

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'B', CHANDIGARH**

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA Nos.1220 & 1221/Chd/2016
Assessment Year: 2012-13 & 2013-14

M/s Associated Biotech
Vill, Kishanpura, P.O
Gurumajra, Nalagarh
Solan

Vs. The Dy. CIT
Circle, Parwanoo

PAN No. AALFA5132G

(Appellant)

(Respondent)

Assessee By : Sh. Kanav Kaushal
Revenue By : Smt. Chanderkanta

Date of hearing : 05/02/2018
Date of Pronouncement : 06/04/2018

ORDER

PER BENCH.

Both the above appeals have been filed by the Assessee against the separate order of the Ld. CIT(A), Shimla dt. 26/09/2016

2. Since the issues have been raised in both the above appeals are similar therefore they are being disposed off by a consolidate order for the sake of convenience.

3. We shall take ITA No. 1220/Chd/2016 as a lead case in which assessee has raised the following grounds:

1. *That the order of Ld. CIT(A) is bad and against the facts & Law.*

2. *That the Ld. CIT(A) has wrongly upheld the order of Ld. Assessing Officer disallowing deduction, amounting to Rs. 2,70,15,483/-, under section 80IC, without appreciating the fact that the act allows deduction of 100% for first five years substantial expansion.*

4. The sole issue raised in this appeal relates to the action of the CIT(A) in disallowing the claim of deduction @ 100% us 80IC of the Income-tax Act, 1961 (in short 'the Act') on account of substantial expansion of the Unit.

5. During the course of hearing before us, it was brought to our notice that the issue involved in this appeal has already been adjudicated by the Hon'ble Himachal Pradesh High Court vide their order dt. 28 November 2017 in the group of cases with the lead case titled as M/s Stovekraft India vs. Commissioner of Income Tax, ITA No.20 of 2015, and it was pointed out that the Hon'ble High Court had decided the issue in favour of the assessee, holding that there is no bar in the said section denying the benefit of hundred percent deduction to new units undertaking substantial expansion. Our attention was drawn to the relevant conclusions of the Hon'ble High Court in this regard at para 55 of the order as under:

"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 Assesses, 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 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 7.1.2013 upto 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)]."

6. Ld. DR fairly admitted that the issue is squarely covered by the above decision of the Hon'ble jurisdictional High Court.

7. In view of the above discussion, the impugned order of the CIT(A) is set aside and the AO is directed to grant to the assessee deduction as per the ruling of the jurisdictional High Court in this regard in the case of 'M/s Stovekraft India vs. Commissioner of Income Tax' (supra) after due examination.

8. In the result, the appeal of the assessee, therefore, stands allowed.

Order pronounced in the open court.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER
Dated : 06/04/2018
AG

Sd/-
(B.R.R.KUMAR)
ACCOUNTANT MEMBER

Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR