

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘B’, CHANDIGARH

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

आयकर अपील सं./ ITA No.1166/Chd/2018

निर्धारण वर्ष / Assessment Year : 2014-15

The A.C.I.T., Circle-2(1), Chandigarh.	बनाम	M/s Micro Turners, SCO 80-81, Sector 17-C, Chandigarh.
स्थायी लेखा सं./PAN NO. AABFM5301M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Manjit Singh, Sr.DR

राजस्व की ओर से/ Revenue by : Shri T.N. Singla, CA

सुनवाई की तारीख/Date of Hearing : 06.03.2019

उद्घोषणा की तारीख/Date of Pronouncement: 08.03.2019

आदेश/ORDER

Per Annapurna Gupta, Accountant Member:

The present appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-1, Chandigarh (in short ‘CIT(A)’ dated 22.6.2018 passed u/s 250(6) of the Income Tax Act, 1961 (hereinafter referred to as ‘Act’).

2. The sole issue in the present appeal relates to allowance of claim of deduction u/s 80IC of the Act @ 100% of profits from the eligible business of the assessee on account of substantial expansion undertaken, after availing 100% deduction of the profits for the first five years.

3. Brief facts relating to the case are that the assessee is in the business of manufacturing automobile components which includes shafts, shifting rods, rocker arm assemblies, con rod assemblies and various transmission assemblies. The assessee had four working units i) at Naryal, Parwanoo; ii) tractor parts division (TPD) at Parwanoo; iii) connecting rod division (CRD) at Parwanoo and; iv) unit at Manesar, Gurgaon. During the impugned assessment year the assessee had claimed deduction u/s 80IC of the Act @ 25% of the profits of Naryal unit, @ 100% of profits of TPD unit and @ 100% of profits of CRD unit. The A.O. restricted the assessee's claim of deduction of 100% of the profits of the TDP unit to 25% thereof on noting that the assessee had already claimed 100% deduction of the profits for a period of five years and the impugned assessment year was the 8th year and that the assessee had claimed 100% deduction on account of substantial expansion undertaken in the financial year 2011-12. The A.O. noted that the ITAT Chandigarh Bench in the case of Hycron Electronics Vs. ITO in ITA No.798/Chd/2012 had held that the benefit of substantial expansion was available only to units which were in existence at the time of announcement of scheme and not to new units which came into the existence thereafter and that there was no provision of law allowing for multiple initial assessment years. Accordingly the A.O. restricted the deduction claimed by the assessee on its TDP unit to 25% of the eligible units.

4. The matter was carried in appeal before the Ld.CIT(A). During the course of hearing before him it was brought to his notice that the Hon'ble Jurisdictional High Court had decided the issue in favour of the assessee in the case of Stovecraft India Vs. CIT, reported in 160 DTR 378, holding that the benefit of deduction u/s 80IC @ 100% of the eligible profits was allowable even in the case a new undertaking going for substantial expansion after five years of commencement of production. The Ld.CIT(A) following the aforesaid decision of the Hon'ble Jurisdictional High Court allowed the assessee's appeal.

5. Aggrieved by the same, the Revenue has come up in appeal before us, raising following grounds of appeal:

1. *On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in allowing appeal of the assessee without appreciating the facts of the case.*
2. *On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs. 1,55,47,172 /- (made on account of restricting the claim of deduction u/s 80IC of Income Tax Act, 1961 @ 25%) without discussing the merits of the issue involved and by relying on the decision of Hon'ble Himachal Pradesh High Court in the case of M/s Stovekraft India.*
3. *The Ld.CIT(A) has erred in holding that those undertakings or enterprises which commenced production after 07/01/2003 can carry out multiple "substantial expansion" prior to 01/04/2012 and there will be initial year for each "substantial expansion" as long as provision of section 80IC(8)(ix) are met without appreciating that as per provision of section 80IC of the Income Tax Act and as explained in CBDT Circular No. 7/2003, such enterprise or undertaking cannot carry out any "substantial expansion" only once.*
4. *Also, the Hon'ble Supreme Court of India in the civil appeal no 7229 of 2018 of M/s Stovekraft India bunched in the lead case of CIT Vs. M/s Classic Binding Industries vide appeal no. 7208 of 2018 & others has held that after availing deduction at 100% for first 5 years from the initial*

assessment year, the assessee would be entitled to deduction for remaining 5 assessment years @ 25% and not @ 100%. Thus, the issue is settled in the favour of Revenue by the Hon'ble Apex Court.

5. *It is prayed that the order of the Ld.CIT(A) be cancelled and that of the assessing officer may be restored.*

6. *The appellant craves leave to add or amend any grounds of appeal before the appeal is heard or is disposed off."*

6. A bare perusal of the above grounds reveals that the Revenue has challenged the order of the Ld.CIT(A) relying upon the decision of the Hon'ble Apex Court in bunch of cases with the lead case being CIT Vs. M/s Classic Binding Industries in Civil Appeal No.7208 of 2018 & Others. The said order was dated 20th August 2018.

