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

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

ITA No:- 3609/Del/2016
(Assessment Year: 2012-13)

Deputy Commissioner of Income Tax, Circle-Rohtak.	Vs.	Sh. Pankaj Sachdeva, 214-R, Model Town, Rohtak.
PAN No: AKYPS7647D		
APPELLANT		**RESPONDENT**

Revenue by : Ms. Ashima Neb, Sr. DR
Assessee by : Shri Sanjay Nath, CA

ORDER

PER ANADEE NATH MISSHRA, AM

This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals), Rohtak, ["Ld. CIT(A)", for short] dated 11.04.2016 for Assessment Year 2012-13. The grounds of appeal are as under:

"1. CIT(A) has erred in deleting the addition of Rs. 1,51,74,535/- 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. 2007-08 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. vs. DCIT (ITA No. 991/Del/2013) dated 29 January 2014 had already been considered.

2. *CIT(A) has erred in deleting the addition of Rs. 4,57,931/- made on account of disallowance of travel expenses of taxable unit after reallocation without considering the low travel expenses debited to its taxable unit as compared to its exempt once*."

(2) Vide Assessment Order dated 16.03.2015 of the Assessing Officer ("AO", for short) following additions were made to the income returned by the Assessee.

i. Disallowance of assessee's claim U/s 80IC of I.T. Act : Rs. 1,51,74,535/-

ii. Disallowance out of travel expenses : Rs. 4,57,931/-

The relevant portions of the Assessment Order are reproduced as under:

"5.1 ***Deduction u/s 80IC : Restriction on the rate of deduction from 100% to 25% :***

The assessee had set up one unit in ParwanooDisttSolan, Himachal Pardesh and by claiming initial year as AY 2007-08 started claiming deduction u/s 80IC since AY 2007-08 onwards. In this way, the assessee was eligible for deduction for 10 consecutive years: 100% deduction for AY 2007-08 to 2011-12 and 25% for AY 2012-13 to 2016-17. The assessee had claimed deduction u/s 80IC @ 100% from AY 2007-08 to 2011-12. Thereafter in FY 2011-12, the assessee carried on the substantial expansion & re-fixed its initial AY 2012-13& started claiming deduction @ 100%. Hence, instead of claiming deduction at the rate of 25%, the assessee started claiming deduction @100% again by refixing its initial AY as 2012-13. In this connection, the assessee was showcaused vide order sheet entry dtl0.02.2015 as to why the deduction u/s 80IC may not be restricted to 25% as it had claimed AY 2006-07 as initial year firstly. In reply, the assessee furnished the submission on 27.02.2015 and same is reproduced as below :

"That regarding deduction claimed U/S 80IC of the I T Act 1961 @ 100% of the Profit & Gains of the Industrial undertaking when the initial assessment

year of the unit was A/Y 2006-07, it is submitted that the unit of the assessee took Substantial expansion during A/Y 2012-13 and as per Sec 80IC of the I T Act 1961, the unit is eligible for deduction @ 100% for another five years from the A/Y 2012-13.

That as per "**Sec 80 IC (8) (v) "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 thins, or commences operation* **or completes substantial expansion "**
Hence the unit is eligible for deduction of 100% of its profit & *Gains from the industrial undertaking established in the notified specified area."*

The submission of the assessee is considered but is not found tenable on the following grounds :

1. The legislative intent behind the explanatory notes to Finance Act 2003 contained in Circular 7 of 2003 (Clause 49.1) makes clear that the benefit of deduction shall be given to either of the two units of new units or the existing units "*The Union Cabinet has announced a package of Fiscal and non-fiscal concessions for the special category States of Himachal Pradesh, Uttaranchal, Sikkim and North-Eastern State, in order to give boost to the economy in these States. With a view to give effect to these new packages a new section 80IC has been inserted to allow a deduction for ten years from profits* **of new undertakings or enterprises OR existing undertakings or enterprises on their substantial expansion, in the States of Himachal Pradesh, Uttaranchal, Sikkim and North-Eastern States."** Same way the Circular 49/2003 of Central excise is also relevant here as the new package interalia included tax benefits under Income tax and Central Exercise *"The exemption contained in this notification shall apply only to the following kinds of units, namely:- New industrial units which have commenced their commercial production on or after the 7th day of January, 2003; Industrial units existing before the 7th day of January,2003, but which have undertaken substantial expansion by way of increase in installed capacity.... on or after the 7th day of January, 2003." Thus it is clear that these are two distinct categories with no overlapping.*

2. *The definition of the initial year as per the section 80IC(8) of the act is reproduced as below :*

"(v) "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; "

Thus, the definition of the initial year as per the section 80IC(8) of the act

makes it clear that the initial year is to be taken either of the two : the year in which the undertaking begins to manufacture OR In which completes substantial expansion. Thus "initial A.Y." can be fixed only once.

3. *As per clause 25 of the form 10CCB, for claiming deduction u/s 80IC, it is clear that there are separate columns for New business and the Existing business which undertakes substantial expansion.* ***The Existing business does not mean" new business existing for 5 years and then undertaking the substantial expansion".***

To sum up, it is noted that the assessee had substantially expanded its new business already claiming deduction u/s 80IC since AY 2007-08 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% (Rs2,02,32,714 @ 25% = Rs50,58,179/-) and accordingly addition of Rsl,51,74,535/- (= Rs2,02,32,714 - Rs50,58,179/-) is being made to the total income.

Penalty u/s 271(l)(c) is being initiated separately for concealment of income and for furnishing the inaccurate particulars of the income.

[Addition: Rs 1,51,74,535/-]

5.2 Disallowance upon allocation of travel expenses

During the previous year, the assessee had debited travel expenses worth Rs2,477 in Parwanoo Unit(unit claimng exemption u/s 80IC) and :travel expenses worth Rs 5,09,088/- in the Delhi Unit (taxable ..nit).On perusal of the case records, it was seen that the Turn over in tne Parwanoo Unit was Rs 9,83,84,881 and in the Delhi unit, it was Rsl,10,43,643. Thus the unit having higher turnover i.e. Parwanoo Unit was debiting lesser expenses worth Rs 2,477/- only as compared to unit at Delhi claiming the expenses worth Rs 5,09,088/- which seems quite unreasonable. Vide order sheet entry dt 10.02.2015, the assessee was showcaused as to why the travel expenses may not be allocated on the basis of the turnover of both the units. However, no reply is furnished by the assessee till date. Hence, the travel expenses are reallocated on the basis of the turnover which comes out to 90:10 and the travel expenses are worked out to Rs 4,50,408/- and Rs 51,157/- in the Parwanoo Unit and Delhi unit respectively. Hence, the travel expenses of the Delhi unit worth Rs 4,57,931/- are being disallowed and are added to the total income.

Penalty u/s 271(l)(c) is being initiated separately for concealment of income

and for furnishing the inaccurate particulars of the income.

[Addition :Rs 4,57,931/-]"

(2.1) Aggrieved, the assessee filed appeal before the Ld. CIT(A), who deleted the aforesaid additions vide impugned order dated 11.04.2016. The relevant portion of the order of the Ld. CIT(A) is reproduced as under:

"2. The submissions made by the AR of the appellant are as under:-

Brief Facts of the Case:

That the assessee is a Proprietor of M/S Adit Infotech - Parwanoo and M/S Adit Infotech - Delhi engaged in the business of Manufacturing/Assembling and Trading in batteries and other electrical equipments.

That the unit of the assessee firm is established and located in a notified specified area Parwanoo Dist. Solan in the state of Himachal Pardesh and produce any article or thing except an article or thing mentioned in Schedule XIII.

That the unit has started production w.e.f 02-02-2006 relevant to A/Y 2007-08 . and undertaken substantial expansion during F/Y 2011-12.

That the assessee is doing only trading activity at M/S Adit Infotech Delhi.

That return of income for the A/Y 2012-13 was filed on the income of Rs 18,49,911/- after claiming deduction under chapter VI A of Rs 2,03,47,714/- including deduction of Rs 2,02,32,714/- being 100% of the profits from the eligible unit U/S 80IC of the I T Act, 1961.

That the Ld AO restricted the deduction claimed U/S 80IC of the I T Act 1961 from 100% to 25% of the profits from the eligible unit and disallowed travelling expenses at Delhi unit upon allocation between exempted unit and non exempted unit, thus making total additions of Rs 1,56,32,466/- (1,51,74,535/- + 4,57,931/-) towards the income of the appellant.

That the appellant preferred an appeal against the said order on the following grounds of appeal:

1. *That the order of the Assessing Officer is bad in Law and facts of the present case.*

2. *That on the facts and circumstances of the case the Ld A.O. erred in restricting the deduction claimed U/S 80 IC of the I T Act 1961 from 100 % of profits from the eligible unit to 25% of profits from the eligible unit, thus making additions of Rs 1,51,74,535/- towards the income of the appellant.*
3. *That on the facts and circumstances of the case the Ld AO wrongly disallowed travelling expenses of Rs 4,57,931/- at Delhi Unit upon allocation between exempted unit at Parwanoo and non exempted unit at Delhi.*
4. *That the appellant craves for permission to add, delete or amend any ground of appeal before or at the time of hearing of the appeal.*

Ground No 2

That on the facts and circumstances of the case the Ld A.O. erred in restricting the deduction claimed U/S 80 IC of the I T Act 1961 from 100 % of profits from the eligible unit to 25% of profits from the eligible unit, thus making additions of Rs 1,51,74,535/- towards the income of the appellant.

(1) *During assessment proceedings it was submitted before the Ld AO as under:*

"That regarding deduction claimed U/S 80IC of the I T Act 1961 @ 100% of the Profit & Gains of the Industrial undertaking when the initial assessment year of the unit was A/Y 2006-07, it is submitted that the unit of the assessee took Substantial expansion during A/Y 2012-13 and as per Sec 80IC of the IT Act 1961, the unit is eligible for deduction @ 100% for another five years from the A/Y 2012-13.
That as per ***"Sec 80 IC (8) (v) "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 thins, or commences operation* ***or completes substantial expansion"***

Hence the unit is eligible for deduction of 100% of its profit & Gains from the industrial undertaking established in the notified specified area."

(2) *That the Ld AO denied the deduction claimed being 100% of the profits from the eligible unit stating the following reason:*

It is noted that the assessee had substantially expanded its new business already claiming deduction U/S 80IC since A/Y 2006-07 and refixed its initial assessment year for claiming deduction at higher rate which is not permissible as per law and the legislative intent.

The existing business does not mean "new business existing for 5 years and then under taking the substantial expansion'.

(3) Sec 80IC

(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).*

(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 anv article or thing, not being any article or thing specified in the Thirteenth Schedule and undertakes substantial expansion during the period beginning—

(ii) ***on the 7th day of January, 2003 and ending before the 1st day of April, 2012,*** *in anv 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[59] by the Central Government in this regard, in the State of Himachal Pradesh or the State of Uttaranchal: or*

Substantial expansion,

"Sec 80 IC (8) (ix) "Substantial expansion *'means increase in the investment in the plant and machinery by at least fifty per cent on 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 in undertaken."*

Initial Assessment Year

"Sec 80 IC (8) (v) "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".***

(4) That if we go through Sec 80IC along with the above definitions of Initial Assessment Year and Substantial expansion, there is no restriction or bar which suggests that a unit already taking exemption U/S 80IC cannot make substantial expansion. The section only says

" 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— on the 7th day of January. 2003 and ending before the 1st day of April. 2012,"

(5) ***It was also held in the case of TIRUPATI LPG INDUSTRIES LTD*** *VS.*

D C I T ITAT DELHI TRIBUNAL - (2015) 167 TTJ 0713.

*"Held, bare reading of provisions of 80IC(2) reveal that deductions under two categories were independent—In first category deduction was given to undertaking which had begun or begins manufacturing or production of article and thing during specified period—Under first category deduction available to newly set-up units— In second category, deduction allowed in case of expansion by existing units which undertake substantial expansion—There was nothing to suggest that there could not be second initial year if second substantial expansion completed—**Even if existing unit which claiming 80 IC, undertook first substantial expansion then also year of completion of substantial expansion would be "initial year"—Section imposed restriction for total period of 10 years for claiming deduction in question—**There was no ever greening of provisions—Assessee could not claim said deduction for total period exceeding 10 years—Deduction could be allowable only for balance period of 5 years including A/Y 2009-10—Claim of Assessee was admissible—Deduction could not be extended beyond period of 10 years from A.Y. 2004-05—Assessee's appeal allowed."*

*It is further submitted that a contrary view was taken by the Chandigarh Bench of **Hob'ble Tribunal in the case o**f **Hycron Electronics vs. ITO in ITA NO. 798/Chd/2012 dated 29.5.2015 The Hon'ble Tribunal stated in para 29 of the order stated as under:***

