

आयकरअपीलीयअधिकरण“गुवाहाटी” न्यायपीठगुवाहाटीमें।
IN THE INCOME TAX APPELLATE TRIBUNAL “GUWAHATI” BENCH,
GUWAHATI

श्रीएस.एस. गोदारा, न्यायिकसदस्यएवंडॉए.एल.सैनील~~सा~~सदस्यक~~स~~समक्ष।

BEFORE SRI S.S. GODARA, JM AND DR. A.L. SAINI, AM

ITA No. 194/Gau/2019
(Assessment Year 2015-16)

Shri Lakshmi Ram Thakuria on behalf of prop. M/s Charu Engineering Industries, Thakurias Novelty, Mother Teresa Road, Nrengi, Guwahati-26	Vs.	ITO, Ward-3(2), Guwahati
(Appellant)	..	(Respondent)
स्थायीलसासं./PAN No. A CBPT9469P		

ITA No. 279/GAU/2018
(Assessment Year 2012-13)

M/s Charu Engineering Industries M/s Charu Innovation Department Industries, on behalf of Prop. Shri Lakshmi Ram Thakuria, Thakurias Novelty, Mother Teresa Road, Narengi, Guwahati-26	Vs.	The Dy. Commissioner of Income Tax, Circle-3, Guwahati AaykarBhawan, 7 th Floor, G.S. Road, Guwahati- 781005
(Appellant)	..	(Respondent)
स्थायीलसासं./PAN No. A CBPT9469P		

ITA No. 279& 280/G/18, 116/G/19& 193&194/G/19

ITA No. 280/GAU/2018

(Assessment Year 2010-11)

Shri Lakshmi Ram Thakuria on behalf of prop. M/s Charu Engineering Industries, Thakurias Novelty, Mother Teresa Road, Nrengi, Guwahati-26	Vs.	The Dy. Commissioner o Income Tax Officer, Circle-3, Guwahati, Aayakar Bhawan, 7 th Floor, G.S. Road, Guwahati-781005
(Appellant)	..	(Respondent)

ITA No. 116/GAU/2019

(Assessment Year 2007-08)

Shri Lakshmi Ram Thakuria Prop-Charu Engineering Industries Thakuria Novelty, Forest Gate, Guwahati, Pin- 781026	Vs.	The Income Tax Officer, Ward-3(2), Guwahati, Aayakar Bhawan, Christianbasti, Pin-781005 (Assam)
(Appellant)	..	(Respondent)

ITA No.193/Gau/2019

(Assessment Year 2006-07)

Shri Lakshmi Ram Thakuria Prop-Charu Engineering Industries Thakuria Novelty, Forest Gate, Guwahati, Pin- 781026	Vs.	The Income Tax Officer, Ward-3(2), Guwahati, Aayakar Bhawan, Christianbasti, Pin-781005 (Assam)
(Appellant)	..	(Respondent)

अपीलार्थीकीओरस / Appellant by	:	Shri D Sahu, AR
प्रत्यर्थीकीओरस / Respondent by	:	Shri Sandeep Sengupta, DR
सुनवाईकीतारीख / Date of hearing:		01.07.2019
घोषणाकीतारीख / Date of pronouncement :		09.2019

ORDER

PER BENCH:

These five appeals filed by the group assessees, pertaining to assessment years 2006-07, 2007-08, 2010-11, 2012-13 and 2015-16, are directed against the separate orders passed by the Commissioner of Income Tax- (Appeals)-2 [in short 'CIT(A)-2'], Guwahati, in appeal Nos., GUA-253/2013-14, GUA-254/2013-14, GUA-32/2016-17/83, GUA-594/2014-15/79 and 840978231300915 respectively, which in turn arise out of separate assessment order passed by the Assessing Officer (in short AO) u/s 143(3)/147 of the Income Tax Act, 1961.

2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in the assessee's appeal in ITA No. 279/GAU/2018, in the case of M/s Charu Engineering Industries & Charu Innovation Department Industries for AY 2012-13, is taken as the lead case for deciding the above appeals *en masse*.

3. Grounds of appeals raised by the assessee as per its lead case in ITA No. 279/GAU/2018 are as follows: -

“(i). For that the ld. Commissioner of Income Tax (Appeals), Guwahati, is not legally justified disallowing 100% of the profits and gains derived out of the manufacture activities during the assessment year 2012-13 holding that the assessee has already availed the exemption u/s 80IB and 10C in the earlier periods prior to Assessment Year 2010-11 for 10 years. Hence, the assessee is not eligible u/s 80IE after its expansion/modernization in its plant & machineries by further investing 133 % of its initial capital outlay in plant & machineries in the Financial Year 2008-09. The Id.

Commissioner, of Income Tax has wrongly invoked the provisions of Sec. 801E(5) of the Income Tax Act, 1961 which is not applicable in this present case. It is submitted that provisions of sec. 801E(5) is not applicable for those units undertaken substantial expansion and modernization. That in case of Charu Innovation Department and Industries, the AO disallowed the benefit allowed u/s 801E due to non- availability of eligibility documents for inspection by the inspector of Income Tax, Guwahati. The Ld. Commissioner of Income Tax (Appeal) failed to appreciate the contentions of the appellant and disallowed the substantial benefit allowed under law on the grounds of procedural lapses by the Assessee's end. The Ld. CIT (A) is legally not justified rejecting the substantial benefit allowed under the law. The impugned Order-in-Appeal is liable to be set aside in the ends of justice.

(II) For that the Id. Commissioner of Income Tax (Appeals)-2, Guwahati, failed to appreciate the contentions of the petitioner on wrong interpretation of the provisions of Sec. 801E of the I T Act, 1961. The stand point of the Ld. DCIT, Circle -3, Guwahati, is not legally justified disallowing 100% of the profits and gains derived out of the manufacture activities during the assessment year 2010-11 disallowing exemption allowable to the appellant in terms of NEIIP, 2007 as declared by the Central Govt, on the ground that the petitioner has already exempted u/s 801B and 10C of the Act periods prior to Assessment Year 2010-11 for 10 years.

(III) For that the Ld. Commissioner (Appeals)-2, Guwahati, failed to consider the conditions of North East Industrial Investment Policy, 2007, (NEIIP, 2007) as declared by the Central Govt. The Id. Appellate Authority failed to appreciate the legislative intention of the lawmakers and directly disallowed the exemption allowable to the appellant u/s. Sec. 801E of the Income Tax Act, 1961 simply referring the provisions of Sec. 801E(5) of the IT Act, 1961 isolate without referring other provisions and Industrial Policy of the Central Govt. The contention of the Commissioner of IT (Appeals) -2, is against the Legislative intention of the lawmakers and is liable to be set aside in the ends of justice.

(IV) For that the Id. Commissioner of Income Tax (Appeals)-2, failed to interpret the provisions of Sec. 801E(5) inasmuch as a new Section 801E has been inserted to provide tax benefits and it applies to any undertaking which is located in any of the North Eastern States including the state of Sikkim during the period beginning on 1st April, 2007 and ending on 31st March, 2017 and the benefit is applicable to existing undertakings undergoing substantial expansion during the prescribed period as mentioned in the said section. The impugned Order-in-Appeal is not sustainable in law as the impugned Assessment Order was not in accordance with the decision of the Hon'ble Apex Court decided in Civil Appeal No. 4765-4766 of 2018 in the case of Mahabir Industries Vs. Principal Commissioner of Income Tax, Shimla, wherein the law has been settled that appellants are allowed exemption u/s. 801C of the IT Act, 1961 from the date of undergoing substantial expansion for a period of 10 years. In the present case in hand the Id. Commissioner Appeals has not considered the law points

applying has judicious mind. Hence, the demand for the AY 2012-13 is not sustainable in law and is liable to be set aside in the ends of justice.

(V) For that the Ld. Commissioner (Appeals) committed an error in interpreting the provisions of sub-sec. 5 of Sec. 801E which supersedes the other conditions of Sec. 801E only for those undertakings availed benefits under the NEIP, 2007 if the said undertaking availed benefit under Sec. 801E only and not any other previous policies as declared by the Central Govt. The interpretation of sub-sec. 5 of Sec. 801E cannot be interpreted isolate without considering the NEIP, 2007. The interpretation of the Id. Commissioner Appeals is not sustainable in law and the demand raised for the A.Y 2012-13 is liable to be set aside in the ends of justice.

(VI) For that the impugned Order-in-Appeal has been passed by the Appellate authority without giving the appellant an opportunity of personal hearing and order is passed in his absence and thereby causing violation of principles of natural justice. The impugned Order-in-Appeal is not sustainable on this ground and liable to be set aside in the ends of justice.

(VII). For that the Ld. Commissioner Appeals fail to consider of brief facts that the Assessing Officer as allow the exemption for the Assessment Year 2015-16 on the basic of the document available on record and allow the exemption on section 801E of the Income Tax Act, 1961 being on eligible in the Industry under the Industrial Policy 2007. However the Ld. Assessing Officer has not considered the eligibility of unit on the grounds of non availability of the relevant document which is not sustainable in law. This impugned Order in Appeal is not sustainable in law and is liable to be set aside in the ends of justice.

4.The facts of the case which can be stated quite shortly are as follows: The assessee filed its return of income for A.Y.2012-13 declaring total income at Rs. 18,29,380/-, after claiming deduction under chapter VI-A of Rs.2,13,21,284/-. During the year, the assessee is having two proprietorship concerns, namely, M/s Charu Engineering Industries and M/s Charu Innovation Department and Industries. M/s Charu Engineering Industries deals in manufacturing of UPVC Pipes and fittings and M/s Charu Innovation Department and Industries deals with manufacturing of Polyethylene Water Storage Tank and Other plastic articles such as Dustbin, Traffic Signal Point add Injection Moulded Item, Moulded Filter. In the return of income filed dated 29.09.2012, assessee has

claimed deduction under Chapter VI-A of Rs 2,13,21,284/-. In the computation of total income it is noted that claim of deduction under Chapter VI-A includes claim of deduction u/s 80-IE in the case of M/s Charu Engineering Industries at Rs.1,25,60,390/- and claim of deduction u/s 80-IE in the case of M/s Charu Innovation Department and Industries at Rs. 87,60,893/-. Assessee has furnished copy of Tax Audit Report u/s 44AB in the case off both, M/s Charu Engineering Industries and M/s Charu Innovation Department and Industries, along with audited accounts. However, AO noticed that assessee has not furnished audit reports u/s 80-IC/80-IE in Form No. 10CCB for both proprietary concerns.

5. The AO noticed that M/s Charu Engineering Industries commenced commercial production w.e.f 26.12.1994 and has already exhausted the claim of deduction u/s 80-IB of the Act in the earlier assessment years. Thereafter, on the premise of having infused additional capital investment by more than 25% of the initial investment in Plant & Machinery of Rs. 22,51,982/- in financial year 2008-09, assessee again claimed deduction under section 80-IE of the Income Tax Act, 1961 from assessment year 2009-10 onwards. The assessee is claiming deduction under section 80-IE on the pretext that it has made a 'substantial expansion' as defined in clause (iii) of sub-section (7) of section 80-IE of the Act. In doing so, assessee has failed to understand a very important condition given in sub section (5) of section 80-IE of the Act. The Sub-section (5) of section 80-IE lays down the condition that no deduction shall be allowed to any undertaking under section 80-IE, where the total period of deduction inclusive of the period of deduction under section 80-IE, or under section 80-IC or section 80-IB or section 10-C, as the case may be, exceeds ten assessment years.

In the light of the above provisions, the AO noted that in the case of M/s Charu Engineering Industries, a proprietary concern of the assessee undertaking has already claimed deduction u/s 80-IB of the Act for the earlier assessment years

for full 10 (Ten) assessment years. M/s Charu Engineering Industries had already exhausted the maximum limit of assessment years in which deduction u/s 80IE/80IC/801B/10C, as the case may be, can be claimed and allowed, if eligible. Therefore, M/s Charu Engineering Industries, having exhausted its claim of tax exemption/deduction, is no longer eligible for claim of deduction u/s 80-IE of the Income Tax Act, 1961 for the assessment year 2012-13, under consideration. Hence, assessee's claim of deduction u/s 80-IE of the Act, at Rs.1,25,60,390/-, for its proprietary concern, M/s Charu Engineering Industries, was disallowed.

6. With regards to assessee`s claim of deduction u/s 80-IE of the Act, for another proprietary concern i.e. M/s Charu Innovation Department and Industries, assessee was asked to furnish detailed justification regarding eligibility for deduction u/s 80-IE of the Act. In response, during the assessment proceedings, the assessee furnished written submission dated 18.12.2014, which reads as follows:

"Charu Innovation Department & Industries, an SSI unit for manufacturing of Polyethylene Water Storage Tank and other plastics moulded articles has newly set-up comprising New Plant & Machinery, new building, new manpower, new electricity with new concept with effect from 23.11.2011 valid to 22.11.2021 as per Eligibility Certificate/permanent Registration Certificate No. 1801291400 issued by the District Industries & Commerce Centre, Government of Assam 'under the NEIIP-2007 for exemption of income tax as per the said policy.

The NEIIP-2007 policy stated that all new units as well as existing units which go in for substantial expansion/modernization, unless otherwise specified and which commercial production within the 10 year period from the date of notification of NEIIP-2007 will be eligible for incentives for a period of ten years from the date of commencement of commercial production.

Here, refer the incentive clause under the NEIIP-2007 Policy dated New Delhi the 1st April 2007 issued from file No. 10(3)2007-DBE-II/NER, Government of India, Ministry of Commerce & Industry, Department of Industrial Policy and Promotion, incentives Clause No (VI) of the policy stated hereunder:

"100% Income Tax Exemption will continue under NEIIP-2007"

And also refer the said Policy Serial No. 4 for wherein a directives had been, issued to all concern Ministries/Department of the Government of India to amend their, respective Act/Rules/Notification etc and issue necessary instruction giving effect to these decisions"

The factory/production unit of M/s Charu Innovation Department & industries located at Thakuria Industrial Area, Chandrapur, Guwahati, had also been visited by the inspector of Income Tax 04.03.2015. The Inspector's Report dated 04.03.2015 had also been examined by AO. As per relevant report, the unit has a pucca structure but the concerned persons present on the site were unable to tell ownership status of land & building and extent of area of the unit/premises. The Inspector's Report mentions 3 (Three) principal machines, apart from the transformer. The production process was also explained by the concerned person present at the site. However, copy of DIC Certificate, Factory License, Land Documents etc were not available at the production site. These important documents were also not furnished by the assessee subsequently.

The assessee has failed to prove with necessary evidences the set-up of a new unit by the name of M/s Charu Innovation & industries. Such documents or evidences like copy of DIC Certificate, Factory License, Land Documents, ASEB permission, etc has not been produced. The assessee and its group has other proprietary concerns and many sister concerns. In the absence of any concrete evidence, it is not possible to establish as to whether the factory unit shown to the Inspector is of M/s Charu Innovation & Industries or common factory area or of any other group concerns. The assessee has failed to prove with evidence the actual manufacturing or production of 'eligible article or thing' during the relevant previous year under consideration. The assessee has also not furnished any details and evidences VAT/Excise Duty/Sales Tax, etc deducted or paid by the unit. The assessee has also failed to furnish required audit report u/s 80-IE in Form 10 CCB

as per sub-section (7) of section 80-IA of the Act. The assessee therefore failed to satisfy condition laid down in sub-section (6) of section 80-IE of the Income Tax Act, 1961. Therefore, assessee's claim of deduction u/s 80-IE of the Act amounting to Rs.87,60,893/- for its proprietary concern, namely, M/s Charu Innovation & Industries was disallowed.

7. Aggrieved, by the order of AO, the assessee carried the matter in appeal before the learned CIT(A), who has confirmed the disallowance made by AO under section 80-IE of the Act.

8. Ld Counsel, for the assessee relied on the submissions made before the authorities below.

9. On the other hand, ld DR for the Revenue has submitted before us written submissions which are reproduced below:

“The brief and undisputed facts in the instant appeals are that the assessee had set up its proprietorship M/s. Charu Engineering Industries on 26.12.1994[A.Y. 1995-96] and subsequently undergone 1st and 2nd substantial expansions on 10.12.2001 [A. Y .2002-03] and on 02.05.2008 [A. Y .2009-10] respectively. A second proprietorship concern, M/s. Charu Engineering Innovation Department & Industries was further set up as a new industrial undertaking on 23.11.2011 [A. Y .2012-13]. On the above facts, it was held by the AO and CIT(A) that the period of deduction available for a span of 10yrs starting from the initial assessment year, being A Y .1995-96 was exhausted in A.Y.2004-05 and hence the assessee was ineligible for further deductions U/s.80IC/80IE beyond that period. The assessee on the other hand claimed further deduction of 10yrs from the date of 1st substantial expansion i.e. 10.12.2001 [A. Y .2002-03] U/s.80IC and was also under the impression that it would be eligible for deduction U/s.80IE for another span of 10yrs following its 2nd substantial expansion on 02.05.2008[A.Y.2009-10).

Before proceeding further, it is relevant to mention that the Hon'ble Apex Court judgment in M/s Dilip Kr. And company & Others lays down the rules of interpretation of a tax exemption provision / notification, hence the said judgment should be followed and deduction claimed by the assessee on account of 'substantial expansion' should be denied.

10. We have heard both the parties and perused the material available on record. The solitary issue before us to examine the allowability of deduction with respect to M/s. Charu Engineering Industries, Rs.1,25,60,390/- and amounting to Rs. 87,60,893/- for its proprietary concern, namely, M/s Charu Innovation & Industries. We note that the moot question involved qua the claim of the deduction under section 80IE of the Act by the assessee with respect to the above undertaking is as to whether an assessee who had earlier claimed deduction under sections 801B and also under section 10C of the Act can still claim the deduction under section 80IE beyond the 10 years? The undisputed fact is that the assessee is proprietor of an industrial undertaking namely, M/s Charu engineering Industries and had commenced its industrial production w.e.f. 26/12/1994. The assessee accordingly claimed deduction under section 10C and 801B in the earlier assessment years. The said industrial undertaking of the assessee had further claimed to have undergone 'substantial expansion' during the period relevant to AY 2009-10 and therefore it is the contention of the assessee. The assessee had accordingly claimed deduction under section 80IE of the Act for the above assessment year of Rs.1,25,60,390/-, while treating the AY 2009-10 to be the 'initial assessment year' for the purpose of claim of deduction under section 80IE of the Act. It is not in dispute that the assessee had claimed deductions under section 801B and also under section 10C for and in respect of earlier years based on the commencement of its industrial undertaking w.e.f. 26/12/1994 (i.e. FY 1994-95, and corresponding assessment year 1995-96). The issue arises as to whether an assessee who had earlier claimed deduction under sections 801B and also under section 10C of the Act, would still be entitled to deduction under section 80IE of the Act on account of any 'substantial expansion', even though such an assessee had claimed deduction under section 801B/ 10C for ten years prior to the year in which substantial expansion has taken place. For the above assessment year, the Ld. AOs has disallowed the claims of deduction of the

Assessee on the grounds which, inter-alia, include the fact that the Assessee is not entitled to the deduction beyond the prescribed cap of 10 years and, in the case of the Assessee, more so when the assessee had already availed deduction under section 80IB/10C earlier. We note that the contention of the assessee, before the Ld AO was that since its industrial undertaking had undergone substantial expansion during AY 2009-10 and therefore the said AY 2009-10 should be taken as the first year for claim of deduction under section 80IE of the Act.

However, ld DR submitted before us that assessee cannot claim deduction for more than 10 Years, in view of the bar/capping provided under section 80IE of the Act. The ld DR further submitted before us that the assessee shall not be entitled to claim deduction u/s 80IC and 80IE taken together for more than ten assessment years from the initial assessment year howsoever whether by way of commencement of the undertaking or the substantial expansion thereof taken together. Any other interpretation of this incentive section would only render the provisions of section 80IE(5) to be otiose. On the other hand, the contention of the Counsel is that the assessee was the proprietor of the above undertaking, which was newly set up during the above assessment year w.e.f. 23/11/2011 and had new plant and machinery, new building, new manpower, new electricity with new concept.

11. First of all let us examine the old industrial policy issued by the Government of India, dated 24.12.1997, which is reproduced below for ready reference:

New Industrial Policy and Other Concession in the North Eastern Region.

No. EA/1/2/96-IPO
Government of India
Ministry of Industry
Department of Industrial Policy & Promotion.

24th December, 1997 .

OFFICE MEMORANDUM

In view of the continuing backwardness of North Eastern Region, the need for a new and synergetic incentive package was widely felt to stimulate development of industries (Hon'ble Prime Minister made a statement at Guwahati on October 27,1996 that New initiatives would be announced for the industrial development of the North Eastern Region). Expert groups/committees were constituted by the Ministry of Industry and the Planning Commission to concretise the initiatives.

Subsequently, the Inter Departmental Meetings were held under the Chairmanship of Member Secretary (Planning Commission) to consider the recommendations and finalise the proposals. Based on these proposal government approved the New Industrial Policy and other concession in the North Eastern Region which inter alia envisage the following :

- A. Development of Industrial Infrastructure:
1. Currently the funding pattern for the Growth centres envisages a central Assistance of Rs.10 crores for each centre and balance amount to be raised by the State Government. Government has approved that entire expenditure on the growth centre would be as Central Assistance subject to a ceiling of Rs.15 crores.
 2. In respect of IID centres, the funding pattern would be changed from 2:3 between GOI and SIDBI to 4:1 and the GOI would be a grant.

B. Transport Subsidy Scheme:

The transport subsidy scheme will be extended further in so far as N.E. States are concerned for period of another 7 years i.e. upto 31st March 2007 being coterminous with the Tenth Five year Plan on the same terms & condition as are applicable now.

C. Fiscal Incentives to New Industrial Units and their Substantial Expansion:

- i. Government has approved for converting the Growth Centres and IIDCs into a total tax free zones for the next 10 years. All industrial activity in these zones would be free from Income Tax, Excise for a period of 10 years from the commencement of production. State Government would be requested to grant exemption in respect of Sales Tax and Municipal Tax.
- ii. Industries located in the Growth Centres would also be given Capital Investment subsidy at the rate of 15% of their investment in plants & machineries subject to a maximum ceiling of Rs.30 lakhs.

- iv. The Commercial Banks and the North Eastern Development Financial Corporation (NEDFI) will have dedicated branches/counters to process applications for term loans and working capital in these centres. While sanctioning assistance NEDFI and Commercial Banks would take a liberal view of the debt: equity ratio.
- v. An interest subsidy of 3% on the working capital loans would be provided for a period of ten years after the commercial production. The working capital requirements would be worked out as per the Nayak committee.
- vi. Similar benefit would also be extended to the new industrial units or their substantial expansion other Growth Centres of Idiocies or Industrial Estates/ parks/ Export Promotion zones set up by the States in the N.E. Region. New Industrial units or their substantial expansion in the specified industries (as at Annexure-A) located outside these growth centres and other identified locations would also be eligible for the similar fiscal incentives.

D. Relaxation of PMRY Norms:

The PMRY would be extended in scope to cover areas of Horticulture, Piggery, Poultry, Fishing, Small tea gardens etc. so as to cover all economically viable activities. PMTY would have a family income ceiling of Rs.40, 000 per annum for each beneficiary along with his/her spouse and upper age limit will be relaxed 40 years. Projects costing upto Rs.2 lakhs in other than business sectors will be eligible for assistance. No collateral will be insisted for projects costing upto Rs.1 lakhs. Group financing upto Rs.5 lakhs will be eligible. Scheme will have a subsidy component @ 15% with the upper ceiling of Rs.15, 000. The margin money may vary from 5 % to 12.5 % of the project cost to make the subsidy and margin money at 20 % of the project cost. PMRY would continue to have Entrepreneurship Training component as per the existing rate.

E. Other Incentives Proposed:

- i. A comprehensive insurance scheme for industrial units in the North East will be designed in consultation with General Insurance Corporation of India Ltd and 100 % premium for a period of 10 years would be subsidised by Central Government.
- ii. A one time grant of Rs.20 crores will be provided to the North East Development Financial corporation Ltd. (NEDFi) by the Central Government through NEC to fund techno economic studies for industries and infrastructures best suited to this region.
- iii. State Government may consider setting up of a "Debt Purchase Window" by the NEDFI, which buys the debt of the manufacturing units particularly in respect of the supplies made to the government departments so as to reduce the problem of blocking of funds for these units.
- iv. For development of markets in North East possibilities of exports of products of N.E. to the neighbouring countries particularly Bangladesh , Myanmar and Bhutan would be explored.
- v. It may be considered to provide assistance for restructuring State PSUs from National Renewal Fund.
- vi. The community pattern of land holding in large parts of N.E. Region does not lend itself to providing collateral security as required under the conventional bank lending. RBI has constituted a committee to look into this issue. An appropriate system of "gurantee" will be evolved for N.E. Region.

F. Procedure for Release o Assistance under the New Initiatives:

It is approved that the transport subsidy budget may be released by a designated agency on the basis of the recommended of the SLC. It is proposed that NEDFi may be designated as the nodal agency for release of transport subsidy in N.E. States. NEDFi may be paid administrative expenses for this service, which may be decided in consultation with IDBI.

G. Development Of Village & Small Industries (VSI) Sector:

Weaver's Service Centres (WSC) in N.E. Region and Indian Institute of handloom Technology at Guwahati would be suitable strengthened to provide technology and training support to the weavers. National Handloom Development Corporation will give priority in supply of hank yarn to the N.E. Region. All the four varieties of silk would be covered under the Mill Gate Price Scheme. Priority would be given to the N.E. Region in scheme of setting up market complexes and permanent exhibition facilities. A new design Centre for development of handicraft would be set up in N.E. Region. To upgrade the skill of artisan advance training programme through master-craftsman would be organised. New emporia will be set up and financial assistance for renovation of existing emporia would be provided. The Central Silk Board will give priority to N.E. Region in implementation of its schemes.

Ministry of finance etc. are requested to amend rules/notifications etc and issue necessary instructions for giving effect to these decisions.

Ashok Kumar,
Joint Secretary.

12. Let us also examine the new industrial policy issued by the Government of India, dated 01.04.2007, which is reproduced below for ready reference:

**File No.10 (3)/2007-DBA-II/NER
Government of India
Ministry of Commerce and Industry
Department of Industrial Policy and Promotion

New Delhi dated the 1st April, 2007.

OFFICE MEMORANDUM

Subject: North East Industrial and Investment Promotion Policy (NEIIPP), 2007

The Government has approved a package of fiscal incentives and other concessions for the North East Region namely the 'North East Industrial and Investment Promotion Policy (NEIIPP), 2007', effective from 1.4.2007, which, inter-alia, envisages the following:

(i) Coverage:

The North East Industrial Policy (NEIP), 1997 announced on 24.12.1997 covered the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. Under NEIIPP, 2007, Sikkim will also be included. Consequently, the 'New Industrial Policy and other concessions for the State of Sikkim' announced vide O.M. No.14(2)/2002-SPS dated 23.12.2002 and the Schemes thereunder i.e. Central Capital Investment Subsidy Scheme, 2002, Central Interest Subsidy Scheme, 2002 and Central Comprehensive Insurance Scheme, 2002, notified vide Notifications No. F.No.14(2)/2002-SPS dated the 24.12.2002 will be discontinued from 1.4.2007.

(ii) Duration:

All new units as well as existing units which go in for substantial expansion, unless otherwise specified and which commence commercial production within the 10 year period from the date of notification of NEIIPP, 2007 will be eligible for incentives for a period of ten years from the date of commencement of commercial production.

(iii) Neutrality of location:

Incentives will be available to all industrial units, new as well as existing units on their substantial expansion, located anywhere in the North Eastern Region. Consequently, the distinction between 'thrust' and 'non-thrust' industries made in NEIP, 1997 will be discontinued from 1.4.2007.

(iv) Substantial Expansion:

Incentives on substantial expansion will be given to units effecting 'an increase by not less than 25% in the value of fixed capital investment in plant and machinery for the purpose of expansion of capacity/modernization and diversification', as against an increase by 33½ % which was prescribed in NEIP, 1997.

(v) Excise Duty Exemption:

100% Excise Duty exemption will be continued, on finished products made in the North Eastern Region, as was available under NEIP, 1997. However, in cases, where the CENVAT paid on the raw materials and intermediate products going into the production of finished products (other than the products which are otherwise exempt or subject to nil rate of duty) is higher than the excise duties payable on the finished products, ways and means to refund such overflow of CENVAT credit will be separately notified by the Ministry of Finance.

(vi) Income Tax Exemption:

100% Income Tax exemption will continue under NEIIPP, 2007 as was available under NEIP, 1997.

(vii) Capital Investment Subsidy:

Capital Investment Subsidy will be enhanced from 15% of the investment in plant and machinery to 30% and the limit for automatic approval of subsidy at this rate will be Rs.1.5 crores per unit, as against Rs.30 lakhs as was available under NEIP, 1997. Such subsidy will be applicable to units in the private sector, joint sector, cooperative sector as well as the units set up by the State Governments of the North Eastern Region. For grant of Capital Investment Subsidy higher than Rs.1.5 crore but upto a maximum of Rs.30 crores, there will be an Empowered Committee Chaired by Secretary, Department of Industrial Policy & Promotion with Secretaries of Department of Development of North Eastern Region (DONER), Expenditure, Representative of Planning Commission and Secretary of the concerned Ministries of the Government of India dealing with the subject matter of that industry as its members as also the concerned Chief Secretary/Secretary (Industry) of the North Eastern State where the claiming unit is to be located.

Proposals which are eligible for a subsidy higher than Rs.30 crores, will be placed by Department of Industrial Policy and Promotion before the Union Cabinet for its consideration and approval.

(viii) Interest Subsidy:

Interest Subsidy will be made available @ 3% on working capital loan under NEIIPP, 2007 as was available under NEIP, 1997.

(ix) Comprehensive Insurance:

New industrial units as well as the existing units on their substantial expansion will be eligible for reimbursement of 100% insurance premium.

(x) Negative List:

The following industries will not be eligible for benefits under NEIIPP, 2007:-

- (i) All goods falling under Chapter 24 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which pertains to tobacco and manufactured tobacco substitutes.
- (ii) Pan Masala as covered under Chapter 21 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).
- (iii) Plastic carry bags of less than 20 microns as specified by Ministry of Environment and Forests Notification No.S.O. 705(E) dated 02.09.1999 and S.O.698 (E) dated 17.6.2003.
- (iv) Goods falling under Chapter 27 of the First Schedule to the Central Excise tariff Act, 1985 (5 of 1986) produced by petroleum oil or gas refineries.

(xi) Incentives for Service/other Sector Industries

Incentives under NEIIPP, 2007 will be applicable to the following service sector activities/industries:-

I. Service Sector:

- (i) Hotels (not below Two Star category), adventure and leisure sports including ropeways ;
- (ii) Medical and health services in the nature of nursing homes with a minimum capacity of 25 beds and old-age homes ;
- (iii) Vocational training institutes such as institutes for hotel management, catering and food crafts, entrepreneurship development, nursing and para-medical, civil aviation related training, fashion, design and industrial training.

A number of tax concessions under the existing provisions of Section 10A and 10AA of the Income Tax Act are already available to the IT sector. However, one of the important impediments to the development of Software Technology Parks or IT related SEZs in the North Eastern Region is the non-availability of trained human resources in the North Eastern Region. Accordingly, tax benefits as is availed under Section 80 IC of the Income Tax Act would be extended to IT related training centers and IT hardware units.

II. Incentives for Bio-technology industry:

The biotechnology industry will be eligible for benefits under NEIIPP, 2007 as applicable to other industries.

III. Incentives for Power Generating Industries:

Power Generating plants will continue to get incentives as governed by the provisions of Section 81A of the Income tax Act. In addition, power generating plants upto 10 MW based on both conventional and non-conventional sources will also be eligible for capital investment subsidy, interest subsidy and comprehensive insurance as applicable under NEIIPP, 2007.

(xii) Establishment of a monitoring mechanism for implementation of the NEIIPP, 2007:

In order to establish a monitoring mechanism for implementation of NEIIPP, 2007, a 'High Level Committee' / an 'Advisory Committee' under the Chairmanship of Secretary, Department of Industrial Policy and Promotion and comprising Secretaries of the Ministries/Departments of Revenue, Department of Development of North Eastern Region (DONER), Banking and Insurance, Representative of Planning Commission, CMD, NEDFi as well as major stakeholders including the industry associations of the North Eastern region would be constituted. In addition, an 'Oversight Committee' will be constituted under the Chairmanship of the Union Commerce and Industry Minister with Industry Ministers of NE States as its members.

(xiii) Value Addition

In order to ensure genuine industrial activities in the North Eastern Region, benefits under NEIIPP, 2007 will not be admissible to goods in respect of which only peripheral activities like preservation during storage, cleaning operations, packing, re-packing, labelling or re-labelling, sorting, alteration of retail sale price etc. take place.

(xiv) Transport Subsidy Scheme

The Transport Subsidy Scheme would continue beyond 31.3.2007, on the same terms and conditions. However, an early evaluation of the scheme will be carried out with a view to introducing necessary safeguards to prevent possible leakages and misuse.

(xv) Nodal agency

The North East Industrial Development Finance Corporation (NEDFi) will continue to act as the nodal agency for disbursement of subsidies under NEIIPP, 2007.

2. The 'New Industrial Policy and other concession in the North Eastern Region' announced vide O.M. No.EA/1/2/96-IPD, dated 24.12.1997 (NEIP, 1997) will cease to operate with effect from 1.4.2007. Industrial Units which have commenced commercial production on or before 31.3.2007 will continue to get benefits/incentives under NEIP, 1997.

3. Government reserves the right to modify any part of the Policy in public interest.

4. All concerned Ministries/Departments of the Government of India are requested to amend their respective Acts/rules/notifications etc. and issue necessary instructions for giving effect to these decisions.

(N.N. Prasad)

Joint Secretary to the Government of India

Copy for information and necessary action to:

- (i) All Ministries/Departments of the Government of India and Planning Commission.
- (ii) Chief Secretaries of the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura and Sikkim.
- (iii) Secretary (Industries) of the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura and Sikkim
- (iv) The North East Industrial Development Finance Corporation (NEDFi), Guwahati.

Copy also to:

- (i) Cabinet Secretariat
- (ii) PMO

13. We note that assessee under consideration falls in the ambit of new industrial police of Government of India dated 01.04.2007, mentioned above. We note that new industrial policy is applicable to all the new units as well as existing units which go in for substantial expansion and commence commercial production within 10 years period from the date of notification of NEIIPP,2007. That is, the

incentives will be available to all industrial units, new as well as existing units on their 'substantial expansion' located anywhere in the North Eastern Region. The term 'substantial expansion, has also been defined by the new Industrial Policy as follows:

(iv) Substantial Expansion: Incentives on substantial expansion will be given to units effecting 'an increase by not less than 25% in the value of fixed capital investment in plant and machinery for the purpose of expansion of capacity/modernization and diversification, as against an increase by 33.5% which was prescribed in NEIP, 1997"

We note that assessee submitted before us the permanent registration certificate of units which is place at page 24 to 25 of paper book. The assessee submitted Schedule of fixed assets, which shows substantial expansion (vide pb 60). The assessee also submitted before us the eligibility certificate for modernisation dated 05.11.2009, which is issued by Directorate of Industries & Commerce, Assam, Guwahati-21 (vide pb 61to 62). These documents clearly show that assessee is entitled to claim deduction under section 80IB/80-IE of the Act.

14. We note that the assessee has two industrial unit Viz: – M/s Charu Engineering Industries, an existing industrial undertaking established and commenced its commercial production w.e.f 26.12.1994 in terms of the erstwhile North East Industrial Policy, 1997. The assessee availed exemption as per the Industrial Policy, 1997. The assessee unit subsequently undergone substantial expansion in terms of North East Industrial & Investment Promotion Policy, 2007 (NEIIP, 2007) and commenced its commercial production w.e.f. 02.05.2008 after undergoing substantial expansion in its plant & machinery. Copy of the North East Industrial Policy, 1997 and NEIIP, 2007 is enclosed in paper book page 29. The assessee availed benefit of Income Tax exemption in terms of Sec. 80-IA

and 80IB and 10C in the earlier assessment years and availed benefit of exemption under Chapter VIA of the Income Tax Act 1961 and after undergoing substantial expansion of its existing plant and machinery and production capacity by investing more than 25 % of its existing capital investment in terms of NEIIP,2007 in the Financial Year 2008-09 . The other one M/s. Charu Innovation Department and Industries, a new Industrial Undertaking, established in the year 2011-12 and commenced its commercial production w.e.f 23.11.2011, engaged in production of polyethylene Water Storage Tank and other plastic articles such as, Dustbin, Traffic Signal Point and injunction moulded Item and moulded filter etc. We note that after implementation of North-East Industries Investment Promotion Policy (NEIIP), 2007, the Assessee undergone modernization of its unit M/s. Charu Engineering Industries, in the year 2008, w.e.f 02.05.2008 by additional capital outlay in plant & machinery amounting to Rs. 29,85,611/- in comparison to the previous capital outlay in plant & machinery (i.e prior to the expansion/modernization) Rs. 22,51,982/-, an increase in capital outlay by 133 % of the initial capital outlay in the financial year 2008-09. Therefore, the Assessee is eligible for income tax exemption from the Financial year 2008-09 and onwards due to modernization in its plant & machinery by infusing additional capital investment by more than 25 % of the initial investment in plant & machinery as envisaged in clause (iii) of sub-sec. 7 of Sec. 80-IE of the Income Tax Act, 1961, effective from 01.04.2008. We note that the purpose of section 80IE 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. Hence, we note that assessee is entitled to claim deduction under section 80IE of the Act. For that we rely on the Judgment of the Hon`ble Supreme Court in the case of AARHAM SOFTRONICS 412 ITR 623 (SC), wherein it was held as follows:

"Section 80-IC(2) of the Income-tax Act, 1961 applies to an undertaking or enterprise which has, *inter alia*, begun or begins to manufacture or produce any article or thing by setting up a new factory in the area specified therein which includes the State of Himachal Pradesh as well. Section 80-IC(3) is in two parts : in certain cases, exemption from income is provided at the rate of 100 per cent. of such profits and gains earned from the undertaking or enterprise for ten assessment years commencing with the initial assessment year. The other relates to another category of undertakings or enterprises where the exemption is at the rate of 100 per cent. of the profits and gains for five assessment years commencing with the initial assessment year and, thereafter, at 25 per cent. of the profits and gains, for the next five years. Sub-section (3) mentions the period of ten years commencing with the initial assessment year. Sub-section (6) puts a cap of ten years, which is the maximum period for which the deduction can be allowed to any undertaking or enterprise under this section, starting from the initial assessment year.

According to the definition of "initial assessment year" contained in section 80-IC(8)(c) , there can be an "initial assessment year", relevant to a previous year, in any of the following contingencies : (i) the previous year in which the undertaking or the enterprise begins to manufacture or produce article or things, or (ii) commences operation, or (iii) completes substantial expansion. The benefit of section 80-IC is, thus, admissible not only when an undertaking or enterprise sets up a new unit and starts manufacturing or producing articles or things. The advantage of this provision also accrues to existing units, if they carry out "substantial expansion" of their units by investing the required capital, in the previous year relevant to the assessment year. "Substantial expansion" is defined in section 80-IC(8)(ix) as increase in the investment in the plant and machinery by at least fifty per cent. of 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 is undertaken. There can thus be another "initial assessment year" on the fulfilment of the condition mentioned in the definition, namely, completion of substantial expansion of the existing unit. This new event entitles that unit to start getting deduction at 100 per cent. of the profits and gains.

At the same time, a new period of ten years does not start. This is because the total period for which deduction can be allowed is capped at ten years, inasmuch as section 80-IC(6) in no uncertain terms stipulates that deduction shall not be allowed for a period exceeding ten assessment years. In fact, this period of ten years relates not only in respect of deduction under section 80-IC but under the second proviso to section 80-IB(4) as well. This would mean that the total deduction under section 80-IB as well as section 80-IC is for a period of ten years.

The cap under section 80-IC(6) is on the ten assessment years. It is not on quantum.

The purpose for which section 80-IC was enacted was to encourage undertakings or enterprises to establish and set up such units in specified States to make them industrially advanced States as well. Keeping in mind these objectives for which section 80-IC was enacted, the irresistible conclusion would be to grant 100 per cent. deduction of the profits and gains even from the year when there is substantial expansion in the existing unit.

COMMISSIONER OF CUSTOMS (IMPORT) v. DILIP KUMAR AND CO. [2018] 9 SCC 1 applied.

The court must give effect to the provisions of section 80-IC by reading various provisions conjointly.

Held accordingly, (i) that an undertaking or an enterprise which had set up a new unit between January 7, 2003 and April 1, 2012 in the State of Himachal Pradesh of the nature mentioned in section 80-IC(2)(ii) would be entitled to deduction at the rate of 100 per cent. of the profits and gains for the five assessment years commencing with the "initial assessment year". For the next five years, the admissible deduction would be 25 per cent. (or 30 per cent. where the assessee is a company) of the profits and gains.

(ii) That however, in a case where substantial expansion as defined in section 80-IC(8)(ix) is carried out by such an undertaking or enterprise, within the period of ten years, the assessment year corresponding to the previous year in which the substantial expansion is undertaken would become the "initial assessment year", and from that assessment year the assessee shall be entitled to 100 per cent. deductions of the profits and gains.

(iii) That such deduction, however, would be for a total period of ten years, as provided in section 80-IC(6) . For example, if the expansion is carried out immediately, on the completion of the first five years, the assessee would be entitled to 100 per cent. deduction again for the next five years. On the other hand, if substantial expansion is undertaken, say, in the eighth year by an assessee such an assessee would be entitled to 100 per cent. deduction for the first five years, deduction at 25 per cent. of the profits and gains for the next two years and at 100 per cent. again from eighth year as this year becomes the "initial assessment year" once again. However, this 100 per cent. deduction would be for the remaining three years, i.e., the eighth, ninth and tenth assessment years.

Decision of the Himachal Pradesh High Court in *STOVEKRAFT INDIA v. CIT* [\[2018\] 400 ITR 225](#) (HP) affirmed. Decision of the Punjab and Haryana High Court in *ADMAC FORMULATIONS v. CIT* [\[2018\] 409 ITR 661](#) (P&H) reversed.

In Classic Binding Industries' case [2018] 407 ITR 429 (SC) the court, on the basis of section 80-IB(14)(c) of the Act, took the view that once the "initial assessment year" starts on the assessee fulfilling the conditions laid down in section 80-IC(2) , there cannot be another "initial assessment year" for the purposes of section 80-IC within this period of 10 years. Section 80-IB is materially different from section 80-IC of the Act. Therefore, the definition of "initial assessment year" mentioned in section 80-IB could not have been the basis of finding out the definition of "initial assessment year". The observation in CLASSIC BINDING INDUSTRIES [\[2018\] 407 ITR 429](#) (SC) that if deduction is allowed at 100 per cent. for the entire period of ten years, it would be doing violence to the language of sub-section (6) of section 80-IC was without noticing the definition of "initial assessment year" contained in the very same provision.

CIT v. CLASSIC BINDING INDUSTRIES [\[2018\] 407 ITR 429](#) (SC) *overruled.*"

Considering the facts narrated above and the case law explained, we note that assessee is entitled to deduction under section 801E with respect to its above industrial undertakings M/s. Charu Engineering Industries of Rs. 1,25,60,390/- & Ms. Charu Innovation Department and Industries, of Rs. 87,60,893/-.

15. In the result, all appeals filed by the assessee (in ITA No.193, 194, 279,280 and 116) are allowed.

Order pronounced in the open court on 18 -09-2019.

Sd/-

(एस.एस. गोदारा/S.S. GODARA)
(न्यायिकसदस्य/ JUDICIAL MEMBER)

Sd/-

(डॉ.ए.एल.सैनी/ DR. A.L. SAINI)
(लक्षासदस्य / ACCOUNTANT MEMBER)

Dated: 18-09-2019

सुदीपसरकार, व.निजीसचिव/ Sudip Sarkar, Sr.PS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, गुवाहाटी / DR, ITAT, Guwahati
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

**व.निजीसचिव/ Sr. Private Secretary/ DDO / HOO
आयकरअपीलीयअधिकरण, गुवाहाटी/ ITAT, Guwahati**