

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

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT & SHRI SANJAY GARG,
JUDICIAL MEMBER

आयकर अपील सं./ ITA Nos. 1032 to 1034/CHD/2018

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

The ACIT, Circle -5(1), Chandigarh	बनाम	Sh. Parvinder Singh Sahni, # 2082, Sector 44-C, Chandigarh
स्थायी लेखा सं./PAN NO: ACEPS9705L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Manjit Singh, CIT DR

राजस्व की ओर से/ Revenue by : Written submissions

सुनवाई की तारीख/Date of Hearing : 28.03.2019

उदघोषणा की तारीख/Date of Pronouncement : 05.04.2019

आदेश/Order

Per Bench:

The present appeals preferred by the Revenue are against the separate orders dated 07.05.2018 (ITA Nos. 1032 & 1033/Chd/2018) and dated 4.5.2018 (ITA No.1034/Chd/2018) of Commissioner of Income Tax (Appeals)-2, Chandigarh [hereinafter referred to as ‘CIT(A)’]

2. At the outset, the Ld. DR has submitted that the only issue involved in these appeals is as to whether the assessee is entitled to deduction at the rate of 100% of the eligible profits u/s 80IC of the Income-tax Act, 1961 (in short 'the Act') for another five years in the case of substantial expansion of unit. In other words, whether the year in which the substantial expansion is carried out is to be taken as initial assessment year

for the purpose of grant of deduction u/s 80IC of the Act. He has further submitted that the issue raised in these appeals has been earlier adjudicated by the Hon'ble H.P. High Court in the case of 'M/s Stovekraft India Vs. CIT' ITA No. 20 of 2015 dated 28.11.2017, wherein, the issue was decided in favour of the assessee. However, the Department on the issue of substantial expansion went in appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court decided the issue in favour of the Revenue by the decision dated 20.8.2018 in the group of cases with the lead case titled as 'CIT Vs. M/s Classic Binding Industries, in Civil Appeal No(s) 7208 of 2018 dated 20.08.2018.

The Ld. DR has further fairly admitted that the order of the Hon'ble Supreme Court in M/s Classic Binding Industries (supra) has been recalled in a Review Petition filed by the Petitioners and proposition of law laid down by the Hon'ble H.P. High Court in the case of 'M/s Stovekraft India Vs. CIT' ITA No. 20 of 2017 dated 28.11.2017 has been reaffirmed recently by the Hon'ble Supreme Court in the group of cases with the lead case in 'Pr. CIT Vs. M/s Aarham Softronics' in ITA No. 1784 of 2019 vide order dated 20.02.2019.

3. No one has appeared on behalf of the assessee. However, written submissions were filed by the assessee were considered.

4. We have gone through the order of the Hon'ble Apex Court in the case of 'Pr.CIT, Shimla Vs. M/s Aarham Softronics' (supra) and find that 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 initial 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.”

5. The Hon'ble Apex Court thereafter concluded 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.”

6. 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.

7. Since in the present cases the fact that the assessee had undertaken substantial expansion is not disputed, the assessee, we hold, is entitled to claim deduction @ 100% of its eligible profits even if it has already claimed deduction of its profits at the said rate for five years, in view of the law laid down by the Apex court in this regard in its decision in the case of M/s Aarham Softronics(supra). We, therefore, uphold the orders of the Ld.CIT(A) and dismiss the appeals of the Revenue.

In the result, the appeals of the Revenue are dismissed.

Order pronounced in the Open Court on 05.04.2019

Sd//-
(एन. के. सैनी / N.K. SAINI)
उपाध्यक्ष/ Vice President

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य /Judicial Member

Dated : 05/04 /2019

“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