

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

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

**ITA No.56/Chd/2018**

(Assessment Year : 2010-11)

Emmbros Autocomp Limited,  
(Village Katha Baddi), SCO 27,  
1<sup>st</sup> Floor Mansa Devi Complex,  
Sector 5, Swastick Vihar,  
Panchkula.

Vs.

The D.C.I.T.,  
Circle Parwanoo.

PAN: AAACE3489Q  
(Appellant)

(Respondent)

Appellant by : Shri N.K.Saini, Adv.

Respondent by : Shri Ankur Alya, JCIT(DR)

Date of hearing : 07.08.2018

Date of Pronouncement : 07.08.2018

**ORDER**

**PER ANNAPURNA GUPTA, A.M.:**

The present appeal has been filed by the assessee against the order of learned Commissioner of Income Tax(Appeals), Shimla dated 23.11.2017 relating to assessment year 2010-11.

2. Ground No.1 raised by the assessee reads as under:

*"1. The learned CIT(A) has erred in law and facts in confirming the disallowance of claim of deduction under 80IC of IT Act Rs.15,31,241/- which was claimed @ 100% of the of such profits and gains of Embross Export unit and of Rs.21,87,486/- but allowed at 30% of such profits and ignoring the fact that substantial expansion was carried out in AY 2008-09 and deduction was admissible at 100% of the profits of this unit."*

3. The assessee in the above ground has challenged the action of the CIT(Appeals) in restricting its claim of

deduction u/s 80IC of the Income-tax Act, 1961 (in short 'the Act') to 30% of the eligible profits, as against 100% claimed by it on account of substantial expansion of its eligible Unit

4. Brief facts relating to the case are that the assessee company is engaged in manufacturing & sale of Auto Spares and is also doing job work. The manufacturing activities are being done from three units (Unit-I, Unit-III and Unit-Embros Exports) and job work from a separate unit (Unit-ACE). With regards to Embross Export unit, the assessing officer observed that the assessee had commenced manufacturing activities in the same on 16.12 03, relating to A.Y 2004-05, and being eligible to claim deduction u/s 80IC, had already claimed the same to the extent of 100% of the eligible profits for five years period starting from assessment year 2004-05 to 2008-09. It was noticed that the assessee firm had again claimed deduction u/s 80IC @100% in the impugned assessment year, being the 7<sup>th</sup> year of production, by claiming to have carried out substantial expansion in assessment year 2008-09. The Assessing Officer, for detailed reasons mentioned in the assessment order, held that the assessee was eligible for deduction u/s 80IC only @ 30% of its profits being Rs.6,56,2451- as against the claim of 100% at Rs.21,87,486/ made by the assessee. Accordingly the balance profits were added to the income of the assessee and subjected to tax.

5. The matter was carried in appeal before the Ld.CIT(Appeals) who upheld the order of the Assessing Officer following the decision of Co-ordinate Bench in ITA No.798/CHD/2012 in the case of Hycron Electronics Vs ITO.

6. 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 dated 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)].”*

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

8. Accordingly, in view of the above, the issue is remanded to the Assessing Officer 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.

9. The ground of appeal No.1 raised by the assessee stands allowed for statistical purposes.

10. Ground Nos.2 and 3 raised by the assessee read as under:

- “2. The learned CIT (A) has erred in law and on facts in not considering loss of Rs.54,51,400/- in unit II separately, while calculating taxable income of the assessee as assessee inadvertently claimed deduction under section 80IC on **unit III** and **unit export** at Rs.1,19,61,435/- on the basis of consolidated net profit against the profit of unit III at Rs.1,50,14,896/- and of unit Exports at Rs.21,87,487/-.
3. The learned assessing officer has erred in law in not computing the profits of each unit separately for the purpose of computing taxable income of the company. Assessing officer may be directed to compute the income of each unit separately for the purpose of computing taxable income of the assessee.”

11. The above grounds were not pressed by the Ld. counsel for assessee and are therefore dismissed as not pressed.

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

Order pronounced in the open court.

Sd/-

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

Sd/-

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

Dated : 7<sup>th</sup> August, 2018

\*Rati\*

Copy to:

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

Assistant Registrar,  
ITAT, Chandigarh