

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 Nos. 447 to 449/CHD/2018

निर्धारण वर्ष / Assessment Years : 2010-11 to 2012-13

The DCIT, Circle, Parwanoo	बनाम	M/s Altruist Technologies Pvt. Ltd., 4 <sup>th</sup> Floor, Behind Hotel Firhill, Near Tunnel No. 103, Shimla (H.P.)
स्थायी लेखा सं./PAN NO: AAFCA3725N (Appeal against the order of CIT(A), Shimla dated 30.01.2018)		

अपीलार्थी/Appellant		प्रत्यर्थी/Respondent
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निर्धारिती की ओर से/Assessee by : Dr. Gulshan Raj, CIT DR

राजस्व की ओर से/ Revenue by : Sh. Rohit Goel, CA

सुनवाई की तारीख/Date of Hearing : 09.10.2018

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आयकर अपील सं./ ITA Nos. 793 & 794 /CHD/2018

निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-2015

The DCIT, Circle, Parwanoo	बनाम	M/s Altruist Technologies Pvt. Ltd., 4 <sup>th</sup> Floor, Behind Hotel Firhill, Near Tunnel No. 103, Shimla (H.P.)
स्थायी लेखा सं./PAN NO: AAFCA3725N (Appeal against the order of CIT(A), Shimla dated 21.03.2018)		

अपीलार्थी/Appellant		प्रत्यर्थी/Respondent
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निर्धारिती की ओर से/Assessee by : Sh. Ashish Gupta, CIT DR

राजस्व की ओर से/ Revenue by : Sh. Rohit Goel, CA

सुनवाई की तारीख/Date of Hearing : 18.10.2018

उदघोषणा की तारीख/Date of Pronouncement : 16.11. 2018

आदेश/Order

**Per Bench:**

The captioned appeals have been preferred by the Revenue against the separate orders of the Commissioner of Income Tax (Appeals), Shimla [hereinafter referred to as CIT(A)].

2. Before proceeding to adjudicate these appeals of the Revenue, it is pertinent to mention here that the appeals of the assessee for the same assessment years were heard on 08.08.2018 by the 'A' Bench of the Tribunal, however, at that time it was not informed by the parties that the appeals of the assessee for the same assessment years were also pending. However, the issues in assessee appeals were different from the issues involved in the present Revenue's appeals, hence, as per the submissions of both the Ld. representatives of the parties, these appeals of the Revenue could be disposed of independent of the assessee's appeals. Hence, we proceed to adjudicate these appeals.

3. The common issue taken by the Revenue in all these appeals is regarding the eligibility of the assessee in claiming deduction u/s 80IC of the Act on the ground that the business activity of the assessee does not fall under Schedule XIV of the Income-tax Act, 1961 (in short 'the Act'). Since this common issue is involved in all the appeals, therefore, these have been heard together and are being disposed of by this common order.

**ITA No. 447/Chd/2018** for assessment year 2010-11 is taken as a lead case. The modified grounds taken by the Revenue reads as under:-

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 21,70,58,065/- made by the Assessing officer by disallowing claim u/s 80IC, ignoring the fact that the*

*business activity of the assessee does not fall under schedule XIV of the Income-tax Act, 1961.*

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that assessee is entitled for deduction u/s 80IC(2)(b) of the Income-tax Act, 1961.*
3. *It is prayed that the order of Ld. CIT(A) be set-aside and that of the Assessing officer restored*
4. *The appellant craves leave to add any other ground of appeal which may arise at the time of hearing.*

4. The brief facts relevant to the issue are that assessee is engaged in the business of Information and Communication Technology since assessment year 2006-07. The assessee is functioning from two units' i.e Unit -II and Unit-III. The assessee claimed deduction u/s 80IC of the Act in respect of income from both the units, however, the Assessing officer denied the same observing that assessee did not qualify for exemption u/s 80IC of the Act. To properly adjudicate the issue, we deem it fit to reproduce the relevant provisions of section 80IC of the Act, which read are as under:-

***“Special provisions in respect of certain undertakings or enterprises in certain special category States.***

***“80-IC. (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (2), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains, as specified in sub-section (3).***

12. *Since interpretation of the statute (the Act) is involved, we deem it appropriate to reproduce the relevant clauses thereof:*

***“80-IC. (1) .....***

***2. This section applies to any undertaking or enterprise,-***

(a) which has begun or begins to manufacture or produce any article or thing, not being any article or thing specified in the Thirteenth Schedule, or which manufactures or produces any article or thing, not being any article or thing specified in the Thirteenth Schedule and undertakes substantial expansion during the period beginning-

- (i) .....
- (ii) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in the State of Himachal Pradesh or the State of Uttaranchal;”

“(b) which has begun or begins to manufacture or produce any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule, or which manufactures or produces any article or thing, specified in the Fourteenth Schedule or commences any operation specified in the Schedule and undertakes substantial expansion during the period beginning-

- (i) .....
- (ii) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in the State of Himachal Pradesh or the State of Uttaranchal;”

13. Relevant portion of the Schedule is extracted as under:

“[THE FOURTEENTH SCHEDULE  
[See section 80-IC(2)]  
LIST OF ARTICLES OR THINGS OR OPERATIONS”  
“PART C

FOR THE STATE OF HIMACHAL PRADESH AND THE STATE OF  
UTTARANCHAL

S.No.	Activity or article or thing or operation	4/6 digit excise classification	Sub-clause under NIC classification on 1998	ITC(HS) classification 4/6 digit
13	Information and communication Technology Industry, Computer hardware, Call Centre	84.71	300006/7	

4. The assessee claimed that it was covered by the item mentioned at Sr.No.13 of Part 'C' of the XIV Schedule (as reproduced above) and hence, was eligible for deduction u/s 80IC(2) of the Act. The Assessing officer rejected the claim of deduction u/s 80IC of the Act holding that the assessee had not obtained Central Excise 4/6 Digit Classification or National Industrial Classification (NIC) code on 1998, stipulated at point No. 13 and, hence, was not eligible for statutory deduction. The Ld. CIT(A), however, reversed the order of the Assessing officer and held that the assessee was entitled to deduction u/s 80IC of the Act while relying upon the decision of the Hon'ble Jurisdictional High Court of Himachal Pradesh in the own case of assessee in 2017 (8) TMI 1299 'Altruist Technologies Pvt Ltd Vs. DCIT', wherein, the Hon'ble High Court in para 14 of the judgement has observed as under:-

*"14. That the activity carried out by the Assessee falls in the categories specified in the category so mentioned at Sr. No.13 of the Schedule, is not in dispute. The only objection being that since the Assessee does not possess NIC code and Excise Classification, it is not entitled to the statutory deduction. It is here, we find the Assessing Officer to have committed grave illegality in correctly and completely construing the provisions of the Schedule. In fact, from the observations of the Assessing Officer, reproduced supra, it stands admitted that the code / classification, reproduced supra, is required only for such of those activities, which fall under the category of 'manufacture'. Assessee is running a Call Centre. It does not deal with computer hardware or is in the business of manufacturing information and communication technology. It is not into the business of manufacture or production of any articles referred to in item at Sr. No.13. It carries out operation of such items, which do not require registration or necessitate obtaining permission under the provisions of the Central Excise Act or National Industrial (Activity) Classification, 1998, vis-à-vis Code 30006/7. Sub-class under NIC classification on 1998 at 30006/7 reads as under:*

*"3006: Manufacture of complete digital systems comprising a central processing unit, an input unit and an output unit; digital*

*systems which include peripheral units such as additional input/output units, additional storage units etc.*

*30007: Manufacture of computer peripherals like magnetic disc/floppy/Winchester disk drives, magnetic tape/cassette/cartridge drives; punchy tape readers, curve followers, graph plotters: serial/daisy wheel/line printers. Data entry equipment with or without visual display; magnetic or optical readers; machines for transcribing data onto data media in coded form; and so forth.”*

*15. Now, if the Assessee is otherwise not subjected to any of the provisions of the Statute, Rules, Notifications, circulars, under the said provisions, and when it does not relate to the activity of operations, so carried out by him, that of running a Call Centre, for which, in any event, the aforesaid provisions are not applicable, then obviously it would be incorrect and illegal to read the provisions relating to the code into the expression “Call Centre”, which is an activity, totally distinct and separate from “manufacture” or “production of information and communication technology”. It is in this backdrop, we find the Assessing Officer to have erred in forming its opinion/reason to believe that the Assessee, was not entitled to statutory deductions. The interpretation is perverse, resulting into travesty of justice.”*

5. Since the issue is squarely covered by the decision of the Hon'ble Jurisdictional High Court and Ld. DR could not point out any distinguishing decision, hence, we do not find any infirmity in the order of the CIT(A) while relying upon the decision of the Hon'ble High Court of Himachal Pradesh (supra) on this issue.

There is no merit in the appeals of the Revenue and, hence, the same therefore, dismissed.

The issue being common in all the captioned appeals, hence, all these appeals of the Revenue are hereby dismissed.

Order pronounced in the Open Court on 16.11.2018

Sd/-

(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

Dated : 16.11.2018

Sd/-

(संजय गर्ग / SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

“आर.के.”

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