

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C', NEW DELHI**

**BEFORESHRI SUDHANSHU SRIVASTAVA, JUDICIALMEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.3344/Del/2018
Assessment Year: 2014-15

And

ITA No.299/Del/2019
Assessment Year: 2015-16

M/s. Indian Herbs Specialties Pvt. Ltd., D-21, Shop No.2, Acharya Niketan, MayurVihar, Phase-1, New Delhi	Vs.	Addl. CIT, Special Range-4, New Delhi
PAN :AADCI0033P		
(Appellant)		(Respondent)

Appellant by	Shri Sanjay Kumar, FCA; Shri Akarsh Garg, Adv.
Respondent by	Shri Kanwaljit Singh, CIT(DR)

Date of hearing	29.08.2019
Date of pronouncement	18.10.2019

ORDER

PERO.P. KANT, AM:

These two appeals by the assessee are directed against two separate orders dated 16.02.2018 and 17.10.2018 passed by the Ld. Commissioner of Income-tax (Appeals)-35, New Delhi [in short the Ld. CIT(A)] for assessment years 2014-15 and 2015-16 respectively. As common issues are involved in both the appeals,

we have heard these appeals together and disposed off by way of this consolidated order for convenience.

ITA No.3344/Del/2018 for AY: 2014-15

2. First we take up the appeal having ITA No. 3344/Del/2018 for assessment year 2014-15. The grounds raised by the assessee are reproduced as under:

- 1.1 *Because in the immediately preceding previous assessment year 2013-14 in the case of the assessee, the learned CIT (A)-4 allowed the deduction @ 100% U/s 80IC by following the judgments of jurisdiction Hon'ble ITAT Delhi and the stand alone judgement of the Hon'ble Himachal Pradesh High Court and therefore the learned CIT (A) has grossly erred in law by not following the judicial discipline and holding contrary to the findings of the jurisdiction Tribunal and the stand alone judgement of the Hon'ble High Court and holding that the deduction is allowable @ 30% only against 100% u/s 80IC.*
- 1.2 *Because the assessment orders passed by the assessing officers in AY 13-14 & 14-15 were wholly on identical grounds for restricting the deduction to 30% u/s 80IC and therefore the learned CIT(A) was wholly incorrect in confirming the dis-allowance on the ground that the AO has discussed in detail various angles pertaining to the provisions of Section 80IC in AY 2014-15 (which were not there in AY 2013-14).*
- 1.3 *Because in view of the documentary evidences placed on record, the Learned CIT (Appeals)-35, New Delhi has not been justified in restricted the claim of the assessee for deduction u/s 8IC @ 30% instead of @ 100% keeping in view of the facts that the appellant fulfills all the prerequisite conditions for claiming deduction @100% under section 80IC by virtue of having undertaken substantial expansion during the financial year 2011-12.*
- 1.4 *Because in a subsequent development, the Hon'ble ITAT Chandigarh, in the case of the assessee for the Assessment year 2012-13, by following the judgment of the Hon'ble Himachal Pradesh High Court has allowed the deduction @ 100% under Section 80IC by virtue of having undertaken substantial expansion during the financial year 2011-12 and therefore the assessee should be allowed deduction @ 100% in the assessment year under appeal.*
- 2.1 *Because the learned Commissioner of Income Tax (Appeals) has failed to appreciate the basic fact that disallowance of Rs.40,31,675/- made under Section 14A of the Act is without satisfying the statutory preconditions as envisages under the Act.*

3. Briefly stated facts of the case are that the assessee company was incorporated on 13/08/2012 after conversion of the partnership firm, namely, M/s Indian Herbs Specialities. The partnership firm before conversion had set up an industrial undertaking in the Baddi, Himachal Pradesh on notified land and commenced business on 14/06/2006 and claimed deduction under section 80IC of the Income-tax Act, 1961 (in short 'the Act') for the assessment years 2007-08 to 2011-12 @ 100%. The assessee carried out substantial expansion during financial year 2011-12 relevant to assessment year 2012-13 in terms of section 80IC(2)(b) read with clause (ix) and section 80IC(8) of the Act and claimed deduction under section 80IC of the Act @ 100 per cent of the profit and gains for the five assessment years, i.e., from assessment AY: 2012-13 to 2016-17, including the assessment year under consideration.

3.2 However, the Assessing Officer restricted the deduction at the rate of 25% by holding that provision of substantial expansion are not applicable to the assessee. The learned CIT(A) upheld the disallowance observing as under:

“4.3.3.2. A perusal of the assessment order reveals that the appellant company filed its return of income on 24.09.2014 declaring total income at Rs.19,09,95,080/-. The appellant is a private limited company engaged in the business of manufacturing and sale of herbal products i.e. Ayurvedic Medicines and Animal/Poultry supplements for the use of animals and herbal extracts / human medicines etc. In the computation of income, the appellant has claimed deduction u/s 80IC at Rs.14,84,56,974/- which is @ 100% of the profit of the undertaking eligible to claim deduction u/s 80IC of the Act. As per Form 10CCB filed by the appellant, the undertaking had commenced its business from 14.06.2006 and it started claiming deduction u/s 80IC from AY 2007-08. The deduction u/s 80IC was claimed @ 100% of the profit of the undertaking for 5 years

beginning from AY 2007-08 and has again been claimed @100% deduction u/s 80IC during the 6th year, 7 year and 8 year. i.e. AY 2012-13, AY 2013-14 and AY 2014-15. The instant year is the 8th year of claim of deduction u/s 80IC of the Act. The AO has observed that the appellant company came into existence on 13.08.2012 on conversion of the firm namely M/s Indian Herbs Specialties and it has been claimed that the Industrial undertaking of the appellant at Baddi in Himachal Pradesh had undertaken substantial expansion by increasing the value of plant & machinery by more than 50% of it's total block of fixed assets as on 31.03.2011 before conversion into private limited company in the financial year 2011-12 and on the basis of substantial expansion the undertaking had become entitled to claim deduction u/s 80IC at the rate of 100% of profit & gain of the unit for further five assessment years i.e. from AY 2012-13 to 2016-17 in addition to five assessment years AY 2007-08 to AY 2011-12 as claimed earlier.

- 4.3.3.3. *As per the provisions, Section 80IC applies to new undertaking as well as to existing undertaking, if they undertake 'substantial expansion' i.e. increase in plant and machinery by at least 50% of the book value without taking depreciation in any year. Further, the commencement of production or substantial expansion should have been during the period 07.01.2003 to 01.04.2012 as for the units in the State of Himachal Pradesh. The rate of deduction is 100% for the first five defines the term "initial assessment year" as one in which a new eligible undertaking commences operation or an existing one makes substantial expansion. In the assessment order, the AO has correctly analysed that, nowhere does the section provide for change in the initial assessment year nor is there any provision for continuing claim at 100% beyond five years. It has been rightly observed that the scheme of exemption / deduction under chapter VI-A of the Act is very specific. The argument of the AO that if it is assumed that there is no bar on carrying out any number of substantial expansions in that case, every year of substantial expansion would become initial assessment year, holds true. This liberal interpretation will trivialise the purpose of the Section and lead to wrong interpretation of the Section. The AO has relied upon the recent decision of the Hon'ble 1TAT, Chandigarh in the case of Hycron Electronics vs ITO (ITA no. 798/chd/2012 wherein the Hon'ble ITAT has held that the benefit of "substantial expansion" is applicable to units which were in existence at the time of announcement of the scheme.*

Further, if the various sub sections of section 80IC are read, there is clearly no doubt that the deduction was meant only for new units or in case of old units if substantial expansion was carried out in such old units. The AO has distinguished the case law relied upon by the Appellant, of Hon'ble ITAT Delhi Bench and has stated that the facts of the instant case are entirely different. In the present case, substantial expansion has not been incurred by the appellant company in the year under assessment and deduction @ 100% has also not been claimed for the first time. Rather, deduction @ 100% on account of substantial expansion was first claimed in the AY 2012-13 and also in AY 2013-14 and as mentioned earlier in this order, having examined the facts of the case, such deduction claimed @100% on account of substantial expansion was denied and restricted @25%.

The above discussion fully clarifies that the appellant is not eligible for deduction as a consequence of substantial expansion and hence, cannot claim 100% deduction by the AO after the initial years.

Therefore, in law and on facts, the AO has rightly restricted the deduction under section 80 IC of the Act to Rs.4,45,37,092/- (30% of the profits and gains of eligible undertaking), as against the deduction claimed of Rs.14,84,56,974/-(100% of profits and gains of eligible undertaking). In view of the above discussion and in accordance with the specific provision of the I.T. Act, the assessment order of the AO on the issue of the restriction of the deduction u/s 80IC on the undertaking to 30% instead of 100% as claimed by the appellant is held to be correct. I find no reason to interfere with the AO's order on this issue and the deduction u/s 80IC claimed at Rs.14,84,56,974/- is allowed @30% amounting to Rs.4,45,37,092/-. The disallowance of excess deduction by the AO claimed at Rs.10,39,19,882/- is upheld. Hence, the ground of appeal is dismissed.”

4. Before us, the Ld. counsel of the assessee submitted that issue in dispute is covered in favour of the assessee by the order of the Tribunal for assessment year 2012-13 and 2013-14 in ITA No.196 & 197/Chd/2017. He also submitted that eligibility of 100% deduction under section 80IC in case of substantial expansion has been upheld by the Hon'ble Supreme Court in the

case of Principal CIT, Shimla Vs M/s AarhamSoftronics in Civil Appeal Nos. 1784 of 2019.

5. On the other hand, the Ld. DR relied on the order of the lower authorities but could not controvert the submission of the assessee.

6. We have heard the rival submission and perused the relevant material on record. As per the provision of section 80IC(2) of the Act any undertaking or enterprises which has begun or begins to manufacture or produce any article or the thing by setting up a new factory in the area specified therein including the state of the Himachal Pradesh, is eligible for deduction under section 80IC of the Act. Sub-section (3) has prescribed period of 10 years commencing with initial assessment year. Sub-section 3 further prescribed deduction at the rate of 100% of such profit and gains from the undertaking or an enterprise for five assessment years commencing with initial assessment year and thereafter deduction allowable @ 25% (or @ 30% where the assessee is a company) of the profit and gains. Further, sub-section (6) puts a cap of 10 years for claiming deduction under the section. In the case, the assessee has availed 100% of the profit and gains as deduction under section 80IC of the Act for five assessment years commencing with the initial assessment year, i.e., 2007-08 to 2011-12 and thereafter the assessee carried out “substantial expansion” and again claimed that it should be allowed deduction from profit and gains for another five years @ 100%.

6.1 The issue in dispute is whether the assessee is entitled for deduction under section 80IC @ 100% for 6th to 10th assessment

years from the year of the manufacturing as claimed by the assessee, on the ground that for the purpose of substantial expansion “initial assessment years” would be separate. The contention of the assessee that there can be more than one “initial assessment year”, first when the assessee begins to manufacture or commences operation and another after completing substantial expansion .

6.2 We find that Hon’ble Supreme Court in the case of Aarham Softronics (supra) has held in case of substantial expansion, the said previous year would become initial assessment year and from that assessment year the assessee shall be entitled to hundred percent deduction of the profit and gains. The relevant finding of the Hon’ble Supreme Court is reproduced 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."

6.3 The Tribunal (supra) in the assessment year 2012-13 and 2013-14 has also decided the issue in favour of the assessee observing as under:

"6. During the course of hearing before us, it was brought to our notice that the issue involved in these appeals has already been adjudicated by the Hon'ble Himachal Pradesh High Court vide their order dt. 28th November 2017 in the group of cases with the lead case titled as M/s Stovekraft India vs. Commissioner of Income Tax, ITA No.20 of 2015, and it was pointed out that the Hon'ble High Court had decided the issue in favour of the assessee, holding that there is no bar in the said section denying the benefit of hundred percent deduction to new units undertaking substantial expansion. Our attention was drawn to the relevant conclusions of the Hon'ble High Court in this regard at para 55 of the order as under:

"55. Thus, in view of the above discussion, these appeals are allowed and orders passed by the Assessment Officer as well as the Appellate Authority and the Tribunal, in the case of each one of the Assesses, are quashed and set aside, holding as under:

(a) Such of those undertakings or enterprises which were established, became operational and functional prior to 7.1.2003 and have undertaken substantial expansion between 7.1.2003 upto 1.4.2012, should be entitled to benefit of Section 80-IC of the Act, for the period for which they were not entitled to the benefit of deduction under Section 80-IB.

- (b) Such of those units which have commenced production after 7.1.2003 and carried out substantial expansion prior to 1.4.2012, would also be entitled to benefit of deduction at different rates of percentage stipulated under Section 80-IC.
- (c) Substantial expansion cannot be confined to one expansion. As long as requirement of Section 80-IC(8)(ix) is met, there can be number of multiple substantial expansions.
- (d) Correspondingly, there can be more than one initial Assessment Years.
- (e) Within the window period of 7.1.2013 upto 1.4.2012, an undertaking or an enterprise can be entitled to deduction @ 100% for a period of more than five years.
- (f) All this, of course, is subject to a cap of ten years. [Section 80-IC(6)].
- (g) Units claiming deduction under Section 80-IC shall not be entitled to deduction under any other Section, contained in Chapter VI-A or Section 10A or 10B of the Act [Section 80-1B(5)]. ”

7. Ld. DR fairly admitted that the issue is squarely covered by the above decision of the Hon'ble jurisdictional High Court. It was, however, submitted that the issue be restored to the file of the Assessing officers for verification as to whether the assessee has actually carried out the substantial expansion to be entitled to claim deduction u/s 80IC of the Act.

8. We do not agree to the above contention raised by the Revenue at this stage. A perusal of the orders of the Assessing officers reveal that the Assessing officers have not disputed that the assessee unit has carried out substantial expansion as provided under clause (b) of sub section (2) read with clause (ix) of sub section (7) of section 80IC of the Act. Almost similar view has also been taken by the Hon'ble Himachal Pradesh High Court in the case of 'M/s Stovekraft India vs. Commissioner of Income Tax' (supra) in the following concluding para of the order:-

“58. On facts, we may clarify that the Revenue has not disputed, (a) the units having carried out substantial expansion within the definition of the Section, (b) their entitlement and extent of deduction would be dependent upon interpretation of the relevant provisions.”

We, therefore, do not find any justification at this stage to give the Assessing officers a second innings to re-examine undisputed facts.

9. In view of the above discussion, the impugned orders of the CIT(A) are set aside and the Assessing officers are directed to grant to the assessee deduction at the rate of hundred percent of its eligible profits, as per the ruling of the jurisdictional High Court in

this regard in the case of 'M/s Stovekraft India vs. Commissioner of Income Tax' (supra)."

6.4 In view of the above, respectfully following the binding precedent, the order of the Ld. CIT(A) on the issue in dispute is set aside and the Assessing Officer is directed to allow the deduction under section 80IC of the Act to the assessee's. The Ground No. 1 to 1.4 of the appeal are accordingly allowed.

7. In Ground No. 2.1 the assessee has challenged disallowance of ₹ 40,31,675/-made under section 14A of the Act.

7.1 The main contention of the Ld. counsel of assessee is that the disallowance has been made without satisfying statutory precondition of recording dissatisfaction by the Assessing Officer as to the claim of expenses incurred for earning exempt income. The learned counsel also argued that the assessee has made investment out of own funds and no borrowed funds have been utilized in investment. The learned counsel relied on the decisions of Hon'ble Supreme Court in the case of Pr. CIT, Ahmedabad Vs. Sintex Industries Ltd. (2018) taxmann.com 24 (SC).

7.2 The Ld. DR, on the other hand, submitted that the Assessing Officer recorded dissatisfaction in para 26 of his order specifically after making observation on the claim of the assessee in para 24 &25 of the assessment order. This according to him the disallowance under section 14A read with rule 8D of the Income Tax Rules, 1962 has been made after recording proper dissatisfaction on the claim of the assessee. He further submitted that no ground on merit has been raised by the assessee on the utilization of own funds for investment.

7.3 We have heard the rival submission and perused the relevant material on record. In the grounds raised, the assessee

has challenged the disallowance only on the ground that statutory precondition of invoking Rule 8D has not been satisfied by the Assessing Officer. However, we find that the Assessing Officer has properly recorded the dissatisfaction on the claim of assessee of expenses of ₹ 2000 per month incurred for earning dividend income of ₹ 1,00,90,882/-. The relevant part of the assessment order is reproduced as under:

“26. In view of above, I am not satisfied with the correctness of the claim of the assessee that only an expenditure of Rs.2000/- per month was incurred for earning dividend income of Rs.1,00,90,882/-.”

7.4 In view of the above, we do not find any error in the order of the learned CIT(A) in upholding the disallowance under section 14A of the Act read with Rule 8D of the Income Tax Rules. The ground of the appeal of the assessee is accordingly dismissed.

ITA No. 299/Del/2019 for AY: 2015-16

8. Now, we take up the appeal of the assessee in ITA No. 299/Del/2019 for assessment year 2015-16. The grounds of appeal are reproduced as under:

1.1 Because in view of the documentary evidences placed on record and keeping in view of the facts that the appellant fulfills all the prerequisite conditions for claiming deduction @100% under section 80IC by virtue of having undertaken substantial expansion during the financial year 2011-12 the Learned CIT (Appeals)-35, New Delhi was not justified in confirming the order of the ACIT of restricted the claim of the assessee for deduction u/s 8IC @ 30% instead of @ 100%.

1.2 Because the plain reading of Sec. 80IC gives a clear interpretation that units both old and new can undertake substantial expansion for getting benefit of 100% for another 5 years (but subject to overall limit of exemption of 10 years) and therefore the Learned CIT (Appeals) was not justified in confirming the addition of Rs.13,00,51,922/-.

2.1 Because the learned Commissioner of Income Tax(A) has failed to appreciate the basic fact that dis-allowance of Rs.14,63,881/- made under section 14A of the Act is without satisfying the statutory preconditions as envisaged under the Act.

2.2 Because the confirmation by the learned CIT (A) of addition of dis-allowance under section 14A of Rs.14,63,881, was without giving due consideration of the facts and of law.

9. As the issue involved in the grounds raised are identical to the issues raised in the appeal in ITA No.3344/del/2018 for assessment year 2014-15, following our decision in said appeal, the issues are decided *mutatis mutandis*. Accordingly, the Grounds No. 1.1 to 1.2 of the appeal are allowed whereas Ground No. 2.1 and 2.2 are dismissed.

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

Order is pronounced in the open court on 18th October, 2019.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 18th October, 2019.

RK/-(D.T.D.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR