assessing Officer to the premises of the appellant. It is once again submitted that the Assessing Officer has travelled far beyond the scope of the direction issued by your Honor.

5.5 It is further respectfully submitted that the visit made by the Assessing Officer was without disclosing the statutory authority in exercise of which the visit was made. Further, the Assessing Officer has not disclosed the specific statutory provisions in exercise of which information was sought to be gathered

during such visit. Therefore, the visit as well as the 'information' gathered during the visit, are bad in law and no reliance can be placed thereon.

5.6 There is no dispute that the Act confers wide powers on the Assessing Officer regarding, inter alia, discovery and production of evidence, search, calling for information, survey, collecting information, etc. There is also no dispute that the Assessing Officer has the necessary jurisdiction to exercise these powers in respect of the appellant. However, such powers are not absolute and unfettered, and cannot be exercised without having regard to the form, manner and restrictions prescribed in regard to exercise of these powers. The Assessing Officer has not disclosed the specific provisions of the Act under which the visit was made, or under which the so-called information / evidence was gathered. Hence, both the visit and the 'evidence' gathered during such visit are vitiated by reason of not being in accordance with law.

5.7 The Assessing Officer has not mentioned the name or status of the 'employees' to whom questions were put during the visit. Further, the statements or answers of such 'employees' have not been formally recorded under the relevant provisions of the Act. In fact, such statements or answers have not even been reduced to writing. Hence, the appellant is not in a position to rebut or challenge these 'statements' Even if it is assumed for the sake of argument that the visit of the Assessing Officer was in accordance with law, no opportunity to cross examine was given to the appellant. For that reason also, the allegations made on the basis of the purported 'statements' of the

witnesses said to be the employees of the appellant company examined during the visit cannot be relied upon to draw any adverse inference against the appellant.

5.8 In furtherance to the submissions dated 14.12.2010, the appellant humbly submits before your Honour that the appellant is carrying on its business and income generating activities in Dehradun i.e. the state of Uttarakhand. The appellant is in the business of providing 'Information and Communication Technology Services' and has duly registered as a STPU in the state of Uttarakhand. The appellant has three offices at Dehradun, Bangalore and Gurgaon. It is humbly submitted before your Honour that the offices at Bangalore and Gurgaon are merely nodal / branch offices. Primarily, these nodal / branch offices are used for housing marketing personnel and for correspondence. The ICT activities are primarily carried out through the Dehradun STPU of the appellant. It is humbly submitted that the appellant has employed personnel in Dehradun for the purpose of rendering such services which are in the nature of ICT services; however such employees are required to travel to the offices / sites of their clients to render on-site services as per the nature of the services and the needs of the clients.

5.9 It is respectfully submitted that there is no requirement under Section 80IC of the Act that the services/operations of the undertaking/enterprise should be provided/consumed within the state, of Uttarakhand. Given the cross-border nature of the ICT industry and the services related thereto, such an

interpretation would render the provisions of Section 80IC of the Act ineffective and otiose in so far as ICT sector services / activities are concerned. In this regard it is humbly submitted that the nature and services provided in the ICT industry cannot be limited by territory or geographical area. It is respectfully submitted that Section 80IC being a beneficial provision should not be subjected to narrow interpretation so as to deny the benefit to the appellant. The provisions of Section 80IC should be interpreted widely to include in its ambit all services related to ITC industry, whether provided/consumed within Uttarakhand or outside. It would be appreciated that service providers in the ICT industry are required to provide both onsite and offsite services, depending upon the nature of the projects and the requirements of the client. The projects on which the appellant and its employees work are in the nature of intellectual property and therefore require confidentiality and protection. It is also submitted that detailed perusal of the service agreements between the assessee and its clients would also reveal that there are a variety of services which are rendered by the assessee to its clients both on-line and on-site, all of which are in the nature of IT services.

5.10 Reference is invited in this regard on Circular No. 694 dated 22-11-1994, wherein the CBDT has clarified that, for the purpose of tax holiday under sections 80HHE, 10A and 10B of the Act, on-site performance of software operations would be deemed to be manufacture/production of computer software by the unit. Attention in this regard is also invited to Explanation 3 to Section 10A wherein it is provided

that profits from onsite development of software outside India would be deemed to be profits from export of computer software outside India. From the aforesaid it can be inferred that the onsite development of software and provision of IT services is covered within the activity /operation "Information and Communication Technology Industry" mentioned at Item 13 in Part C of the Fourteenth Schedule to the Act, for the purpose of Section 80IC ibid. Although the services may be rendered outside the state, the same should in our respectful submission be deemed to have been rendered from the Dehradun STPU within the state of Uttarakhand.

5.11 In paragraph 9 and 9.1 of the remand report, the Assessing Officer has challenged the claim of the appellant for deduction under Section 80IC on the grounds that the appellant company does not fulfill the essential criteria for availing the deduction under Section 80IC. In this regard, it is most respectfully submitted by the appellant that in light of the submissions dated 14.12.2010 and the submissions made hereinbefore, the appellant duly fulfills all the conditions laid down under Section 80IC of the Act.

5.12 In view of the above submissions, it is most respectfully submitted before your Honour that, the claim of the appellant for deduction under Section 80IC is correct and justifiable on law and facts. The appellant reiterates the detailed submissions dated 24.12.2010, which may be read made in the”

The ld. CIT(A) also asked the assessee about the quantum of revenue generated within the State of Uttarakhand as compared to those generated outside. The submissions of the assessee had been incorporated by the ld. CIT(A) in para 5.1 of the impugned order, for the cost of repetition, the same are not reproduced herein.

15. The ld. CIT(A) after considering the submissions of the assessee and the remand report of the AO observed that the assessee to claim deduction u/s 80IC of the Act must fulfill certain conditions laid down in the said section as also not be hit by the exclusions contained in Section 80IC(4) of the Act. He further observed that as per the provisions contained in Sub-Section (2) of Section 80IC of the Act, the concerned undertaking or enterprise should have begun or begins to manufacture any article or thing. The ld. CIT(A) pointed out that the assessee had been incorporated on 01.07.1986 with registered office at 122, South Park, Kalkaji, New Delhi and thereafter, the registered office had been shifted to 1101, Michigan Avenue, Doon Express Business Park, Majra, Dehradun w.e.f. 18.12.2008 and the assessee was in the same line of business i.e. recruiting and supplying manpower to I.T. companies/clients since 1995. So, it was not a new unit which commenced operations from January, 2006.

16. The assessee had taken a strong objection to the said observation of the learned CIT(A) and stated that the Software Technology Park Unit (STPU) of the assessee commenced operations from January, 2006. However, the Id. CIT(A) relied upon the following inferences drawn by the AO:

“a) The appellant did not begin or began producing article or thing necessary for claiming deduction u/s 80-IC of the Act in 2006 as claimed. The STPU has been leased out to the extent of 90% of usable space (10% is used by appellant) and the income from such leasing is shown as income from house property for which no deduction u/s 80IC of the Act has been claimed for obvious reasons. If the date of commencement of operations to the extent of recruitment and deployment of manpower is actually linked with the date of shifting the registered office to Dehradun on 18.12.2008 then that date would decide the actual commencement of operations for the purposes of satisfying the conditions laid down in Sec. 80-IC of the Act.

b) The words "has begun" or "begins" are not new and have been used in a number of sections contained in Chapter VIA. They have been interpreted to mean that the enterprise claiming eligibility for deduction, must already be manufacturing or producing any article or thing or should have newly begun to do so. However, this should be done in the state or geographical boundary for which the section applies. It is understood that large companies resort to segmental reporting of accounts to distinguish

between sums attributable to eligible units and those pertaining to other units situated elsewhere. In this case it is seen that all eight copies of agreements with I.T. companies filed mention the following dates of agreements:-

<i>Name</i>	<i>Address on contract with appellant</i>	<i>Date of agreement</i>
<i>(i) Tech Mahindra Ltd.</i>	<i>207, Orchid Square B Block Susant Lok, Gurgaon</i>	<i>10.1.2008</i>
<i>(ii) Nokia India (P) Ltd.</i>	<i>-do-</i>	<i>15.07.2005</i>
<i>(iii) IBM India (P) Ltd.</i>	<i>-do-</i>	<i>21.03.2006</i>
<i>(iv) Bharti Retail (P) Ltd.</i>	<i>-do-</i>	<i>10.03.208</i>
<i>(v) Covansys (India) P. Ltd.</i>	<i>-do-</i>	<i>Nov. 14 (year not mentioned)</i>
<i>(vi) Wipro Ltd.</i>	<i>1101, Michigan Avenue, Doon Express Business Park, Dehradun</i>	<i>01.08.2006</i>
<i>(vii) Infosys Tech. Ltd.</i>	<i>207, Orchid Square B-Block, Susant Lok, Gurgaon</i>	<i>03.08.2007</i>
<i>(viii) Nokia Siemens Network Taiwan Co Lid.</i>	<i>-do-</i>	<i>01.08.2007</i>

It is seen that as per the contract agreements only in one case (Wipro) the contracts mention the Dehradun address. All these indicate that the appellant had a running business even before the claimed date of commencing operations from Jan., 2006 (as the chart above would reveal). Thus, it can be safely concluded that the operations did not commence in Jan., 2006 in Uttarakhand as claimed, but they had commenced much earlier as far back as 1995 (as found out by the AO from the appellant's own website) in Delhi or Gurgaon. Furthermore, critical supervisory and control operations appear to be carried out from the Gurgoan address.”

17. The Id. CIT(A) further observed that even if the date of shifting the registered office to Dehradun in December 2008 was not to be taken as the date of commencement of operations in Uttarakhand, then also it was seen that majority of business operations were being carried out outside Uttarakhand, actually from the Gurgaon office from where the assessee appears to be conducting business operations because in majority of contract documents, the said address was mentioned. He further observed that the assessee's case was obviously not a case of splitting up but may be a case of reconstruction of business already in existence. The reliance was placed on the following case laws:

- *JCIT Vs Thirani Chemicals Ltd. (2010) 40 SOT 530 (Del.) (SB)*
- *Nagardas Bechardas & Brothers (P.) Ltd. Vs CIT (1976) 104 ITR 255 (Guj.)*
- *CIT Vs Gaekwar Foam and Rubber Co. Ltd. (1959) 35 ITR 662 (Bom.)*
- *Textile Machinery Corporation Ltd. Vs CIT 107 ITR 195 (SC)*

18. The Id. CIT(A) also observed that the assessee had been recruiting and supplying manpower to various companies for engagement in Information Technology functions, this activity had continued unchanged between the old and new avatars of the assessee and the construction of STPU had been only a

reconstruction of business and not being part of business eligible for claiming deduction u/s 80IC of the Act, and that it would bring the assessee within the ambit of Section 80IC(4) of the Act since the assessee's activity in the State of Uttarakhand were as a result of construction of an already existing business which would deny the benefit of deduction as claimed. The Id. CIT(A) observed that Section 80IC of the Act is specifically designed for the development of hill states of the North-East, Himachal Pradesh and Uttaranchal (Uttarakhand) for the development of relatively unserved region and not specifically for promoting exports or earning foreign exchange. Thus, even though there are many similarities in language between Sections 10A, 10B and 80IC of the Act but the underlying objectives are entirely different in as much as the Section 80IC of the Act is geographically centered in the above mentioned states. Therefore, the liberal definition of "Computer Software" in Sections 10A, 10B and 80HHE of the Act does not mean that the same definition applies to Section 80IC of the Act also. The Id. CIT(A) relied on the judgment of the Honorable Supreme Court in the case of CIT Vs Tara Agencies reported in 292 ITR 444 wherein while interpreting the statutes it has been mentioned as under:

“The intention of the Legislature has to be gathered from the language used in the statute, which means that attention should be paid to what has been said as also what has not been said” (pg 464).....

“It is the bounden duty of the court to interpret the statute as it is. It is contrary to all rules of construction to read words into a statute which the Legislature in its wisdom has deliberately not incorporated.” (pg 464)

19. The learned CIT(A) held that the assessee's attempt to read words belonging to Sections 10A, 10B and 80HHE of the Act into Section 80IC of the Act was at best a self serving attempt to justify its stand and that the assessee's business of supplying manpower from IT jobs may not fall within the meaning of "Information and Communication Technology Industry". The ld. CIT(A) mentioned that the assessee supplied a breakup of revenues generated from the State of Uttarakhand as compared to revenues generated outside the state as per following details:

	<i>Name of client</i>	<i>Onsite revenues (Rs.)</i>	<i>Revenues from activities within Uttarakhand</i>
<i>i)</i>	<i>IBM</i>	<i>2,47,51,258</i>	<i>13,02,699</i>
<i>ii)</i>	<i>Nokia</i>	<i>1,90,03,037</i>	<i>Nil</i>
<i>iii)</i>	<i>Westinghouse</i>	<i>26,45,430</i>	<i>Nil</i>
<i>iv)</i>	<i>Convasnsys</i>	<i>8,24,998</i>	<i>Nil</i>
<i>v)</i>	<i>Tech Mahindra</i>	<i>5,56,400</i>	<i>Nil</i>
<i>vi)</i>	<i>Nortel</i>	<i>7,58,800</i>	<i>Nil</i>
<i>vii)</i>	<i>Nokia, Iran</i>	<i>16,19,967</i>	<i>10,00,159</i>

viii)	<i>Wipro</i>	18,68,577	<i>Nil</i>
<i>TOTAL</i>		5,20,28,467	23,02,858

On the basis of aforesaid details, the Id. CIT(A) observed that the percentage of revenue generated by manpower deployed in the State of Uttarakhand came to only 4.24% of the total revenue generated at Rs.5,43,31,325/- (Rs.5,20,28,467/- + Rs.23,02,858/-). He further observed that even if for a moment for the sake of argument, we subscribe to the view that the assessee was covered under Schedule 14 then too a very significant percentage of 95.76% was done outside the State of Uttarakhand and that the findings of the AO in the remand report that back office functions only were being performed by a few staff posted at the address of the assessee at Dehradun, leads to the inevitable conclusion that even if the activities of the assessee as eligible under Schedule 14 then too all such eligible (u/s 80IC) activities were being carried out outside the State of Uttarakhand and only non-eligible (u/s 80IC of the Act) activities were being carried out in the State of Uttarakhand. He also observed that the assessee though vehemently claimed that all its managerial/supervisory/control functions were being carried out from Dehradun, it was still signing the contracts with the address shown of the Gurgaon office, thereby indicating that the assessee was not accounting

for revenues, unit wise but bundling together everything on to the State of Uttarakhand for claiming the deduction u/s 80IC of the Act, on the profits/receipts which had nothing to do with the State of Uttarakhand. According to the Id. CIT(A), the assessee should have accounted for the receipts on the basis of segment by resorting to segmental accounting rather than bunching every receipt with the State of Uttarakhand. The Id. CIT(A) was of the view that the reliance placed by the assessee on Circular No. 694 dated 23.11.1994 in which both offsite and onsite activities had been deemed to be eligible for relief u/s 10A and 10B of the Act also could not have helped the assessee's case. As regards to the contention of the assessee that substantial investments had been made in the State of Uttarakhand by constructing a 40000 sq. ft. STPU, the Id. CIT(A) was of the view that this STPU was not eligible for claiming deduction u/s 80IC of the Act. Therefore, the receipts from this had rightly been taken under the head income from house property because a mere 10% of the total space was seen to be utilized for its own use by the assessee. The Id. CIT(A) mentioned that the investments should have been linked directly to eligible business activities for the purposes of Section 80IC of the Act and not for earning revenues otherwise. The Id. CIT(A) held that no relief was due to the

assessee for deduction u/s 80IC of the Act for the following reasons:

“(A) That the appellant’s operations for the eligible business have started in the year under consideration actually at the ground level as required u/s 80IC(2) of the Act is not proved since bulk of contracts are seen to have been signed at the Gurgaon address. Also the registered office shifted to Dehradun only in December, 2008.

(B) The appellant's business of supplying skilled manpower for Information Technology purposes cannot be termed as an enterprise in Information and Communication Technology. Appellant's reliance on Circulars and Notifications concerning sections 10A, 10B and 80HHE of the Act are misplaced since these sections pertain to boosting exports for foreign exchange earnings while section 80IC is specifically meant to foster growth and development of certain geographical regions of the country. Thus the appellant's business cannot be said to fall within the purview of Schedule 14 of the Act.

(C) The appellant's business claimed to be eligible for the purposes of section 80IC of the Act has been formed by reconstruction of an already existing business. Thus the claim of appellant is hit by section 80-IC(4) of the Act.

(D) It has been demonstrated on the basis of appellant's own admission that merely 4.24% of the revenues from deploying manpower with various companies is attributable to the State of Uttarakhand. This implies that revenue generation is

taking place outside the State but benefit u/s 80IC of the Act is sought to be availed by having a token presence at Dehradun.

(E) From a perusal of documents filed during appellate proceedings and the facts gathered by the Id. AO, it is seen that the appellant has presence in terms of infrastructure etc. outside Uttarakhand at places like Gurgaon and Bangalore, but instead of apportioning revenues and expenses between all such units, all receipts/profits have been shown at the Dehradun unit as claim eligible for deduction u/s 80IC of the Act.”

In view of the above, the Id. CIT(A) held that the claim for deduction u/s 80IC of the Act was rightly disallowed by the AO.

20. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and submitted that the assessee made detailed submissions before the Id. CIT(A) on 14.12.2010. A reference was made to page nos. 217 to 312 of the assessee's paper book wherein the reply of the assessee is placed at page nos. 217 to 243 of the paper book.

The Id. Counsel for the assessee further submitted that the assessee is a Dehradun based IT Company, engaged in providing support services to IT companies like IBM, Nokia,

Wipro, Infotech, Tech Mahindra, Covansys, Nortel etc. through various modes i.e. on-line, on-site or off-site depending on the nature of requirement of the clients. It was also submitted that the various types of services provided by the assessee are as under:

“a) Application Development & Support, b) Customer Care Services, c) Asset Management and Maintenance, d) Telecom Software & Hardware Installation, e) Facility Management Services, Desktops, Servers, f) Technical Help Desk Support, g) Domino Servers Support, h) On call Support.”

21. It was contended that the assessee furnished a detailed submission vide letter dated 14.12.2010 before the ld. CIT(A) (copy of which is placed at page nos. 217 to 312 and that the ld. CIT(A) asked the remand report from the AO who vide letter dated 14.10.2011 asked the assessee for the justification of claiming the deduction u/s 80IC of the Act, a reference was made to page nos. 313 to 368 of the assessee's compilation. It was further stated that the assessee in the remand proceedings vide letter dated 18.04.2011 replied to each query raised by the AO, a reference was made to page nos. 369 to 402 of the assessee's paper book. It was further contended that the AO furnished his remand report dated 07.07.2011 vide letter dated 18.07.2011 (copy of which is placed at page nos. 404 to 423 of

the assessee's paper book). It was submitted that the assessee filed the reply to the remand vide reply dated 19.08.2011 (copy of which is placed at page nos. 424 to 442 of the assessee's paper book). It was further submitted that the assessee filed additional submissions dated 22.09.2011 before the Id. CIT(A) (copy of which is placed at page nos. 443 to 450 of the assessee's paper book). It was emphasised that the activities of the assessee are duly covered under clause 13 of part (c) of Schedule XIV of the Income Tax Act as mentioned in Sub-Section 2(b) of Section 80IC of the Act, which provides that the activities of Information and Communication Technology Industry, Computer hardware, call centers to be eligible for deduction u/s 80IC of the Act. It was submitted that the assessee was engaged in the field of providing services of the Information and Communication Technology and its personnel were engaged to work with the clients at premises of their choice for efficiency and maintaining confidentiality, the personnel so engaged were employees of the assessee in every respect and they were deployed on the basis of contractual relationship between the assessee and the IT Company/clients and not due to any contract between the IT Company/client and the personnel deployed. It was stated that in the Information and Communication Technology Industry, specific work is

often required to be remitted at the site of the client as per the later requirements, the Software development and maintenance/repair of hardware are the examples of such operations, therefore, the fact that the operation was performed at the client's site does not mean that the work was performed by the client itself because the personnel who worked at client's site remained the employees of the assessee.

22. The Id. Counsel for the assessee drew our attention towards copies of the agreement entered into between the assessee and the clients which are placed at page nos. 251 to 290 of the assessee's paper book and stated that under the agreement the services were rendered by the assessee to the clients, a reference was made to the agreement with Tech Mahindra Ltd. wherein Clause 1.10.1 provides that under the agreement for services entered into by the assessee with M/s Tech Mahindra Ltd., the assessee was required to provide the services of technically qualified and experienced personnel for working on projects and assignments on time and material basis on offshore as well as on-site assignments and that the payment of salaries and all related taxes for the contract would be the sole responsibility of the assessee, therefore, the AO was not justified in holding that assessee's activities could not

have been termed as an 'industry'. The reliance was placed on the judgment of the Honorable Supreme Court in the case of National Union of Commercial Employees Vs M. R. Meher, Industrial Tribunal, Bombay (1962) ILLJ 241 SC and in the case of Bangalore Water Supply & Sewerage Board Vs A. Rajappa (1978) 3 SCR 207. It was stated that the scope of the term 'Information and Communication Technology Industry' can by no means be restricted to activities or operations involving manufacture/production of goods.

The reliance was placed on the Annual Report (2008-09) of the Ministry of Communications and Information Technology (Department of Information Technology), which is the nodal Ministry in the Government of India for the Information and Communication Technology Industry to canvass the view that for I.T. Sector, 'Industry' would include all the services envisaged for this sector.

23. It was further stated that in the said report, the term 'industry' is not understood as being restricted to production or manufacturing of goods. It was contended that the website of National Association of Software and Services Companies (NASSCOM) which is described as the premier trade body and chamber of commerce of the IT/BPO industries in India and its

member companies are stated to be broadly in the business of software development, software services, software products, consulting services, BPO services, e-commerce & web services, engineering services, off-shoring, animation & gaming, also tends to use the term "industry" for the activities peculiar to the I.T. Industry. It was also contended that the term "Industry" as understood in the world of Information and Communication Technology not limited to manufacture of goods only but also covers the rendering of services, a reference was made to page nos. 299 & 300 of the assessee's paper book. The ld. Counsel for the assessee also cited the Notification No. SO 890 (E) dated 26.09.2000 issued in respect of Sections 10A, 10B and 80HHE of the Act. vide which, the CBDT specified the following Information Technology enabled products or services for the purpose of above said sections:

- (i) Back-office Operations;*
- (ii) Call Centres;*
- (iii) Content Development or Animation;*
- (iv) Data Processing;*
- (v) Engineering and Design;*
- (vi) Geographic Information System Services;*
- (vii) Human Resource Services;*
- (viii) Insurance Claim Processing;*
- (ix) Legal Databases;*
- (x) Medical Transcription;*

- (xi) Payroll;*
- (xii) Remote Maintenance;*
- (xiii) Revenue Accounting;*
- (xiv) Support Centres, and*
- (xv) Web-site Services.*

24. The ld. counsel for the assessee stated that broadly the activities of the assessee are in the line with activities envisaged for the IT sector, in the aforesaid notification. It was contended that the said notification established that even the CBDT recognized the Information Technology includes products as well as services. It was further contended that it is trite that the beneficial provision should be liberally construed. It was emphasized that the business activities of the assessee commenced in the State of Uttarakhand as required u/s 80IC of the Act and personnel had been deployed at the sites of various IT companies/clients for performing assigned IT tasks under the control of the assessee, in support of the above, our attention was drawn towards the registration certificate issued by STPI, Dehradun (copy of which is placed at page No. 208 & 209 of the assessee's paper book). It was stated that the word 'industry' has a wide import and it is a systematic activities organized by cooperation between employees and employer in production and/or distribution of goods and services. It was also stated that beneficiary

provision are to be construed liberally. The reliance was placed on the following case laws:

- *Bajaj Tempo Ltd. Vs CIT (1992) 196 ITR 188 (SC)*
- *Broach District Co-operative Cotton Sales, Ginning and Pressing Society Ltd. Vs CIT (1989) 177 ITR 418 (SC)*

25. The ld. counsel for the assessee stated that the assessee is being assessed to tax in Dehradun, all payments with respect to Provident Fund, ESI, TDS were deposited in the State of Uttaranchal and all the technocrats even working at the premises of the clients are actually the employees of the assessee company. It was further stated that the Auditors while preparing the Audit Report in Form No. 3CD have stated the nature of business of the assessee as "manpower recruitment" and that the Auditors while giving a report u/s 80IC of the Act in Form No. 10CCB, in item No. 25(f) (copy of which is placed at page no. 136 of the assessee's paper book) had mentioned the nature of the business of the assessee company as "Information Technology and IT enabled services including Software Development and maintenance". It was contended that the meaning of industry cannot be restricted to the manufacturing or production of articles because the rendering of services is also included for claiming the deduction u/s

80IC of the Act and that the service activities undertaken by the assessee fall in the definition of 'industry'. A reference was made to page nos. 201 to 298 of the assessee's paper book which are the copies of industrial profile of the assessee. It was further stated that the assessee recruited the personnel, paid them salary/wages and instruct them to work on behalf of the assessee, at the various sites of the clients. Therefore, the claim of the assessee was in accordance with law which has to be allowed and the ld. CIT(A) was not justified in confirming the order of the AO who had disallowed the claim of the assessee u/s 80IC of the Act.

26. In his rival submissions, the ld. DR reiterated the observations made by the AO and the ld. CIT(A) in their respective orders. It was further submitted that the assessee was not an industry but a service provider, therefore, it was not eligible for deduction u/s 80IC of the Act and the AO rightly disallowed the claim of the assessee. Therefore, the ld. CIT(A) was fully justified in confirming the order passed by the AO.

27. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the

assessee was engaged in supplying personnel possessing computer skills to its clients. The assessee claimed the deduction u/s 80IC of the Act. The provisions contained in the said section read as under:

“80-IC. (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (2), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains, as specified in sub-section (3).

(2) This section applies to any undertaking or enterprise,—

(a) which has begun or begins to manufacture or produce any article or thing, not being any article or thing specified in the Thirteenth Schedule, or which manufactures or produces any article or thing, not being any article or thing specified in the Thirteenth Schedule and undertakes substantial expansion during the period beginning—

(i) on the 23rd day of December, 2002 and ending before the 1st day of April, [2007], in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology

Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in the State of Sikkim; or

(ii) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in the State of Himachal Pradesh or the State of Uttaranchal; or

(iii) on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in any of the North-Eastern States;

(b) which has begun or begins to manufacture or produce any article or thing, specified in the

Fourteenth Schedule or commences any operation specified in that Schedule, or which manufactures or produces any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule and undertakes substantial expansion during the period beginning—

(i) on the 23rd day of December, 2002 and ending before the 1st day of April, 2012, in the State of Himachal Pradesh or the State of Uttaranchal; or

(ii) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in the State of Himachal Pradesh or the State of Uttaranchal; or

(iii) on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any of the North-Eastern States.

(3) The deduction referred to in sub-section (1) shall be—

(i) in the case of any undertaking or enterprise referred to in sub-clauses (i) and (iii) of clause (a) or sub-clauses (i) and (iii) of clause (b), of sub-section (2), one hundred per cent of such profits and gains for ten assessment years commencing with the initial assessment year;

(ii) in the case of any undertaking or enterprise referred to in sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b), of sub-section (2), one hundred per cent of such profits and gains for five assessment years commencing with the initial assessment year and thereafter, twenty-five per cent

(or thirty per cent where the assessee is a company) of the profits and gains.

(4) This section applies to any undertaking or enterprise which fulfils all the following conditions, namely:—

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence :

***Provided** that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;*

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation.—The provisions of Explanations 1 and 2 to sub-section (3) of section 80-IA shall apply for the purposes of clause (ii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

(5) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee, no deduction shall be allowed under any other section contained in Chapter VIA or in section

10A or section 10B, in relation to the profits and gains of the undertaking or enterprise.

(6) Notwithstanding anything contained in this Act, no deduction shall be allowed to any undertaking or enterprise under this section, where the total period of deduction inclusive of the period of deduction under this section, or under the second proviso to sub-section (4) of section 80-IB or under section 10C, as the case may be, exceeds ten assessment years.

(7) The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible undertaking or enterprise under this section.”

28. From the above provisions, it is clear that the deduction u/s 80IC of the Act is available where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business of manufacturing or production of any article or thing not being article or thing specified in Thirteenth Schedule or commenced any operation specified in Fourteenth Schedule and undertakes substantial expansion during the period beginning on the 7th day of January, 2003 and ending before 1st day of April, 2012 in the State of Himachal Pradesh or State of Uttaranchal. The claim of the assessee is that it was established during the period specified in Sub-Clause (ii) of Clause (a) of Sub-

Section (2) to Section 80IC of the Act and it is providing the services specified in Fourteenth Schedule, therefore, it is eligible for deduction u/s 80IC of the Act. Now the controversy to be resolve before us as to whether the assessee was established in the State mentioned in Section 80IC(2)(a)(ii) and started the business in the specified period i.e. from 7th Day of January, 2003 to April 2012 and perform the functions as are mentioned in Schedule Thirteenth or Schedule Fourteenth. The function/operation provided in Schedule Thirteenth relates to the manufacturing or production of any article or thing specified in that Schedule but the assessee is not engaged in such activities, so the operation undertaken by the assessee does not fall in Schedule Thirteenth. Now we have to examine as to whether the assessee falls in the definition of industry or it is doing the operation specified in Schedule Fourteenth. The term "industry" is not defined in the Income Tax Act, however, the Hon^{ble} Supreme Court in the case of National Union of Commercial Employees Vs M. R. Meher, Industrial Tribunal, Bombay (supra) held that the concept of industry covers the production of goods as well as rendering of services, in the said case, it has been held as under:

"It would be realised that the concept of industry postulates partnership between capital and labour or between the employer and his employees. It is under this partnership that the employer contributes his capital and the employees their labour and the Joint contribution of capital and labour leads directly to the production which the industry has in view. In other words, the cooperation between capital and labour or between the employer and his employees which is treated as a working test in determining whether any activity amounts to an industry, is the co-operation which is directly involved in the production of goods or in the rendering of service. It cannot be suggested that every form or aspect of human activity in which capital and labour co-operate or employer and employees assist each other is an industry. The distinguishing feature of an industry is that for the production of goods or for the rendering of service, co-operation between capital and labour or between the employer and his employees must be direct and must be essential."

[Emphasis Supplied].

29. Similarly, the Hon^{ble} Apex Court in the case of Bangalore Water Supply & Sewerage Board Vs A. Rajappa (supra) held as under:

....the word "industry" has a wide import and it is (i) systematic activity, (ii) organised by co-operation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, e.g., making on a large scale, prasad or food), prima facie there is an

industry" in that enterprise. It was further observed that the true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations."

From the ratio laid down by the Honorable Apex Court in the aforesaid referred to cases, it can safely be held that the word 'industry' has a wide import and it is a systematic activity organized by co-operation between employer and employee for production and/or distribution of goods and services calculated to satisfy human wants and wishes.

29. In the present case, the assessee is a company incorporated at Dehradun, it is engaged in providing support services to IT companies like IBM, Nokia, Wipro Infotech, Tech Mahindra etc. The services provided are through various modes on-line, on-site or off-site depending on the nature of the clients. The various services provided by the assessee to its clients are Application Development & Support, Customer Care Services, Asset Management & Maintenance, Telecom Software & Hardware Installation, Facility Management Services, Technical Help Desk Support, Domino Servers Support and On call support services etc. For providing the above said services, the assessee entered into contract with the various clients and the specific work was required to be done

at the sites of the clients as per their requirements for efficiency and maintaining confidentiality. The work performed at the sites of the clients was through the staff of the assessee and not by the clients or their staff. All the personnels who worked at the sites of the clients were the employees of the assessee, those were accountable to the assessee and not to the clients and the assessee was responsible/accountable for the work done by its employees at the site of the clients who entered into agreements for providing the services with the assessee and not with the personnel deputed by the assessee. The copy of the agreement entered into by the assessee with M/s Tech Mahindra is placed at page nos. 251 to 257 of the assessee's paper book, in the said agreement, it is clearly mentioned at page no. 252 & 253 that the assessee will provide the services of technically qualified and experienced personnel to Tech Mahindra Ltd. for working and assigning as may be desired by Tech Mahindra ltd. on time and material basis on offshore as well as onsite assignments and that the assessee shall ensure that personnel engaged under this agreement must have appropriate qualifications & competence and in all respects acceptable to Tech Mahindra Ltd. and that the assessee company shall be responsible for making appropriate deduction in respect of

Income Tax and other statutory deductions under laws in which the services are provided, meaning thereby all the payments of salaries, related taxes and other statutory obligation towards employees were the responsibility of the assessee and not that of the clients. Similar, agreement was entered with M/s Nokia India Pvt. Ltd. (copy of which is placed at page nos. 258 to 263 of the assessee's paper book). In the said agreement also, the similar conditions were there. Similarly, there was an agreement with IBM Ltd. and scope of work was also defined which is evident from page no. 266 of the assessee's paper book wherein the scope of work (SOW) was as has been defined as under:

“Under this SOW, Supplier will provide software support development activities, including but not limited to, software development, software testing, publication development, program maintenance, software development support and/or such other activities as may be defined by the Buyer to the Supplier in the relevant WA.

Supplier will also provide to Buyer the Deliverables and Services described in Section 3.0 of this SOW.”

From the aforesaid agreements entered between the assessee and its clients, it is clear that assigned work was to be done by the employees of the assessee at the sites of the

clients and there was no direct contract between the clients and employees. All the payments in lieu of the work done was the responsibility of the assessee and not of the clients.

30. In the present case, it is not in dispute that Part (c) of the Schedule Fourteenth of the Act relates to State of Himachal Pradesh and the State of Uttaranchal. The various activity or article or thing or operations are defined in the said Schedule which read as under:

PART C
FOR THE STATE OF HIMACHAL PRADESH
AND THE STATE OF UTTARANCHAL

<i>S. No.</i>	<i>Activity or article or thing or operation</i>	<i>4/6 digit excise classification</i>	<i>Sub-class under NIC classification on 1998</i>	<i>ITC(HS) classification 4/6 digit</i>
1.	<i>Floriculture</i>	-	-	<i>0603 or 060120 or 06029020 or 06024000</i>
2.	<i>Medicinal herbs and aromatic herbs, etc., processing</i>	-	-	
3.	<i>Honey</i>	-	-	<i>0409004</i>
4.	<i>Horticulture and agro-based industries such as</i>			
	<i>(a) Sauces, ketchup, etc</i>	<i>21.03</i>	<i>15135 to 15137 and 15139</i>	
	<i>(b) Fruit juices and fruit pulp</i>	<i>2202.40</i>		
	<i>(c) Jams, jellies, vegetable juices, puree, pickles, etc.</i>	<i>20.01</i>		
	<i>(d) Preserved fruits and vegetables</i>			
	<i>(e) Processing of fresh fruits and</i>			

	<i>vegetables including packaging</i>			
	<i>(f) Processing, preservation, packaging of mushrooms</i>			
5.	<i>Food Processing Industry excluding those included in the Thirteenth Schedule</i>	<i>19.01 to 19.04</i>		
6.	<i>Sugar and its by-products</i>	-	-	<i>17019100</i>
7.	<i>Silk and silk products</i>	<i>50.04 50.05</i>	<i>17116</i>	
8.	<i>Wool and wool products</i>	<i>51.01 to 51.12</i>	<i>17117</i>	
9.	<i>Woven fabrics (Excisable garments)</i>	-	-	<i>6101 to 611710</i>
10.	<i>Sports goods and articles and equipment for general physical exercise and equipment for adventure sports/activities, tourism (to be specified, by notification, by the Central Government)</i>	<i>9506.00</i>		
11.	<i>Paper and paper products excluding those in the Thirteenth Schedule (as per excise classification)</i>			
12.	<i>Pharma products</i>	<i>30.03 to 30.05</i>		
13.	<i>Information and Communication Technology Industry, Computer hardware, Call Centres</i>	<i>84.7</i>	<i>130006/7</i>	
14.	<i>Bottling of mineral water</i>	<i>2201</i>		
15.	<i>Eco-tourism including hotels, resorts, spa, entertainment/amusement parks and ropeways</i>	-	<i>55101</i>	
16.	<i>Industrial gases (based on atmospheric fraction)</i>			
17.	<i>Handicrafts</i>			
18.	<i>Non-timber forest product-based industries.]</i>			

31. From the aforesaid part (C) of Schedule Fourteenth, it is clear that the Information and Communication Technology Industry, Computer hardware, call centers are placed at item

No. 13. The assessee is also engaged in the similar type of activities because it provides Software Support Development activities, programme maintenance services, software development support and software testing. Therefore, the activities undertaken by the assessee falls in category no. 13 of part C of Schedule Fourteenth of the Income Tax Act. In the present case, the AO while disallowing the claim of the assessee riled upon the decision of the Honøble Supreme Court in the case of MSCO Pvt. Ltd. Vs Union of India AIR 1985 SC 76. However, in the said decision, the Honøble Supreme court observed that the word òindustryö has many meaning and that it is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when the word to be construed is to be used in a taxing statute or a notification issued thereunder, it should be understood in its commercial sense. From the judgment of the Honøble Supreme Court in the said case, it is clear that the principles laid down therein are that the term òindustryö has many meanings and the meaning must be given which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. In the aforesaid referred to case, the Honøble Supreme Court held as under:

“The expression 'industry' has many meanings. It means 'skill', 'ingenuity', 'dexterity', 'diligence', 'systematic work or labour', 'habitual employment in the productive arts', 'manufacturing establishment' etc. But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meanings which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject.”

32. The Hon^{ble} Apex Court in the case of Bangalore Water Supply & Sewerage Board Vs A. Rajappa (supra) clearly held that the word 'industry' also includes the distribution of goods and services. Therefore, it can safely be held that the activities undertaken by the assessee falls in the definition of the industry to which the provisions contained in Section 80IC of the Act applies. In the present case, nothing is brought on record to substantiate that the services provided to the clients by the assessee company were not through its employees and that the remuneration or other benefits were not provided by the assessee or there was any direct link between the clients and the employees of the assessee. It, therefore, can be safely be held that the assessee provided the services to its clients

and the operations undertaken by the assessee falls in the category of Information and Communication Technology Industry which is included in "Clause No. 13" of part C of the "Schedule Fourteenth" to the Income Tax Act, 1961. The assessee is situated at Dehradun which is the part of the State of Uttaranchal to which part C of "Schedule Fourteenth" applies. The SDE Telephones, Dehradun also issued a certificate copy of which is placed at Page No. 216 of the assessee's paper book which states that the assessee had been provided datacom links by them which was being used for transmission of data for development of Software for export purposes since 17th January 2006. The said certificate is placed at page no. 216 of the assessee's paper book and read as under:

"CERTIFICATE BY DATACOM SERVICE PROVIDER

Certified that M/s IMSI (India) Pvt. Ltd. have been provided datacom links by us referred in para "4" of Back-up Form. The link is being used by them for transmission of data for development of Software for export purposes since 17 Jan. 2006."

*Sd/-
J.T.O. Telephones
Clement Town
Dehradun*

*Sd/-
S.D.E Telephones
Clement Town
Dehradun*

33. The assessee situated at Dehradun is also having electricity meter in its name which is evident from page nos.

214 & 215 of the assessee's paper book which is the copy of the electricity bill for the period 28th January 2006 to 10th March 2006 and due date of payment was 31st March 2006. In the present case, it is also relevant to point out that nothing is brought on record to substantiate that the assessee was not situated at Dehradun and having its registered office there, copy of the Income Tax Return of the assessee for the year under consideration is placed at page nos. 55 to 95 of the assessee's paper book, in the said return the address mentioned is 'Express Business Park Subhash Road, Dehradun, Uttaranchal'. Therefore, it is clear that assessee is situated at Dehradun in State of Uttaranchal.

34. The CBDT issued a Circular No. 694 dated 23.11.1994 (copy of which is placed at page no. 451 of the assessee's paper book) vide which a clarification has been issued regarding tax holiday under Sections 10A and 10B of the Act for the units producing computer software in Export Processing Zones or Software Technology Parks. The said circular reads as under:

"Since computer programmes are not physical goods but are developed as a result of an intellectual analysis of the systems and methods followed by the purchaser of the programme, it is often prepared on-site, with the software personnel going to the client's premises. Doubts have been raised whether units taking up such

production of software at the client's premises would be eligible for the tax holiday.

The Government's policy on tax incentive to software exports is reflected in the provisions of section 80HHE introduced in 1991. Under this provision, technical services provided outside India, for the development or production of computer software, are included for the purpose of the tax incentive.

Similarly, for the purpose of section 10A or 10B, as long as a unit in the EPZ/EOU/STP itself produces computer programmes and exports them, it should not matter whether the programme is actually written within the premises of the unit. It is, accordingly, clarified that, where a unit in the EPZ/EOU/STP develops software sur place, that is, at the client's site abroad, such unit should not be denied the tax holiday under section 10A or 10B on the ground that it was prepared on-site, as long as the software is a product of the unit, i.e., it is produced by the unit."

35. If an analogy is drawn with reference to the said Circular then there is no territorial limitation to provide or render services for getting the benefit u/s 80IC of the Act. Particularly when, the assessee is situated and based in Dehradun within the State of Uttaranchal which is established from the following documents furnished by the assessee before the authorities below:

i) copy of electricity meter sealing certificate and electricity bill;

ii) certificate from BSNL certifying the date of connection of Broadband;
iii) registration with STPI, Dehradun (the STPI scheme is administered by the Department of Electronics, Govt. of India through Software Technology Parks of India);
iv) registration with the Office of the Commissioner of Provident Fund, Dehradun.”

36. In this present case, the assessee controlled and provided all the facilities to its clients from Dehradun and the activities undertaken by the assessee falls in Item No. 13 of Part C of Schedule Fourteenth to the Income Tax Act, 1961. The assessee has its operational unit at Dehradun, paying taxes in Uttaranchal, creating jobs in the said State, bringing new IT call centres and BPO companies to Dehradun to deliver IT services. Therefore, it fulfills the conditions to claim the deduction u/s 80IC of the Act. We, therefore, by considering the totality of the facts as discussed hereinabove, are of the view that the assessee rightly claimed the deduction u/s 80IC of the Act and the AO was not justified in denying the said claim. In that view of the matter, we set aside the impugned order and direct the AO to allow the claim of the assessee.

37. Identical issue is involved in ITA Nos. 4277 & 5744/Del/2012 and ITA No. 2506/Del/2013 for the Assessment Years 2008-09, 2009-10 & 2010-11 respectively. Therefore,

our findings given in the former part of this order in ITA No. 5856/Del/2011 for the assessment year 2007-08 shall apply *mutatis mutandis* for the remaining assessment years also.

38. In the result, the appeals of the assessee are allowed.

(Order Pronounced in the Court on 27/10/2017)

Sd/-
(Suchitra Kamble)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 27/10/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR