

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

BEFORE SHRI S. S. GODARA, JM & DR. A.L. SAINI, AM

आयकरअपीलसं./ITA No.57/Kol/2018

(निर्धारणवर्ष / Assessment Year: 2014-15)

Umang Goenka	Vs.	ACIT, Cir-31, Kolkata
A.J.C. Bose Road, Kolkata - 700 020.		10B, Middleton Row, Kolkata - 71.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AGDPG 9805 G		
(Appellant)	..	(Respondent)

Appellant by : Shri S.M. Surana, Advocate
Respondent by : Shri S. Dasgupta, Addl. CIT, Sr. DR

सुनवाईकीतारीख/ **Date of Hearing** : **07/05/2018**

घोषणाकीतारीख/**Date of Pronouncement** : **06/07/2018**

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the assessee, pertaining to Assessment Year 2014-15, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-9, Kolkata in appeal No.348/CIT(A)-9/Cir-31/2016-17/Kol, dated 31.10.2017, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.11.2016.

2. The grievances raised by the assessee are as follows:

"1. For that in view of the facts and circumstances of the case the action of the Ld. CIT(A) in upholding the claim of deduction U/s. 80IC at Rs. 64,80,045/- allowed by Assessing officer as

against claim of the appellant at Rs. 2,59,20,182/- is erroneous and bad in law.

2. For that in view of the facts and circumstances of the case the Ld. Asst. Commissioner of Income Tax on wrong interpretation of substantial expansion and initial Assessment Year wrongly and arbitrarily restricted the claim of deduction U/s.80IC at Rs. 64,80,045/- being 25% of the total claim as against eligible claim of deduction of 100% of the total income of Rs. 2,59,20,182/- and the Ld. CIT(A) erred in confirming the action of the Assessing officer in spite of the fact that similar claim of deduction @100% was allowed in earlier Assessment Year by Ld. CIT(A).

3. For that in view of the facts and circumstances of the case the appellant had fulfilled all the criteria for claiming deduction U/s. 80IC of the I.T Act, 1961 @ 100% of the profit on making substantial expansion in the plant & machinery as provided in Section 80IC(8)(IX) of the I.T Act, 1961, the Ld. CIT(A) ought to have deleted the addition in full instead of confirming the action of the Assessing officer.

4. For that the order of the Ld. CIT(A) confirming the addition of the Assessing officer is bad in law.

5. For that the above Grounds of Appeal shall be argued in details at the time of hearing and the appellants crave leave to add to alter and or to amend the aforesaid grounds at or before the hearing of the appeal."

3. The facts of the case which can be stated quite shortly are as follows: The assessee is a proprietor of M/s. Electron Automats. The postal address of the said Firm is HIG24C, Sector-I, Dist. Solan, Parwanoo - 173 220, Himachal Pradesh. During the relevant financial year the assessee was engaged in the business of designing and developing innovative electrical and electronic control gear after studying the short coming of the existing products available in various fields. These products are microprocessor based and once the designs are appreciated and approved by the consultants they go into commercial manufacturing of the end products like automatic change over switches, motor starters, current limiters, safety power guard sockets, etc. As per information given in Form No.10CCB, the assessee

started its business activity on 26-05-2007 and initial Assessment Year for claim of deduction u/s.80-IC of the of the Income-tax Act, 1961 was Assessment Year 2008-2009. The assessee had already claimed deduction u/s. 80-IC to the extent of the 100% eligible profit for five years period of Assessment Year 2008-09 to Assessment Year 2012-2013. However, it was noticed by the AO that the assessee firm had again claimed 100% deduction against eligible profits in the relevant Assessment Year 2014-15 which is 7th year of production for the firm by claiming substantial expansion in F.Y 2011-2012.

During the assessment proceedings, the assessee submitted before the Id AO that he is entitled to claim 100% deduction of Rs,2,59,20,182/- on the basis of substantial expansion in the existing unit as per the provisions of section 80IC of the I.T Act.However, the Assessing Officer allowed the deduction u/s 80-IC of the I.T. Act, 1961 to the tune of 25% of total amount i.e. 25% of Rs.2,59,20,182/- i.e. Rs.64,80,045/- was allowed and the remaining Rs.1,94,40,137/- (Rs.2,59,20,182/--Rs.64,80,045/-) was disallowed by the Assessing Officer.

4. On appeal by the assessee, the Id. CIT(A) confirmed the order passed by the Assessing Officer. Aggrieved by the order of Id CIT(A), the assessee is in appeal before us.

5. At the outset itself, the Id. Counsel for the assessee submitted before us that the said issue of the assessee is squarely covered by the order of Hon'ble ITAT in assessee's own case, in ITA No.1637/Kol/2016, Assessment Year 2013-14,order dated 21.03.2018 wherein it was held as follows:

"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 2013 for five years , and he was of the opinion that the 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. We note that as the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench of ITAT, Kolkata cited above in assessee's own case and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings. Therefore, respectfully following the decision of

the Coordinate Bench in assessee's own case, we allow the appeal of the assessee.

7. In the result, the appeal filed by the assessee is allowed.

Order is pronounced in the open court on 06.07.2018.

Sd/-
(S. S. GODARA)

न्यायिकसदस्य/JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 06/07/2018

(RS, Sr.PS)

Sd/-
(A. L. SAINI)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant- Umang Goenka
2. प्रत्यर्थी/ The Respondent- ACIT, Cir-31, Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR,
ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.