"29. Sub section (1) of the above provision is a general provision and does not require any interpretation. Sub Section [2] is the enabling provision which provides for the types of undertakings and circumstances where deduction under section 80IC would be allowed. It allows deduction to various undertakings which have either begun or begins manufacturing of any article or things not being any article or thing specified in Schedule xiii and also undertakes substantial expansion. These deductions were available in different states during different window periods which have been referred to in clause (i), (ii) & (iii) of this sub section.
The contention on behalf of the assessee is that since deduction is available to the undertaking which undertakes substantial expansion and since there is no restriction in this sub section itself, therefore, the deduction was available on substantial expansion by old undertakings as well as new undertakings during the window period.
However, there is no force in this interpretation. Sub section (2) begins with the expression "this section applies to any undertaking or enterprise which has begun or begins" this itself shows that provision made even the existing undertakings entitled for the deduction because the expression 'begun' would refer to the undertaking which were already existing and began the manufacture before the window period mentioned in the sub section. The last line of the sub section reads "and undertakes substantial
expansion during the period beginning ". This would
naturally refer to the undertaking which were already existing. If it is read the way the Ld. counsel of the assessee would like us to read then the

provision would become unworkable because if there is an undertaking which is established during the window period then the same cannot possibly undertakes substantial expansion also simultaneously. The expression 'and" would refer to the cumulative condition that is both parts of the conditions need to be complied. The expression 'and' can be joined only with the expression 'begun'. This is because 'begun' refers to something which has already started in the past whereas 'begins' connotes something which would commence in the present. Therefore, the expression 'and' can be correlated only with existing unit because as we have already seen a new unit which has been set up and begins production cannot simultaneously undergo substantial expansion also so as to become eligible for deduction under this section."

(6.1) It would be noticed that Hon'ble Tribunal has mixed the two categories namely category (i) and category (ii) as it overlooks the expression or between the two categories. Thus once the literal and strict reading of the provision clearly points to the eligibility of the claim that no other rule of interpretation is otherwise warranted. It is thus submitted with great respect that decision of Chandigarh Bench of Hon'ble Tribunal in the case of ***Hycron Electronics vs. ITO in ITA No. 798/Chd/2012 dated 29.5.2015*** *is per-incuriam and is thus unjustified. Per-incuriam means as under:*

"Dictionary of Law-L B Curzon

Per incuriam: Though want of care; in-advertnelty. A mistaken decision of a court. It was held in Young V.
Bristol Aeroplane Co. Ltd. (1946) 1 All ER 98 that the Court of Appeal (q.v.) was not bound to follow one of its earlier decisions if satisfied that it was reached per incuriam. Application of the doctrine should be made only in the case of "decisions given in ignorance or for getfulness of some inconsistent statutory provision or of some authority binding on the court concerned" (1955) 2 QB 379.

The Law Lexicon 1997

Per incuriam:Through inadvertence of through want of care. Through carelessness through inadvertence"

(6.2) ***It is submitted that in the case of MCD vs. Gurnam Kaur reported in AIR 1989 (SC) 38****, it was held that in ignorance in terms of a statute or of a rule having the force of a statute. It is also submitted that Justice Subba Rao J. (as he then was) in Dr. K C Nambiar v. State of Madras AIR 1953 Madras 351 (approved by a Full Bench of High Court in Subbarayudu v. The State, AIR 1955 AP 87 [FB] [1955] 11 ALT (Crl.) 53) has held at page 94 of AIR 1955 (AP) as under:*

"The effect of binding precedents in India is that the decisions of the

Supreme Court are binding on all the courts. Indeed, article 141 of the Constitution embodies the rule of precedent.

..... It may be noticed that precedent ceases to be a binding precedent (i) if it is reversed or overruled by a higher court,

(ii) *when it is affirmed or reversed on a different ground,*

(iii) when it is inconsistent with the ***earlier*** *decisions of the same rank,*

(iv) when it is sub silentio, and

(v) when it is rendered per incuriam.

In paragraph 578 at page 297 of Halsbury's Laws of England, Fourth Edition, the rule of per incuriam is stated as follows:

"A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of co-ordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision ; or when the decision is given in ignorance of the terms of a statute or rule having statutory force."

(6.3) In Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court [1990] 3 SCC 682, the Apex Court explained the expression " per incuriam as under:

"The Latin expression per incuriam means through inadvertence. A decision can be said generally to be given per incuriam when the Supreme Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of the Supreme Court. "

(6.4) ***The hon'ble Tribunal also stated in para 33 of the order stated as under;***

"33. Even if the above controversy is ignored regarding existing unit, the intention of the Legislature become absolutely clear when sub section (2) is read along with sub-section (3) of section 80IC."

(6.5) *That if we argue about the intention of the Legislature, the Legislature had reduced the period in case of clauses (i) of sub section (2) from year 2012 to year 2007 by the Finance Act 2007, w.e.f 01-04-2008, however not reduced the period in the case of clause (ii) of sub section (2). because the Legislature wanted to extend the benefit in the case of substantial expansion.*

(7) In the captioned appeal, the appellant most respectfully seeks to submit as under:

The Delhi Bench of Hon'ble ITAT is the jurisdictional Bench over the case of the appellant as per Jurisdiction, downloaded from internet, is attached here with, As per the said jurisdiction order the jurisdiction over the case of the appellant lies with the Hon'ble ITAT Delhi Bench. The head office of the appellant is at Rohtak and jurisdiction over the cases of Rohtak lies with ITAT Delhi bench.

It is most respectfully submitted that it is settled law that if there are contrary judgments then a decision which was favorable to the assessee was to be followed in view of the reasoning laid down by the Hon'ble Supreme Court in the case of ***CIT vs. Vegetable Products Ltd. reported in 88ITR 192 (SC).***

It has also been held by the Apex Court in the case of CIT vs. Bajaj Tempo reported in 196 ITR 188 *that provision for incentive or growth and development should be interpreted liberally so as to achieve the object for which, the deductions are provided in the Act. It is submitted that in the instant case, the deduction has been provided for the development of the State of Himachal Pradesh and as such, since the assessee has undertaken expansion for the development of Himachal Pradesh, the assessee be held to be eligible for deduction under section 80IC of the Act.*

(8) In the hierarchical set up of judicial system , the orders of higher judiciary , including ITAT; are binding on the lower authorities . This is imperative to maintain the judicial discipline. The orders passed by the Tribunal are binding on all the Revenue authorities functioning under the jurisdiction of the Tribunal.

It has been laid down by the Hon'ble Supreme Court in the case of Union of India v. Kamalakshi Finance Corporation Limited AIR1992 SC 711; (1991) 53 ELT 433 that:

'Judicial propriety demands that the order of the Tribunal should not only be respected but it should be followed by a lower authority. If the authority subordinate to the Tribunal is allowed to pick up holes gaps or some infirmities or is of the view that different line of thinking is possible, then there will be judicial chaos and there will not be any finality to litigation. This process, ifpermitted, will lead to unnecessary harassment to the taxpayer, which is not envisaged by the statute nor permitted by law. The CIT(A) is duty bound to follow the decision of the Tribunal. It is well settled that the decision of the higher authorities is binding on a lower authority in the judicial hierarchy.

The ratio of the Hon'ble Apex court judgement in Kamalaxmi Finance case has been unreservedly followed by judiciary in its judgements/orders .Some notable instances are:

(a) *M/s Aggarwal Warehousing &Leasing vs CIT 257ITR235(MP)*

(b) *In the case of Nicco Corporation vs CIT (251 ITR 791), the Calcutta High Court has considered this vital aspect and has held that lower authorities are bound to accept the decision of appellate authorities without any reservation. K.N. Agrawal vs Commissioner Of Income-Tax 189 ITR 769 (Allahabad)*

Since, the judgment delivered by the Hon'ble ITAT Delhi Bench in the case of ***Tirupati LPG Industries Ltd. vs. DCIT (2015) 167 TTJ 0713*** *is binding in the case of the appellant as jurisdiction over the case of the appellant lies with Hon'ble ITAT Delhi Bench, it is prayed that restricting the deduction claimed from 100% of profits claimed from eligible unit to 25% of profits was not in accordance with law and therefore disallowance made may kindly be deleted.*

I have considered the issue and also 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* 7.1.2003 *to 1.4.2012; OR*

ii. *The undertaking which manufacture or produce any article or thing and undertakes substantial expansion during the period* 7.1.2003 *to 1.4.2012.*

A bare reading of provisions of sub section (2) would reveal that the deduction under the aforesaid two categories are independent. In the first category the deduction is being given to the undertaking which has begun or begins manufacturing or production of 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) & (iii) of sub section 2(a) of Sec 80IC, each clause has different period as clause (i) has period on the 23rd 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 7th

day of January 2003 and ending before 1st day of April 2012, clause (iii) has period on 24th day of December, 1997 and ending before the 1st day of April 2007.

There is no dispute on 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 1,51,74,535/- by restricting the deduction from 100% of profits to 25% of profits cannot be sustained and is deleted. ***This ground of appeal is allowed.***

Ground No 3

That on the facts and circumstances of the case the Ld AO wrongly disallowed travelling expenses of Rs 4,57,931/- at Delhi Unit upon allocation between exempted unit at Parwanoo and non exempted unit at Delhi.

During the year under consideration, the assessee was operating two units one taxable unit at Delhi and other exempted unit at Parwanoo.
The business of the assessee at taxable unit of Delhi was trading in Mobile Batteries for which the assessee purchases finished goods (not from exempted unit) in the shape of batteries and sold to customers.

The business of the assessee at exempted unit at Parwanoo was manufacturing and assembling of mobile batteries.

During assessment proceedings it was submitted before the Ld AO that the assessee was maintaining separate books of accounts for each unit and also separate Profit & loss account and balance sheet was prepared which was submitted during assessment proceedings. Further ledger account of travelling expenses duly narrated of both units i.e exempted unit as well as non exempted unit was filed. There was no common expenses as well there was no link between the exempted unit & taxable unit.

That the Ld AO has made the disallowance on account of expenditure without bringing any factual evidence of discrepancy on record. The addition has been made more on a conjectural basis without proving any falsity in the claim made.

In support of his contention the appellant places reliance on the following judgments:

M/S Godrej Household Products Ltd Vs. ACIT ITA No 7369/Mum/2010 A/Y

2006-07.

"we are of the view that the basis of turnover adopted by the assessee to allocate the said expenses was more scientific and reasonable. On the other hand, the reallocation of the said expenses made by the AO on adhoc basis was not supported or substantiated by him and the same, in our opinion, cannot be accepted as a reasonable basis. . In the case of Consolidated Coffee Ltd. v. State of Karnataka (supra) cited by the ld. Counsel for the assessee, it was held by the Hon'ble supreme Court that when a bifurcation of expenses is not possible, some reasonable test will have to be adopted and that adoption of the method of apportioning on the basis of gross receipts could not be said to be a perverse method to apply. Keeping in view the decision of Hon'ble Supreme Court in the case of Consolidated Coffee Ltd. v. State of Karnataka (supra) and having regard to the facts of the case, we are of the view that the allocation of expenses made by the assessee between eligible business and non-eligible business for the purpose of computing deduction u/s 80IB/80IC of the Act was reasonable and there was no justifiable reason for the A.O. to disturb the same and make re-allocation on adhoc basis. We, therefore, delete the addition made by the A.O. by restricting the claim of the assessee for deduction u/s 80IB/80IC of the Act by reallocating the common indirect expenses and allow ground No. 1 & 2 of the assessee's appeal."

Under these circumstances it is prayed that the addition made by the Ld AO amounting to Rs 457931/- by reallocating the travelling expenses between exempted unit and non exempted unit may kindly be deleted.

I have considered the issue and also the submissions made by the appellant. The AO has made the disallowance on account of expenditure without bringing any factual evidence of discrepancy on record. The addition has been made more on a conjectural basis without proving any falsity in the claim made. Hence, the addition made by the AO amounting to Rs 457931 /- by reallocating the travelling expenses between exempted unit and non exempted unit is deleted. ***This ground of appeal is allowed."***

(2.1.1.)The present appeal before us has been filed by Revenue against the aforesaid impugned order dated 11.04.206 of Ld. CIT(A).

(3) The first ground of appeal relates to assessee's claim U/s 80IC of Income Tax Act, 1961 ("I.T. Act", for short). At the time of hearing before us, the Ld. Authorized Representative of the assessee submitted at the outset that the issue in dispute is

covered in assessee's favour by order dated 20.02.2019 of Hon'ble Supreme Court in the case of Pr. Commissioner of Income Tax, Shimla, vs. M/s Aarham Softronics in Civil Appeal Nos. 1784 of 2019 (Arising out of SLP (C) No. 23172 of 2018). The Ld. Sr. Departmental Representative ("DR", for short) appearing for Revenue fairly conceded that the issue in dispute is covered in favour of the assessee vide aforesaid order dated 20.02.2019 of Hon'ble Supreme Court. She also fairly drew our attention to the fact that the issue in dispute is also covered in assessee's favour by another order of Hon'ble Supreme Court of India, dated 20th August, 2018; in the case of Commissioner of Income Tax vs. M/s Classic Binding Industries in Civil Appeal Nos.- 7208 of 2018 wherein also identical issue has been decided in assessee's favour. Identical issue has also been decided in a separate appeal, in ITAT, Delhi; in favour of the assessee; vide order dated 07/03/2019 in the case of DCIT vs. Fine Chemicals in ITA no. 3610/Del/2016 pertaining to Assessment Year 2012-13; the relevant portion of which is reproduced as under:

> *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 23rd 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 7th day of January 2003 and ending before 1st day of April 2 12. clause (iii) has period on 24th day of December, 1997 and ending before the 1st day of April 2007.

There is no dispute regarding the fact thsat 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 categoric 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 '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[2] 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 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 been 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 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."

(3.1) In view of the aforesaid judicial precedents in the cases of Pr. Commissioner of Income Tax, Shimla, vs. M/s Aarham Softronics (supra), Commissioner of Income Tax vs. M/s Classic Binding Industries (supra) and DCIT vs. Fine Chemicals (supra); and further in view of the fact that both sides agree that the issue in dispute is covered in favour of the assessee by the aforesaid binding judicial precedents in the cases of Pr. Commissioner of Income Tax, Shimla vs. Aarham Softronics (supra) and Commissioner

of Income Tax Vs. Classic Binding Industries (supra), we also decide the issue in favour of the assessee and dismiss the first ground of appeal.

(3) The second ground of appeal relates to disallowance of Rs. 4,57,931/- out of Travel Expenses. The relevant portions of the orders of the AO and the Ld. CIT(A) have already been reproduced in foregoing paragraph no. (2) of this order. The Ld. Sr. DR appearing for Revenue supported the disallowance made by the AO and for this purpose she relied on the Assessment Order. She further highlighted that the allocation of travel expenses was made by the AO on the basis of respective turnover of the assessee's two units at Parwanoo and Delhi which was a reasonable basis of allocation. The Ld. Authorized Representative ("AR", for short) submitted that separate accounts were regularly maintained by the assessee for the two separate units at Parwanoo and Delhi respectively and expenses pertaining to the two units are accounted for on the basis of the actual expenses relatable to the specific unit(s). Since separate accounts are maintained for the two units, and expenses are allocated to the two units on the basis of actual expenses relatable to the specific unit(s); the disallowance made by the AO was correctly deleted by the Ld. CIT(A); the Ld. AR of the assessee contended. He further submitted that the AO had accepted the books of accounts for the two units and had allowed the expenses (other than Travel Expenses) of the Delhi Unit; but arbitrarily selected only Travel Expenses for disallowance. Without prejudice to this submission, the Ld. AR of the assessee contended, even if the aforesaid amount of Rs. 4,57,931/- is allocated to Parwanoo unit, the amount should have been considered for deduction in Parwanoo unit in accordance with law and that

the disallowance of the entire amount of Rs. 4,57,931/- was incorrect. We have heard both sides patiently. We have also considered the material available on record carefully. We find that the AO had failed to bring any specific instances to light wherein Travel Expenses of Parwanoo unit were shown by the assessee in the accounts of the Delhi unit. We further find that the assessee has maintained separate account for Parwanoo unit and Delhi unit which have been accepted by the AO except in the matter of Travel Expenses. We find that the AO has not provided any reasons for selectively interfering with the Travel Expenses as per assessee's accounts while accepting all the other expenses as per assessee's accounts. In these facts and circumstances, we are of the view that the AO was in error in making the aforesaid disallowance and that the disallowance made by the AO was arbitrary, unreasonable, unjust and without any sound basis. The Ld. DR has failed to make a case to warrant any interference by us with the order of the Ld. CIT(A) on this issue. Therefore, we dismiss the second ground of appeal.

(4) In the result, appeal filed by Revenue is dismissed.

Order pronounced in the Open Court on 19th day of March, 2019.

Sd/-	**Sd/-**
(DIVA SINGH)	**(ANADEE NATH MISSHRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 19.03.2019
(Pooja)

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	Direct of computer
Date on which the typed draft is placed before the dictating Member	8/3/19
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	19/3/19
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	