

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.6186/Del/2016
Assessment Year: 2012-13

Shri Jitendra Kumar Agarwal, Prop. M/s. Anrose Pharma, Vivekanand Nagar, Ghaziabad	Vs.	Income Tax Officer, Ward-1(3), Ghaziabad
PAN :AFYPA8167P		
(Appellant)		(Respondent)

Appellant by	Shri S. Krishan, Adv.
Respondent by	Shri S.S. Rana, CIT(DR)

Date of hearing	17.10.2019
Date of pronouncement	30.10.2019

ORDER

PERO.P. KANT, AM:

This appeal by the assessee is directed against order dated 28/03/2016 passed by the Ld. Commissioner of Income-tax (Appeals)-Ghaziabad [in short the 'Ld. CIT(A)] for assessment year 2012-13 raising following grounds:

“On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the following actions of the Assessing Officer:

1. *determining income u/s 143(3) of the Act at Rs.85,85,850/- against the returned income in a sum of Rs.2,500/-*
2. *restricting deduction u/s 80IC of the Act at 25% as against 100% claimed by the assessee on account of profit derived from eligible unit on substantial expansion as provided u/s 80IC(2) of the Act.*

2. Before us, the Ld. counsel of the assessee submitted that issue in dispute is covered in the favour of the assessee by the order of the Tribunal in ITA No.5253/Del/2017 in immediately preceding assessment year 2011-12 and accordingly, issue of deduction under section 80IC of the Act on substantial expansion might be restored to the file of the Assessing Officer. The Ld. counsel also submitted that in case of the substantial expansion, the initial assessment year would be separate other than the initial assessment year of manufacturing or commencement of the business as held by the Hon'ble Supreme Court in the case of Principal CIT Vs. Aarham Softronics reported in 412 ITR 623 (SC).

3. The Ld. DR, on the other hand, relied on the order of the lower authorities.

4. We have heard the rival submission and perused the relevant material on record. The assessee, an individual, is proprietor of M/s. Anrose Pharma and engaged in the business of manufacturing of Pharma products. In the return of income filed, the assessee claimed deduction under section 80IC of the Act in respect of profit and gains from its units located in notified area in the district 'Solan' of Himachal Pradesh. The assessee claimed 100% deduction at the time of the commencement from initial

assessment year 2006-07. Subsequently, the assessee carried out substantial expansion in assessment year 2011-12 and again claimed deduction under section 80IC @ 100% on the ground that as per section 80IC(2)(b)(ii) of the Act, on carrying out substantial expansion, the assessee is entitled for 100% deduction under section 80IC of the Act, as against the finding of the Assessing Officer that deduction at the rate of 25% is only available.

5. In our opinion, this dispute has now been settled by the Hon'ble Supreme Court in the case of Aarham Softronics (supra), wherein it is held as under:

"24. The aforesaid discussion leads us to the following conclusions:

(a) Judgment dated August 20, 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 January 7, 2003 and April 1, 2012 in the 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 per cent, 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 per cent, (or 30 per cent, 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 per cent, 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 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 the eighth year as this year becomes "initial assessment year" once again. However, this 100 per cent, deduction would be for the remaining three years, i.e., eighth, ninth and tenth assessment years."

5. But, in the case of the assessee, the facts of substantial expansion remained to be verified and, therefore, the Tribunal (supra) in the immediately preceding assessment year, restored the matter to the file of the Assessing Officer with the direction as under:

"10. Since in the instant case there are certain errors in the Audit Report which is apparent and since the Id. CIT(A) has given a finding that the Auditors of the assessee neither verified substantial expansion claimed to have been undertaken by the assessee nor stated that initial assessment year would be other than the assessment year 2006-07, therefore, considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore this issue to the file of the Assessing Officer with a direction to verify the details of such substantial expansion undertaken by the assessee. The Assessing Officer shall decide the issue afresh and in accordance with law keeping in mind the decision of the Hon'ble Himachal Pradesh High Court in the case of Stovekraft India (supra). Needless to say, the Assessing Officer shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. I hold and direct accordingly. The grounds raised by the assessee are allowed for statistical purposes."

6. In view of the above, respectfully following the direction of the Tribunal, the issue in dispute in the year under consideration is also restored to the file of the Assessing Officer for deciding in the light of direction of the Tribunal (supra). It is needless to

mention that the assessee shall be afforded adequate opportunity of being heard. The ground of appeal of the assessee is accordingly allowed for statistical purposes.

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

Order is pronounced in the open court on 30th October, 2019.

Sd/-

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 30th October, 2019.

RK/-(D.T.D.)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi