

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

I.T.A. No.3997/Del/2015
Assessment Year: 2010-11

M/s SaraswatiDyanamics, vs Asstt Commissioner of Income-tax,
C-7, Industrial Estate, Circle Haridwar, Uttarakhand.
Roorkee, Uttarakhand.
(PAN: AA ECS6262M)

(Appellant)

(Respondent)

Assessee by: Dr. Rakesh Gupta , Advocate
Shri Somil Aggarwal, Advocate
Department by: Shri Ashima Neb, Sr. DR

Date of hearing: 29.01.2019
Date of Pronouncement: 20.02.2019

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 27.2.2015 for the Asstt. Year 2010-11 in Appeal No.241/CIT(A)/DDN/12-14 passed by the learned Commissioner of Income-tax (Appeals), Dehradun, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a company engaged in the manufacturing of vibration testing system for defense, aerospace and automobiles. The company was incorporated on 29.3.1989. They have started claiming deduction u/s 80IC of the Income-tax Act, 1961 ("the Act") from 2006-07 after substantial expansion. For the AY 2010-11, they have

filed their return of income on 13.10.2010 at a total income of nil and book profit of Rs.99,51,990/- after claiming deduction u/s 80IC at Rs.80,00,397/-. Learned AO, during the scrutiny, found from Form 10CCB that the date of substantial expansion was 31.3.2005 and, therefore, the initial year for claiming deduction u/s 80IC of the Act was 2005-06 but not 2006-07. On this premise, learned AO restricted the disallowance u/s 80IC to 30% as against 100% claimed by the assessee and made an addition of Rs.56,00,278/-, Rs.18,46,013/- on account of disallowance of AMC, Repair charges and job work, Rs.1,21,531/- on account of disallowance of interest income, thereby assessed the income of the assessee at Rs.75,67,820/-.

3. Assessee challenged the same before the CIT(A). Ld. CIT(A) by way of impugned order held that Section 80IC does not say that the income must be derived from the manufacturing only, but it states that the profit and gains must be derived by the industrial undertaking and enterprise. Learned CIT(A) held that for newly established manufacturing units, the initial year for the purpose of 80IC would be the year in which they commence production whereas for the units undertaking other operations, it is the year of commencement of the operation and for the units undergoing substantial expansion, it is the year of substantial expansion. He, therefore, upheld the addition on account of restriction of the deduction u/s 80IC to 30%. Assessee is, therefore, before us in this appeal challenging the findings of the authorities below to treat the AY 2010-11 as the sixth year for the purpose of calculating the relief u/s 80IC by treating the initial assessment year as 2005-06 whereas record reveals that the initial assessment year was only 2006-07. Though the assessee challenged the disallowance of claim u/s 80IC in respect of duty drawback and miscellaneous income etc., at the time of argument, it was not pressed.

4. It is the argument of the learned AR that the authorities below erred in reading Form 10CCB and taking column 25(d)(i) whereas Column No.9 clearly reveals that the initial assessment year from when deduction was being claimed was mentioned as AY 2006-07. The form has to be read in its entirety but reading some portions which are favourable to the Revenue and conveniently avoiding the other portions supporting the case of the assessee is not fair on the part of the revenue. He submitted that though the assessee company was incorporated on 29.3.1989, it is only after the substantial expansion, the assessee claimed deduction u/s 80IC for the first time. Section 80IC provides that the assessee shall be allowed 100% deduction of the profits and gains for five assessment years commencing from the initial assessment year and 30% of the profits and gains for the next five years to those undertakings which has commenced eligible operations from period commencing from 7.1.2003 and ending on 1.4.2005. He submits that in view of this scenario the expression "complete substantial expansion" should be read in the context of commencement of operation and not as held by the learned CIT(A) that in case of the units going for substantial expansion, the initial year should be the substantial expansion.

5. He further submits that substantial expansion is both a process and stage and when it completes on the last day of the financial year, it is not possible for the unit to commence business of starting production on the very same year to claim the benefit u/s 80IC also. He submits that law shall not be read as leading to absurd consequences. He further submits that when the assessee completes the investment in plant and machinery by 31.3.2005 naturally the production commences from the next day only and for all practical purposes, the assessee would be able to commence his

business in the AY 2006-07 to start claiming the benefit u/s 80IC. He submitted that in the information furnished to the Customs and Excise department also, it was stated that the date on which the operation commenced was mentioned as 26.4.2005; so also at column no.9 of Form No.10CCB, it was mentioned that the initial assessment year from when the deduction is being claimed was AY 2006-07. It is further brought to our notice by the learned AR that in the order dated 31.12.2008 u/s 143(3) of the Act for the AY 2006—07, it was clearly mentioned that the assessee had claimed deduction u/s 80IC for the first time on account of substantial expansion in that year only. Basing on all these things, it is submitted on behalf of the assessee that there is consistency in the case of the assessee but whereas having accepted the initial assessment year for the purpose of benefits u/s 80IC of the Act as 2006-07 consistently for four years, for the first time the revenue had taken a contrary view in the AY 2010-11, which is untenable either on facts or on law.

6. Per contra, it is the submission on behalf of the revenue that the purposes of the information furnished to the Customs and Central Excise and the information furnished in Form 10CCB to the Income-tax Department are different. Commencement of operation is relevant for the purpose of determining the initial year under the Customs and Central Excise whereas the completion of the substantial expansion alone is relevant for the purposes of income-tax Act u/s 80IC. She, therefore, submitted that the assessee cannot rely on the information furnished to the Customs and Central Excise Department.

7. She further submitted that though the assessee mentioned the initial assessment year at Column No.9 of Form 10CCB as AY 2006-07, what is relevant for determining of the assessment year is not the self-serving

statement of the assessee but the fact of completion of the substantial expansion which is mentioned at Column No.25(d)(i) thereof which unequivocally shows the date as 31.3.2005. She justified the observations of the learned CIT(A) that the initial assessment year is different for different purposes as mentioned in Section 80IC(8)(v) of the Act and in case of newly established manufacturing units, it is the year in which they commence production, for the units undertaking other operations, it is the year of commencement of operation and for the units undergoing substantial expansion, it is the year of substantial expansion. She submits that it the condition prescribed under law which must exist but not optional for the assessee to select any of these conditions to suit their convenience. She, therefore, prayed to dismiss the appeal.

8. We have gone through the record in the light of the submissions on either side. For better appreciation of the contentions of the parties, we deem it necessary to read Section 80IC. Under sub Section (1) thereof 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 thereto, subject to the provisions of this section, deduction from such profits and gains as specified under sub section (3) shall be allowed in computing the total income of the assessee. Sub Section (2) specifies the undertakings and for our purpose clause (a) is relevant which says (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. Sub section (3) specifies that the deduction shall be 100% of such profits and gains for five assessment years

commencing with the initial assessment year thereafter 25% (or 30% where the assessee is a company) of the profits and gains.

9. In this context, it is necessary to examine the expression "initial assessment year" and "substantial expansion". Clause (v) of sub section (8) thereof defines "initial assessment year" to mean, "Initial assessment year" means the assessment year relevant to the previous year in which the undertaking or the enterprise begins to manufacture or produce articles or things, or commences operation or completes substantial expansion; whereas clause (ix) defines "Substantial expansion" means increase in the investment in the plant and machinery by at least fifty per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken.

10. A plain reading of Section 80IC shows that any undertaking or enterprise which begins or begun to manufacture or produce any article or thing or which manufactures or produces any article or thing and undertakings substantial expansion during the specified period is entitled to claim deduction u/s 80IC(3)(ii).

11. Now coming to the application of Section 80IC to the facts of the present case, it is an admitted fact that the assessee consistently has been mentioning the initial assessment year in Form 10CCB of Column 9 for claiming deduction as AY 2006-07. The date of substantial expansion was mentioned as 31.3.2005 at column No.25(d)(i) i.e. the last day of the FY 2004-05. The very purpose of Section 80IC is to provide special provision in respect of certain undertakings and enterprise in special category status and it is a beneficial provision. If we accept the contention of the revenue that since the expansion took place on 31.3.2005, the initial assessment year for

claiming deduction u/s 80IC would fall to be 2005-06, in a way Revenue is negating the benefit that was allowed by the statute u/s 80IC to the category of the undertakings which completed the substantial expansion by the last date of the financial year, the simple reason being there is no possibility of commencement of business in that financial year or to claim the benefit of the same. Certainly, it shall not be the way of interpretation of a beneficial provision of the statute. Statute shall not be read to have been taking away the expressly rendering benefit in an indirect way, and any interpretation which attributes redundancy to the wisdom of legislature shall not ordinarily be countenanced.

12. It is, therefore, clear that the interpretation adopted by the Revenue for “initial assessment year” does not promote the object of Section 80IC for the undertakings which have completed the substantial expansion but at the same time it was impossible for such undertaking to commence business or to claim any benefit of an enactment in Section 80IC. Law does not require any assessee to do an impossible act and claiming benefit by the assessee in this particular set of circumstances is nothing but impossibility.

13. Further, as we have observed the initial assessment year means the assessment year relevant to the previous year in which the undertaking or an enterprise begins to manufacture or to produce articles or things or commences operations or completes substantial expansion. Here the completion of substantial expansion has to be read with reference to the expression in the company of which this particular expression happens to be. Having regard to the facts and circumstances of the case, we are of the considered opinion that completing the substantial expansion for the purpose of claiming benefit u/s 80IC for the first time shall be read in the context of the proviso as a whole and it shall mean that the completing of substantial expansion would be equivalent to the commencement of the operation.

14. With this view of the matter, we are of the considered opinion that undertaking of substantial expansion would be complete only when substantial expansion is capable of producing the desired results. We, therefore, find it difficult to agree with the interpretation given by the authorities below.

15. The learned AO observed that from Form No.10CCB of this year and earlier years, it is found that the date of the substantial expansion was 31.3.2005 which indicates that the assessee has been consistently mentioning 31.3.2005 at Column No.25(d)(i) and the AY 2006-07 as the initial assessment year for claiming benefit u/s 80IC and at no point of time any objection seems to have been taken for this apparent discrepancy. There is consistency in the statement of assessee that because the undertaking of substantial expansion has become operational subsequent to 31.3.2005, the initial year for the purpose of claiming benefit u/s 80IC has been taken as 2006-07. Assessment order for the AY 2006-07 also contains a reference to this claiming of deduction u/s 80IC for the first time on account of substantial expansion in that year only. It,thus, goes without saying that it has been in the knowledge of the Revenue right from AY 2006-07 that though the assessee has been mentioning the date of substantial expansion as 31.3.2005, it had taken a clear stand that the initial assessment year for commencement of claiming benefit u/s 80IC is 2006-07. The same was accepted for all these years. We do not find any valid reason for the revenue now to take a different stand. It is not the self serving statement of the assessee alone that the assessee is taking support from, but it is the acceptance of such a statement by the Revenue for all these year, that lend support to the case of the assessee.

16. For the reasons recorded in the preceding paragraphs, we are of the considered opinion that the provisions of the enactment have to be read in the

context of the object of enactment of such provision and a beneficial provision shall not be read in such a way as to militate against the above object of the provision so as to deny the benefit which the law otherwise provides.

17. With this view of the matter, we find it difficult to sustain the impugned order and the same has to be reversed. We, therefore, answer the ground stating that, insofar as the assessee in this matter is concerned, the 'initial year' for claiming benefit u/s 80IC is 2006-07 and going by that 2010-11 is the fifth year for claiming the benefit and not sixth year as held by the authorities below.

18. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 20th February, 2019.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 20th February, 2019.

‘VJ’

Copy forwarded to:

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

Asstt. Registrar, ITAT

Draft dictated on	08.02.2019
Draft placed before author	18.02.2019
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on	
Date of uploading order on the website	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	