

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B', CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & Dr. B.R.R.KUMAR, AM

आयकर अपील सं./ITA No. 617/CHD/2018

निर्धारण वर्ष / A.Y : 2014-15

The DCIT, Circle, Parwanoo.	बनाम VS	M/s Rubykon Manufacturing Co., Village -Ogli, Kala Amb, Sirmour (HP).
स्थायी लेखा सं./PAN No: AAJFR0316D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

राजस्व की ओर से/ Revenue by : Shri Manjit Singh, Sr.DR
निर्धारिती की ओर से/Assessee by : None

सुनवाई की तारीख/Date of Hearing : 09.10.2018

उद्घोषणा की तारीख/Date of Pronouncement : 29.10.2018

आदेश/ORDER

PER DIVA SINGH

The present appeal has been filed by the Revenue assailing the correctness of the order dated 08.02.2018 of CIT(A) Shimla pertaining to 2014-15 assessment year on the following grounds :

1. *On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs.82,17,253/- made by AO by restricting the claim of the assessee to 25% as against the 100% claim made in the 8th year, ignoring the fact that units which commenced production after 07.01.2003 can't carry out multiple "substantial expansion" as per provisions of section 80-IC of the Income Tax Act and as explained in CBDT Circular No. 7/2003.*

2. *On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in holding that there can be more than one "initial assessment year" for availing the deduction under section 80-IC of the Income Tax Act. In other words, the assessee can first claim deduction from the initial assessment year, being the year of setting up of the industrial undertaking and, thereafter, once again claim the deduction from another initial assessment year, being the assessment year in which the assessee carries out substantial expansion of its undertaking.*

2. At the time of hearing, no one was present on behalf of the assessee. The record shows that notice has been sent to the assessee at the address mentioned in form No. 11 in the Memo of Appeal filed. The ld. Sr.DR Mr. Manjit Singh relying upon decision of the Apex Court in the case of CIT Vs Classic Binding Industries (2018) 96 taxmann.com 405 (S.C) submitted that

the point at issue is fully covered in favour of the Department. Inviting attention to the impugned order, it was his submission that deduction @ 100% of eligible profits qua manufacturing activity in the 8th year was made by the AO relying upon the provisions of the Act as considered by the ITAT in the case of Hycron Electronics V ITO in ITA 798/CHD/2012 dated 27.05.2015 which stood upset by the CIT(A) relying upon the decision of the jurisdictional High Court in the case of M/s Stove Craft India Versus CIT-V and others in ITA 20 to 24/2015. It was his submission that the said decision has not been approved by the Hon'ble Apex Court, accordingly relying upon the said decision, it was his prayer that the departmental appeal may be allowed.

3. We have heard the rival submissions and perused the material on record. It is seen that in the facts of the present case, qua manufacturing activity the assessee had started its operation on 08.04.2006 and the claim of deduction @ 100% of eligible profits stood exhausted for five years and the AO in the facts of the present case, considering the year under consideration being the 8th year, restricted the deduction to the extent of 25% which position of law has been confirmed by the Apex Court in the aforesaid decision in the case of CIT Vs Classic Binding Industries (supra). Accordingly, in terms of the said judicial precedent available, the appeal of the Revenue is allowed. The impugned order is set aside upholding the assessment order.

4. In the result, the appeal of the Revenue is allowed.

Order Pronounced in the Open Court on 29.10. 2018.

Sd/-
(डा. बी.आर.आर. कुमार)
(Dr. B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

Sd/-
(दिवा सिंह)
(DIVA SINGH)
न्यायिक सदस्य/Judicial Member

“पूनम”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant -
2. प्रत्यर्थी/ The Respondent -
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाइल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar
ITAT, Chandigarh.