

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**DIVISION BENCH, CHANDIGARH**

**श्री संजय गर्ग, न्यायिकसदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य**  
**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND**  
**Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**आयकर अपीलसं./ITA No.317 & 318/CHD/2018**

निर्धारणवर्ष / Assessment Year : 2010-11 & 2011-12

M/s Vardhman Industries, 55,HPSIDC Industrial Area, Baddi, Distt.Solan (H.P.)	बनाम	The ITO., Baddi (H.P.)
स्थायीलेखासं./PAN NO: AAEFV7858F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे/Assessee by : Ashish Goyal,C.A  
राजस्वकीओरसे/ Revenue by : Smt. Zeenia Handa Sr.DR

सुनवाईकीतारीख/Date of Hearing : 05.04.2019  
उदघोषणाकीतारीख/Date of Pronouncement : 05.04.2019

**आदेश/Order**

**Per Annapurna Gupta, Accountant Member:**

The captioned appeals preferred by the Assessee, were earlier decided vide order dated 13.11.2018 of this Tribunal. However, the said order dated 13.11.2018 has been recalled vide order of even date 05.04.2019 passed in M.A.No. 61 & 62/Chd/2019, filed by the assessee for the limited purpose of adjudicating Ground No.2 & 4(ii) in ITA No.317/Chd/2016 relating to A.Y 2010-11 and Ground No.2 in ITA No.318/Chd/2016 relating to A.Y 2011-12. The appeals for the said limited purpose were, therefore, heard afresh.

2. The aforesaid grounds read as under:

**ITA No.317/Chd/2016**

*“2.(i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law by upholding the*

*order of the AO restricting the deduction claimed .by the assessee u/s 80IC of the Act to Rs.31,39,394/-, i.e. 25% deduction, as against Rs. 1,25,57,577/-, i.e. 100% deduction claimed by the assessee.*

*(ii) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the said addition by misinterpreting the provisions of section 80IC of the Act regarding "substantial expansion".*

*4.(ii) The learned CIT(A) has erred, both on facts and in law in restricting the disallowance made by the AO to 25% of the deduction claimed by the assessee u/s 80IC of the Act on account of miscellaneous receipts of Rs.1,27,000/-, despite the fact that the assessee is eligible for 100% deduction u/s 80IC."*

### **ITA No.318/Chd/2016**

*2.(i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law by upholding order of the AO restricting the deduction claimed by the assessee u/s 80IC of the Act to Rs.44,00,333/-, i.e. 25% deduction, as against Rs.1,76,01,333/-, i.e. 100% deduction claimed by the assessee.*

*(ii) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the said addition by misinterpreting the provisions of section 80IC of the Act regarding "substantial expansion".*

3. At the outset, the Ld. Counsel for the assessee submitted that the issues involved in the ground no.2 of both the appeals was as to whether the assessee was 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. As for ground No.4(ii) in ITA no.317/Chd/2016,it was pointed out that the same related to claim of deduction u/s 80IC of the Act on Misc. Income of Rs.1,27,000/- which after being held as allowable , was restricted to 25% of the eligible profits ,despite substantial expansion having been undertaken.

4. He has further submitted that the issue raised in these grounds had 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.

5. The Ld. Counsel for the assessee has further submitted 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.

6. Ld.DR fairly admitted that the issue now stood covered in favour of the assessee entitling it to 100% deduction of its eligible profits on substantial expansion, vide the decision of the Hon'ble apex court in the case of M/s Aarham Softronics(supra).

7. 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 10assessment 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.”*

8. 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 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., 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 assessees are hereby allowed.”*

9. 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.

10. Since in the present case, 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 allow ground No.2 & 4(ii) raised by the assessee in ITA No.317 & Ground No.2 raised in ITA No. 318/Chd/2016. The remaining part of both the orders will remain unchanged.

11. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the Open Court on 05.04.2019.

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

Sd/-  
(अन्नपूर्णा गुप्ता/ ANNAPURNA GUPTA)  
लेखा सदस्य/ Accountant 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. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,  
सहायकपंजीकार/ Assistant Registrar