

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

BEFORE MS. DIVA SINGH, JUDICIAL MEMBER  
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

**ITA No. 191/CHD/2018**

Assessment year: 2014-15

M/s Om Plastics,  
Village – Swaraj Majra,  
Near Cadila Healthcare Ltd.,  
Baddi, Distt. Solan (HP).  
PAN No. : ABFO4821C

Vs.

The DCIT,  
Circle,  
Parwanoo.

(Appellant)

(Respondent)

Appellant by : Shri Manoj Kumar, CA  
Respondent by: Shri Manjit Singh, Sr.DR

Date of hearing : 11.05.2018  
Date of Pronouncement : 25.05. 2018

**ORDER**

**PER DIVA SINGH**

The present appeal has been filed by the assessee assailing the correctness of the order dated 19.09.2017 of CIT(A) Shimla pertaining to 2014-15 assessment year on the following ground :

*1. The Id. CIT(A) is wrong in disallowing the benefit of substantial expansion u/s 80IC(2) and confirming the deduction u/s 80IC only to the extent of 25% as against 100% by holding that benefit of substantial expansion is allowable only to the undertaking which were existing as on 07.01.2003.*

2. However, before we address the issue raised by the assessee in the present appeal, it is pertinent to address the delay of 70 days in filing of the present appeal pointed out by the Registry.

2.1 The Id. AR addressing the same reading from the application submitted that the assessee could not file the appeal on time for the following reasons :

*(a) That the order from CIT(A), Shimla was received by the assessee firm on dated 09/10/2017 against which appeal was due to be filed on 08/12/2017.*

*(b) That on dated 09.10.2017, accountant of the assessee firm was on leave and also both the partners of the assessee firm are residing in other cities i.e at Nasik and Indore, so order of CIT(A) was received by some another person at our factory premise but somehow he forgot to inform about the receipt of CIT(A) order to the accountant as well as partners of the firm. Therefore, receipt of CIT(A) order neither came to the knowledge of accountant nor partners of the assessee firm. However later on, when the counsel of the assessee firm inquired about the receipt of any order from CIT(A) as the substantial time had been elapsed from the date when the case was heard before CIT(A), then only it came*

*to notice that CIT(A) order was already received by person at the factory premises. Then immediately, I took action against such order and filed an appeal before your goodself.*

- (c) *That due to these bonafide reasons and circumstances, the assessee could not file the appeal in time. After known of the above fact, the assessee immediately filed the appeal on 16/02/2018.*

2.2 Attention was invited to affidavit dated 04.05.2018 of the partner Shri Rajesh Kalra confirming these facts.

3. The Id. Sr.DR considering the application of condonation of delay and the affidavit stated that he has no objection if a fair view is taken.

4. We have heard the rival submissions and perused the material on record. We find, on going through the contents of the application supported by way of an affidavit filed by the assessee that in the peculiar facts and circumstances of the present case, the delay of 70 days has occurred for reasons beyond the control of the assessee. We further note that by filing of appeal late, no benefit is drawn by the assessee nor can it be said that if the delay is condoned, any loss or handicap is visited upon the Revenue. It can also not be said that by late filing of the appeal by the assessee, a vested right stood created in favour of the Revenue which would stand upset if the delay is condoned. We support the view taken by placing reliance on the decision of the Apex Court in the case of Collector Land Acquisition Vs Mst. Katiji & Ors. Civil Appeal No. 460 of 1987 dated 19.02.1987; N. Balkrishnan Vs M. Krishnamurthy (1998) 7 SCC 123; and U.P. State Road Transport Corporation Vs Kedar Singh AIR 1991 All 317. Accordingly, being satisfied by the explanation of the assessee, we hold that the delay of 70 days has occurred in the peculiar facts and circumstances of the present case for reasons beyond the control of the assessee. The delay is, accordingly, condoned. Said order was pronounced in the presence of the parties in the open Court and the parties were accordingly directed to argue the appeal on merits.

5. Considering the sole issue agitated by the assessee in the present appeal, it was a common stand of the parties before the Bench that the issue is covered in favour of the assessee by virtue of the order dated 28.11.2017 of the Hon'ble High Court in the case of M/s Stove Craft India Versus CIT-V and others in ITA 20 to 24/2015.

6. The relevant facts of the case are that the assessee in the year under consideration was engaged in manufacturing of Pet bottles for pharma industry in Baddi, Barotiwala. The assessee as per record started its business activity/operation on 15.09.2006 and the initial year for claim of deduction u/s 80IC of 100% eligible profits was made in 2006-07 assessment year. The fifth year stood exhausted till 2010-11 assessment year. The AO rejected the claim of 100% deduction against eligible profits claiming substantial expansion being carried out in 2014-15 as the assessment year being the 9<sup>th</sup> year of production. The said view was confirmed by the CIT(A) relying upon decision of the Chandigarh Bench of the ITAT in ITA 798/CHD/2012 in Hycron Electronics V ITO dated 27.05.2015

6.1 We note that the jurisdictional High Court in the aforesaid decision considered the facts of the specific case in para 51 has come to the following conclusion:-

*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 assessees, are quashed and set aside, holding as under:*

*(a) Such of those undertakings or enterprises which were established, became operational and functional prior to 07/01/2003 and have undertaken substantial expansion between 07/01/2003 upto 01/04/2012, 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 07/01/2003 and carried out substantial expansion prior to 01/04/2012, 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 07/01/2013 upto 01/04/2012, 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)].*

7. Accordingly, in view of the above, the issue is remanded to the AO to grant necessary relief in accordance with law as per the ruling of the jurisdictional High Court. Said order was pronounced in the Open Court

at the time of hearing itself. Needless to say that the assessee shall be afforded a reasonable opportunity of being heard.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 25.05. 2018.

Sd/-

Sd/-

**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

'Poonam'

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR

**(DIVA SINGH)**  
**JUDICIAL MEMBER**

Asstt. Registrar  
ITAT Chandigarh