

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'A' KOLKATA

[Before Hon'ble Shri P.M.Jagtap, AM & Shri S.S.Viswanethra Ravi, JM ]

**ITA No.1637/Kol/2016**  
**Assessment Year : 2013-14**

A.C.I.T., Circle-32,  
Kolkata

-versus-

Sri Umang Goenka,  
Kolkata  
(PAN:AGDPG 9805 G)  
(Respondent)

(Appellant)

For the Appellant: Shri Sallong Yaden, Addl. CIT

For the Respondent: Shri S.M.Surana, Advocate

Date of Hearing : 12.03.2018.

Date of Pronouncement : 21-03-2018.

**ORDER**

**Per S.S.Viswanethra Ravi, JM**

This is an appeal by the Revenue against the order dated 31.05.2016 passed by C.I.T-(A)-9, Kolkata for A.Y.2013-14.

2. The only issue is to be decided as to whether the CIT(A) is justified in allowing the claim of deduction @100% u/s 80IC of the Act as against 25% restricted by the AO in the facts and circumstances of the case.

3. The brief facts of the case are that the assessee is an individual and conducts his business in the name and style as M/s Electron Automates. He is engaged in the business of designing and developing innovative electrical and electronic control gear of existing products in various fields. The assessee filed his return of income declaring at 'nil'. Notices u/s 143(2) and 142(1) of the Act were issued in response to which the Authorised representative representing the assessee appeared before the AO and complied with the requisitions required by the AO. The AO, whereby restricted the claim of deduction u/s 80IC of the Act to 25% as against claim of 100% vide his order dated 29.02.2002. In challenge in the First Appellate proceedings, the CIT(A) by placing reliance on the order dt. 10.02.2016 of Delhi Benches of ITAT in the case of

Tirupathi LPG Industries Ltd. In ITA No..2786/Del/103 allowed the deduction @ 100% u/s 80IC of the Act and the relevant portion of which is reproduced below :-

*“Conclusion: I have considered the observations of the Assessing Officer and the submissions made by the appellant. I have also gone through the provisions contained in section 80le. I find that initial assessment year has been defined in sub section 80IC(8)(v) as under:-*

*"Initial assessment year" means the assessment year relevant to the previous year in which the undertaking or the enterprise begins to manufacture or produce articles or things, or commences operation or completes substantial expansion; As per the aforesaid definition initial assessment year can be year in which the undertaking begins to manufacture as also initial assessment year can be the year of substantial expansion. However there is nothing in the definition that there can be only one initial assessment year. There is also nothing in section 80IC to show that the assessee has the choice to choose initial assessment year either the year in which the appellant begins to manufacture or in which substantial expansion has taken place. The Section also does not prescribe that an Industrial Unit covered u/s 80IC which is newly set up cannot make any expansion and if such an expansion is made in the existing unit covered u/s 80IC, the unit shall not be entitled to claim deduction on account of expansion of the existing unit established after coming into force the provisions of section 80le. My view is further strengthened from the provisions contained in section 80IC(6) which can be workable only if the interpretation placed by the appellant is accepted. Moreover the issue is covered by the decisions of Hon'ble Delhi Bench of ITAT in the case of Tirupati LPG Industries Ltd. In ITA No. 2786/Del/2013 dated 10.2.2016. I further find that deduction has been allowed in respect of the profits arrived at in the unit which went through expansion. The AO in the second year cannot have different view in the view of the decision of the Hon'ble Gujrat High Court cited above. In view of the above-the AO is directed to allow 100% deduction of the profits as claimed by the appellant.”*

4. After hearing both the parties we find that as the issue of claiming deduction @100% u/s 80IC of the Act was challenged by a batch of assessees before the Hon'ble High Court of Himachal Pradesh which held that the assessee is entitled to benefit @ 100% u/s 80IC having claimed such deduction for first five years as there was no bar in the statute to claim deduction after undertaking substantial expansion within the prescribed period. The relevant portion of which is reproduced herein below :-

*“55. Thus, in view of the above discussion, these appeals are allowed and orders passed by the Assessment Officer as well as the Appellate Authority and the Tribunal, in the case of each one of the assesseees, are quashed and set aside, holding as under:*