7. During the course of hearing before us the Ld. DR at the outset itself pointed out that the Hon'ble Apex Court had thereafter decided this issue again in bunch of cases with the lead case being Pr.CIT, Shimla Vs. M/s Aarham Softronics in Civil No.1784 of 2019 dated 20.2.2019, deciding the issue in favour of the assessee and further holding that the decision in the case of M/s Classic Binding Industries (supra) did not lay down the correct law.

8. We have gone through the order of the Hon'ble Apex Court in the case of M/s Aarham Softronics (supra) and find that the Hon'ble Apex Court had noted that these appeals were earlier heard and decided by its judgment dated 20.8.2018 reversing the judgment of the Hon'ble Jurisdictional High Court on the issue but in some of the appeals the assessees who were respondents were not served with notices and they remained unrepresented and on their

Miscellaneous Application filed for recall of the order, which was allowed by the Hon'ble Apex Court, the appeals were restored and were heard afresh. That thereafter the Hon'ble Apex Court dealt with the entire scheme of the Act relating to the relevant section i.e. section 80IC of the Act, and arrived at the conclusion that the definition of the initial assessment year contained in clause (v) of sub-section(8) of section 80IC of the Act can lead to a situation where there can be more than one assessment year within the said period of ten years. The relevant finding of the Hon'ble Apex Court at para 19 of its order is as under:

“19. Having examined the scheme in the aforesaid manner, we arrive at the conclusion that the definition of ‘initial assessment year’ contained in clause (v) of sub-section (8) of Section 80-IC can lead to a situation where there can be more than one “initial assessment year” within the said period of 10 years. As per sub-section (6), cap is on the 10 assessment years. It is not on quantum. We have also to keep in mind the purpose for which Section 80-IC was enacted. The purpose was to establish the business of the nature specified in the said provision in the specified States. This provision was, thus, aimed at encouraging the undertakings or enterprises to establish and set up such units in the aforesaid States to make them industrially advanced States as well. Undoubtedly, these are difficult States as most of these States fall in hilly areas. Therefore, cost of production and transportation may also go up.

20. When we keep in mind these objectives for which Section 80-IC was enacted, an irresistible conclusion would be to grant 100% deduction of the profits and gains even from the year when there is substantial expansion in the existing unit. After all, this substantial expansion involves great deal of investment which has to be, at least 50% in the plant and machinery, of the book value thereof before taking depreciation in any year. With an expansion of such a nature not only there would be increase in production but generation of more employment as well, which would benefit the local populace. It is for this reason, carrying out substantial expansion by itself is treated as ‘initial assessment year’. It would mean that even when an old unit completes substantial expansion, such a unit also becomes entitled to avail the benefit of Section 80-IC. If that is the purpose of the legislature, we see no reason as to why 100% deduction of the

profits and gains be not allowed to even those units who had availed this deduction on setting up of a new unit and have now invested huge amount with substantial expansion of those units.”

9. The Hon'ble Apex Court thereafter noted that in its judgment in the case of M/s Classic Binding Industries (supra) the observation of the Hon'ble Court that allowing deduction @ 100% for the entire period of ten years would be doing violence to the language of sec 80IC of the Act, was made without noticing the definition of initial assessment year contained in section 80IC of the Act. The finding of the Hon'ble Apex Court at para 22 of its order is 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.”*

10. The Hon'ble Apex Court thereafter concluded that this decision in the case of M/s Classic Binding Industries (supra) did not lay down the correct law and that a newly set up undertaking or enterprise in the State of Himachal Pradesh would be entitled to deduction @ 100% of the Act its profits for the first five years and even thereafter in the case of substantial expansion is carried out by it with the previous year in which substantial expansion is undertaken becoming the initial assessment year. That in any case the period of deduction u/s 80IC of the Act would not exceed 10 years. The conclusion of the Hon'ble Apex Court at para 24 of its order is as under:

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

(a) Judgment dated 20th 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 7th January, 2003 and 1st 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 8th 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 8th year as this year becomes ‘initial assessment year’ once again. However, this 100% deduction would be for remaining three years, i.e., 8th, 9th and 10th 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 assesseees are hereby allowed.”

11. In view of the above, it is now settled law that even a new undertaking which has claimed deduction of its eligible profits @ 100% thereof for the first five years is entitled to

claim deduction @ 100% of its profits thereafter on account of substantial expansion undertaken by it. We, therefore, see no reason to interfere in the order of the Ld.CIT(A) and the appeal of the Revenue is, therefore, dismissed.

12. In the result, the appeal of the Revenue is dismissed.
Order pronounced in the Open Court.

Sd/-
संजय गर्ग
(SANJAY GARG)
न्यायकि सदस्य/ Judicial Member
दिनांक /Dated: 8th March, 2019
रती

Sd/-
अन्नपूर्णा गुप्ता
(ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant 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