

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**I.T.A .No.-3610/Del/2016  
(ASSESSMENT YEAR-2012-13)**

DCIT Circle Rohtak, Aayakar Bhawan Rohtak <b>(APPELLANT)</b>	vs	Fine Chemicals 1186/23, DLF Colony Rohtak AABFF5436E  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Ms. Ashima Neb, Sr. DR</b>
<b>Respondent by</b>	<b>Sh. Sanjeev Juneja, Partner</b>

<b>Date of Hearing</b>	<b>06.03.2019</b>
<b>Date of Pronouncement</b>	<b>07.03.2019</b>

**ORDER**

**PER DIVA SINGH, JM**

The present appeal has been filed by the Revenue assailing the correctness of the order dated 11/4/2016 of CIT(A)-Rohtak pertaining to Assessment Year 2012-13, on the following grounds:-

*“CIT(A) has erred in deleting the addition of Rs. 1,16,19,710/- made on the ground of disallowance on restricting the deduction u/s 80IC as the assessee had substantially expanded its new business already claiming deduction u/s 80IC since A.Y. 2006-07 and refixed its initial A.Y. for claiming deduction at 100% instead of 25% which is not permissible as per law and the legislative intent. The CIT(A) relied on ITAT decision of M/s Tirupati LPG Industries Ltd V/s DCIT ( ITA No. 991/DEL/2013) by citing that the deduction once given, cannot be disturbed. CIT(A) had not considered the latest decision of M/s Hycron Electronics V/s ITO(ITA No. 798/CHD/2012) pronounced by jurisdictional ITAT dated 27 May 2015 wherein the case of M/s Tirupati LPG Industries Ltd V/s DCIT ( ITA No. 991/DEL/2013) dated 29 January 2014 had already been considered.”*

2. At the time of hearing an adjournment application was moved by Ld. Sr. DR Ms. Ashima Neb. However, the assessee's partner Mr. Sanjeev Juneja, present at the time of hearing filed documents namely copies of the assessment order, the impugned order and the decision of the Apex Court dated 20th February, 2019 in the case of Principal CIT Shimla M/s Aarham Softronics in Civil Appeal No. 1784/2019 etc. Relying on the same it was submitted that the point at issue is fully covered in favour of the assessee. The appeal was passed over and time was given to the Ld. Senior DR to study the claim of the assessee. In the second round, the Ld. DR considering the record i.e. the specific orders of the Assessing Officer, the CIT(A) and decision of the Apex Court submitted that the issue is fully covered by the aforesaid decision of the Apex Court and hence withdrew the application seeking time.

4. We have heard the submissions and perused the material available on record. It is seen that the Assessing Officer considering the assessee's claims of having carried out substantial expenses restricted the deduction to the extent of 25% holding as under:-

*"To sum up, it is noted that the assessee had substantially expanded its new business already claiming deduction u/s 80IC since AY 2006-07 and refixed its initial AY for claiming deduction at higher rate which is not permissible as per law and the legislative' intent. Thus, the deduction claimed by the assessee is restricted to 25% ( Rs 1,54,92,945 @ 25% = Rs 38,73,236/-)and accordingly addition of Rs 1,16,19,709/- (= Rs 1,54,92,945- Rs 38,73,236/-) is being made to the total income."*

5. The CIT(A) considering the issue relying upon the decision of the ITAT in the case of Tripuati LPG Industries Ltd. Vs. DCIT granted relief to the assessee holding as under:-

*"I have considered the issue and also the submissions made by the appellant. The AO has restricted the deduction by relying on the Circular no 7 of 2003 (Clause 49.1). As per sub-section (2) of section 80 IC, deduction under this section is*

available to any undertaking or enterprises in the following two categories:-

- i. The undertaking or enterprises has begun or begins to manufacture or produce any article or thing during the period 7.01.2003 to 1.4.2012; OR
- ii. The undertaking which manufacture or produce any article or thing and undertakes substantial expansion during the period 7.01.2003 to 1.4.2012.

A bare reading of the provisions of sub section (2) would reveal that the deduction under the aforesaid two categories are independent. In the first category, the deduction is given to the undertaking which had begun or began manufacturing or production of an article and thing during the specified period of 7.1.2003 to 1.4.2012. Thus, under the first category, the deduction is available to newly set-up units.

In the second category, the deduction is allowed in case of expansion by the existing units which undertake substantial expansion during the specified period of 7.1.2003 to 1.4.2012."

The term "substantial expansion" makes it clear that there is no restriction or bar on more than one substantial expansion being undertaken by an assessee.

In Clauses (i), (ii) 85 (iii) of sub section 2(a) of Sec 80IC, each clause has different period as clause (i) has period on the 23<sup>rd</sup> day of December, 2002 and ending before 1st day of April [2007] earlier it was 2012 but substituted to 2007 by Finance Act 2007 w.e.f 01-04-2008, clause (ii) has period on 7<sup>th</sup> day of January 2003 and ending before 1st day of April 2012. clause (iii) has period on 24<sup>th</sup> day of December, 1997 and ending before the 1st day of April 2007.

There is no dispute regarding the fact that the assessee is claiming deduction U/S 80 IC since A/Y 2006-07 and substantially expanded its business during A/Y 2011-12.

The case is squarely covered by the decision of the Hon'ble Delhi ITAT in *Tirupati LPG Industries Ltd. vs DCIT* in ITA No.991/D/2013 dated 29.01.2014, which is also the Jurisdictional Bench over the case of the appellant as per Jurisdiction.

In view of the facts pointed out above, the addition of Rs 1,16,19,709/- by restricting the deduction from 100% of profits to 25% of profits cannot be sustained and is deleted.

4. In the result, the appeal is allowed."

6. It is seen that the Apex Court in very categorical terms has attend the position of law in the aforesaid decisions as under:-

" 22. It would be pertinent to point out that in Para 20 of the judgment in *Classic Binding Industries*, this Court observed that if deduction @ 100%

for the entire period of 10 years, it would be doing violence to the language of sub-section (6) of Section 80-IC. However, this observation came without noticing the definition of 'initial assessment year' contained in the same very provision.

23. Having examined the matter in the aforesaid perspective, judgment in the case of *Mahabir Industries v. Principal Commissioner of Income Tax*<sup>2</sup> would, in fact, help the assessee. The fine distinction pointed out in *Classic Binding Industries* elopes thereby. To recapitulate, in *Mahabir Industries*, it was held that if an assessee get 100% exemption under Section 80-1B of the Act for five years and thereafter carries out the substantial expansion because of which said assessee becomes entitled to exemption under the new provision i.e. Section 80-IC of the Act, the assessee would be entitled to deduction @ 100% even after five years. This ruling was predicated on the ground that there can be two initial assessment years, one for the purpose of Section 80-IB and other for the purposes of Section 80-IC of the Act. Once we find that there can be two initial assessment years, even as per the definition thereof in Section 80-IC itself, the legal position comes at par with the one which was discussed in *Mahabir Industries*.

24. The aforesaid discussion leads us to the following conclusions:

(a) Judgment dated 20<sup>th</sup> August, 2018 in *Classic Binding Industries* case omitted to take note of the definition 'initial assessment year' contained in Section 80-IC itself and instead based its conclusion on the definition contained in Section 80-IB, which does not apply in these cases. The definitions of 'initial assessment year' in the two sections, viz. Sections 80-IB and 80-IC are materially different. The definition of 'initial assessment year' under Section 80-IC has made all the difference. Therefore, we are of the opinion that the aforesaid judgment does not lay down the correct law.

(b) An undertaking or an enterprise which had set up a new unit between 7<sup>th</sup> January, 2003 and 1<sup>st</sup> April, 2012 in State of Himachal Pradesh of the nature mentioned in clause (ii) of sub-section (2) of Section 80-IC, would be entitled to deduction at the rate of 100% of the profits and gains for five assessment years commencing with the 'initial assessment year'. For the next five years, the admissible deduction would be 25% (or 30% where the assessee is a company) of the profits and gains.

(c) However, in case substantial expansion is carried out as defined in clause (ix) of sub-section (8) of Section 80-IC by such an undertaking or enterprise, within the aforesaid period of 10 years, the said previous year in which the substantial expansion is undertaken would become 'initial assessment year', and from that assessment year the assessee shall be entitled to 100% deductions of the profits and gains.

(d) Such deduction, however, would be for a total period of 10 years, as provided in sub-section (6). For example, if the expansion is carried out immediately, on the completion of first five years, the assessee would be entitled to 100% deduction again for the next five years. On the other hand, if substantial expansion is undertaken, say, in 8<sup>th</sup> year by an

*assessee such an assessee would be entitled to 100% deduction for the first five years, deduction @ 25% of the profits and gains for the next two years and @ 100% again from 8<sup>th</sup> year as this year becomes 'initial assessment year' once again. However, this 100% deduction would be for remaining three years, i.e. 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Assessment Years.*

25. *In view of the aforesaid, we affirm the judgment of the High Court on this issue and dismiss all these appeals of the Revenue. Likewise, appeals filed by the assessee are hereby allowed.*

7. Accordingly, in the light of the position of law as available and in the absence of any infirmity in the impugned order being pointed out where the controversy has been set at rest by the Apex Court we find that there is no merit in the appeal of the Revenue. Accordingly, considering the position of law as set out hereinabove we dismiss the Department's appeal. Said order was pronounced in the open Court.

8. In result, Departments appeal is dismissed.

**Order pronounced in the Open Court on 07th MARCH, 2019.**

**Sd/-  
(ANADEE NATH MISSHRA)  
ACCOUNTANT MEMBER**

**Sd/-  
(DIVA SINGH)  
JUDICIAL MEMBER**

Dated: 07/03/2019  
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	06.03.2019
Date on which the typed draft is placed before the dictating Member	06.03.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	08.03.2019
Date on which the final order is uploaded on the website of ITAT	08.03.2019
Date on which the file goes to the Bench Clerk	08.03.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	