*(a) Such of those undertakings or enterprises which were established, became operational and functional prior to 7.1.2003 and have undertaken substantial expansion between 7.1.2003 upto 1.4.2012, should be entitled to benefit of Section 80-IC of the Act, for the period for which they were not entitled to the benefit of deduction under Section 80- IB.*

*(b) Such of those units which have commenced production after 7.1.2003 and carried out substantial expansion prior to 1.4.2012, would also be entitled to benefit of ... 34 ... deduction at different rates of percentage stipulated under Section 80-IC.*

*(c) Substantial expansion cannot be confined to one expansion. As long as requirement of Section 80-IC(8)(ix) is met, there can be number of multiple substantial expansions.*

*(d) Correspondingly, there can be more than one initial Assessment Years.*

*(e) Within the window period of 7.1.20013 up to 1.4.2012, an undertaking or an enterprise can be entitled to deduction @ 100% for a period of more than five years.*

*(f) All this, of course, is subject to a cap of ten years. [Section 80-IC(6)],*

*(g) Units claiming deduction under Section 80-IC shall not be entitled to deduction under any other Section, contained in Chapter VI-A or Section 10A or 10B of the Act [Section 80-IB(5).”*

5. It is also the submission of the Id. AR that the Delhi Benches of ITAT held that even if an existing unit which is claiming deduction u/s 80IC of the Act undertakes first substantial expansion then also the year of completion of the substantial expansion will be the initial year, thereby held that the assessee is entitled to avail deduction u/s 80IC of the Act. In the present case the AO denied the deduction u/s 80IC of the Act to the assessee on the ground that the assessee availed such deduction from A.Y.2008-09 being initial assessment year for availing deduction u/s 80IC of the Act upto 12013 for five years , and he was of the opinion that the ITA No.1637/Kol/2016 Sri Umang Goenka A.Y.2013-14

assessee is not entitled to claim deduction @100% u/s 80IC for the A.Y. under consideration i.e. 2013-14. The AO found that from the tax audit report that the assessee started conducting its business from 26.05.2007, i.e. 2008-09 and the claim of deduction @100% is available for five years i.e. A.Y. 2012-13 and the assessee is entitled to claim deduction u/s 80IC of the Act @25% only. We find that the AO by placing reliance in the case of M/s Hycron Electronics and others of Chandigarh Benches of ITAT which confirmed the order of CIT(A) the disallowance of claim @ 100% made by the AO, we find the said decision of Chandigarh benches were challenged by a group of assesses before the Hon'ble High Court of Himachal Pradesh. We find that the Hon'ble High Court was pleased to quash the order of the Tribunal in confirming the order of CIT(A) and AO in denying allowance @100% u/s 80IC of the Act and held that Sub clause (v) of sub section 8 of section 80IC of the Act contemplates more than one 'Initial assessment year' and for a unit which completes substantial expansion, initial assessment year means A.Y. relevant to the previous year in which it completes substantial expansion. In the present case, claim of the assessee was that substantial expansion was taken place during the previous year i.e. 2012-2013 and claimed deduction @ 100% for A.Y.2013-14. . In view of the decision of Hon'ble High Courts of Himachal Pradesh as discussed above the assessee is entitled to claim deduction @100% u/s 80IC of the Act. We therefore find no infirmity in the order of CIT(A). Accordingly grounds raised by the revenue in 1 and 2 are dismissed. Ground no.3 needs no adjudication as it is general in nature.

6. In the result the appeal by the revenue is dismissed.

**Order pronounced in the open Court on 21.03.2018.**

Sd/-

[P.M.Jagtap]  
Accountant Member

Sd/-

[ S.S.Viswanethra Ravi ]  
Judicial Member

Dated : 21.03.2018.

[RG Sr.PS]

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Copy of the order forwarded to:

1. Sri Umang Goenka, Kamayani, 1, AJC Bose Rod, Kolkata-700020.
2. A.C.I.T., Circle-31, Kolkata.
3. C.I.T.(A)-9, Kolkata
4. C.I.T.-11, Kolkata..
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches