

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 752/CHD/2018

निर्धारण वर्ष / Assessment Year : 2015-16

DCIT, Circle, Parwanoo	बनाम	M/s Associated Biotech, Village - Kishanpura, Baddi, Distt.Solan H.P.
स्थायी लेखा सं./PAN NO: AALFA5132G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Ashish Gupta, CIT DR

राजस्व की ओर से/ Revenue by : None

सुनवाई की तारीख/Date of Hearing : 13.11.2018

उदघोषणा की तारीख/Date of Pronouncement : 13.11.2018

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 20.03.2018 of the Commissioner of Income Tax (Appeals), Shimla [hereinafter referred to as CIT(A)].

2. None has come present on behalf of the assessee. The Ld. DR, however, has submitted that the issue relating to the substantial expansion raised in this appeal has been duly adjudicated by the Hon'ble Supreme Court and is now decided in favour of the Revenue by the recent decision dated 20.8.2018 in the group of cases with the lead case titled as 'CIT Vs. M/s Classic Binding Industries, in Civil Appeal No(s) 7208 of 2018. The relevant part of the order is reproduced as under:-

“17. the question is as to whether these assesseees, who had availed deductions @ 100% for first five years on the ground that they had set up a manufacturing unit as prescribed under sub-section (2) of the Act, can start claiming deductions @ 100% again for next five years as they had undertaking “substantial expansion” during the period mentioned in subsection (2)? The answer has to be in the negative for the following the reasons:

18. We are dealing with the deductions in respect of profits and gains under Section 80-IC of the Act. No other provision is involved. This section makes special provisions in respect of certain undertakings or enterprises in certain special category States. Section 80-IC was inserted by the Finance Act, 2003 w.e.f. April 1, 2004. As per this provision, certain undertakings or enterprises in certain special category States are allowed deduction from such profits and gains, as specified in sub-section (3) of Section 80-IC. The provisions of Section 80-IC provided deduction to manufacturing units situated in the State of Sikkim, Himachal Pradesh and Uttaranchal and North-Eastern States. The deduction was provided to new units established in the aforesaid States, and also to existing units in those States if substantial expansion was carried out. The deduction was available @ 100% for ten Assessment Years for the units located in North-Eastern and in the State of Sikkim and for the units located in Himachal Pradesh, the deduction was available @ 100% for five years and @ 25% for next five years.

19. In the instant case, we are concerned with the assesseees who had established their undertakings in the State of Himachal Pradesh. Sub-section (3), as noted above, mentions the period of 10 years commencing with the initial Assessment Year. Subsection (6) puts a cap of 10 years, which is the maximum period for which the deduction can be allowed to any undertaking or enterprise under this section, starting from the initial Assessment Year. Another significant feature under sub-section (3) is that the deduction allowable is 100% of such profits and gains from an undertaking or an enterprise for five Assessment Years commencing with the initial Assessment Year and thereafter the deduction is allowable at

25% (or 30% where the assessee is a company) of the profits and gains. Cumulative reading of these provisions brings out the following aspects:

(a) Those undertakings or enterprises fulfilling the conditions mentioned in sub-section (2) of Section 80-IC become entitled to deduction under this provision.

(b) This deduction is allowable from the initial Assessment Year. "Initial Assessment Year" is defined in Section 80-IB(14)(c) of the Act.

(c) The deduction is @ 100% of such profits and gains for first 5 Assessment Years and thereafter a deduction is permissible @ 25% (or 30% where the assessee is a company).

(d) Total period of deduction is 10 years, which means 100% deduction for first 5 years from the initial Assessment Year and 25% (or 30% where the assessee is a company) for the next 5 years.

20. When we keep in mind the aforesaid scheme and spirit behind this provision, such a situation cannot be countenanced where an assessee is able to secure deduction @ 100% for the entire period of 10 years. If that is allowed it will amount to doing violence to the provisions of sub-section (3) read with sub-section (6) of Section 80-IC. A pragmatic and reasonable interpretation of Section 80-IC would be to hold that once the initial Assessment Year commences and an assessee, by virtue of fulfilling the conditions laid down in sub-section (2) of Section 80-IC, starts enjoying deduction, there cannot be another "Initial Assessment Year" for the purposes of Section 80-IC within the aforesaid period of 10 years, on the basis that it had carried substantial expansion in its unit.

21. We are conscious of our recent judgment rendered by this very Bench in *Mahabir Industries v. Principal Commissioner of Income Tax* (Civil Appeal Nos. 4765-4766 of 2018 decided on May 18, 2018). However, a fine distinction needs to be noted between the two sets of cases. In *Mahabir Industries*, the assessee had availed the initial deduction under a different provision, namely, Section 80-IA of the Act, i.e. by fulfilling the conditions mentioned in sub-section (4) of Section 80-IA. Those conditions

are altogether different. Deduction in respect of profits and gains under the said provision is admissible when these profits and gains are from industrial undertakings or enterprises engaged in infrastructure development etc. Even this availment started at a time when Section 80-IC was not even on the statute book. As mentioned above, Section 80-IC was inserted by the Finance Act, 2003 with effect from April 01, 2004. The assessees in those cases had started claiming and were allowed deductions from the Assessment Years 1998-99 and 1999-2000 under Section 80-IA and from the Assessment Year 2000-01 to Assessment Year 2005-06 under Section 80-IB of the Act. The deduction was, thus, claimed by the assessees in those appeals under the new provision i.e. Section 80-IC on fulfilling conditions contained in sub-section (2) of Section 80-IC for the first time for the Assessment Year 2006-07. Thus, insofar as those cases are concerned, the initial Assessment Year under Section 80-IC started only from the Assessment Year 2006-07. In contrast, position here is altogether different. These assessees have availed deduction under Section 80-IC alone. Initially, they claimed the deduction on the ground that they had set up their units in the State of Himachal Pradesh and after availing the deduction @ 100% they want continuation of this rate of 100% for the next 5 years also under the same provision on the ground that they have made substantial expansion. As pointed out above, once the assessees had started claiming deduction under Section 80-IC and the initial Assessment Year has commenced within the aforesaid period of 10 years, there cannot be another initial Assessment Year thereby allowing 100% deduction for the next 5 years also when sub-section (3), in no uncertain terms, provides for deduction @ 25% only for the next 5 years. It may be asserted again that the assessees accept the legal position that they cannot claim deduction of more than 10 years in all under Section 80-IC.

22. *In view of the aforesaid discussion, we hold that after availing deduction for a period of 5 years @ 100% of such profits and gains from the 'units', the assessees would be entitled to deduction for remaining 5 Assessment Years @ 25% (or 30% where the assessee is a company), as the case may be, and not @ 100%. The question of law is, thus, answered in favour of the Revenue thereby allowing all these appeals."*

3. In view of the above discussion and as per the recent ruling of Hon'ble Supreme Court on the issue in the case of 'CIT Vs. M/s Classic Binding Industries (supra), the impugned order of the CIT(A) is set aside. As such, the assessee is entitled to only 25% of deduction during the present year because the assessee has already availed the period of full deduction @ 100% in the earlier five years.

Accordingly, the appeal of the Revenue stands allowed.

Order pronounced in the Open Court on 13.11.2018.

Sd/-

(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

Dated : 13.11.2018

“आर.के.”

Sd/-

(संजय गर्ग / SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

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 फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar