

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “एकल सदस्यीय”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH ‘SMC’ CHANDIGARH**

**श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JM**

**आयकर अपील सं./ ITA No. 1554/CHD/2018
निर्धारण वर्ष / Assessment Year : 2015-16**

M/s B.P.Lipeds, 216 NAC Shivalik Enclave, Village-Gurumajra, Mani Majra, Chandigarh.	बनाम VS	The DCIT, Circle, Parwanoo.
स्थायी लेखा सं./PAN No: AAJFB4564B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Yogesh Monga

राजस्व की ओर से/ Revenue by : Shri Shiv Swaroop Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 28.05.2019

उदघोषणा की तारीख/Date of Pronouncement : 03.06.2019

आदेश/ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 28.09.2018 of CIT(A), Shimla pertaining to 2015-16 assessment year on the following grounds :

1. *That the order of Learned C.I.T. (A) is bad and against the facts & Law.*
 2. *That the Learned C.I.T. (A) has wrongly upheld the order of Learned Assessing Officer disallowing deduction, amounting to Rs. 16,77,337/-, u/s 80IC, without appreciating the fact that the act allows deduction of 100% for first five years after substantial expansion. Further the Hon'ble Himachal Pradesh High Court in case of M/s Stovekraft India Vs CIT has held that deduction of 100% for first five years after substantial expansion is allowed.*
 3. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard and disposed off.*
2. Both the parties have been heard. The ld. AR relies upon the latest decision of the Apex Court in the case of PCIT Shimla Vs M/s Aarham Softronics & others in Civil Appeal No. 1784 of 2019 dated 20.02.2019 wherein the view taken in the case of CIT Vs M/s Classic Binding

Industries & Ors. in Civil Appeal No. 7208 and others of 2018 dated 20.08.2018 has been reviewed. The ld. Sr.DR argued that on position of law the assessee has a case, however, on facts whether the assessee has carried out substantial expansion, it is necessary to verify as though the claim has been made, however the AO and the CIT(A) have not given any finding thereon.

3. I have heard the rival submissions and perused the material available on record. Admittedly in the facts of the present case the assessee at the relevant point of time was engaged in manufacturing of printing and packaging material and mono cartons on which deduction u/s 80IC @ 100% of eligible profits from 2010-11 to 2014-15 assessment years i.e. for five years' period had been taken. The assessee claimed that in 2012-13 assessment year substantial expansion had been carried out and in the year under consideration, which is sixth year of deduction by the firm, claim of 100% deduction of eligible profits was made. The AO reduces it to 25% which position of law was confirmed by the CIT(A) relying upon the decision rendered in the case of CIT Vs M/s Classic Binding Industries & Ors. (supra). It is seen that the Apex Court thereafter in the case of PCIT Shimla Vs M/s Aarham Softronics & others (supra) settled the said controversy. For ready reference, we extract the relevant paras from the said decision 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 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% 2 Civil Appeal Nos. 4765-4766 of 2018 decided on May 18, 2018 24 exemption under Section 80-IB 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 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. 26 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.”

4. Accordingly, since the legal position on the issue is well settled and is in favour of the assessee subject to facts being demonstrated, accordingly, for enabling the AO to verify the facts, the issue is remanded back to the file

of the AO to allow necessary relief in accordance with law. Said order was pronounced in the Open Court at the time of hearing itself.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 03.06. 2019.

Sd/-

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/Judicial Member

“पूनम”

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