

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

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

आयकर अपील सं./ ITA Nos. 120 & 121/CHD/2019

निर्धारण वर्ष / Assessment Years : 2012-13 & 2015-16

Shri Vijay Kumar Batra, Prop M/s Adley Foundations, SCO 184, Sector 5, Panchkula Chandigarh	बनाम	The ACIT, Circle 3(1), Chandigarh
स्थायी लेखा सं./PAN NO: AEJPB0879B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Rakesh K. Khanna, CA
राजस्व की ओर से/ Revenue by : Shri G.S. Phani Kishore, CIT DR

सुनवाई की तारीख/Date of Hearing : 28.11.2019
उद्घोषणा की तारीख/Date of Pronouncement : 31.12.2019

आदेश/Order

Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the assessee against the separate orders dated 19.11.2018 & 16.11.2018 of the Commissioner of Income Tax (Appeals)-1, Chandigarh [hereinafter referred to as 'CIT(A)'].

ITA No. 120/Chd/2019 :

2. In ITA No. 120/Chd/2019 the assessee has agitated the action of the Ld. CIT(A) in confirming the penalty levied by the Assessing Officer u/s 271 (1)(c) of the Income Tax Act, 1961 (in short 'the Act').

The assessee in this respect has taken following grounds of appeal:-

1. *The order of Ld. Commissioner of Income Tax (Appeals)-1, Chandigarh (Ld. CIT Appeals) upholding demand of penalty under section 271(l)(c) being unlawful, perverse and against facts and law needs to be set aside, annulled and vacated;*
2. *Ld. CIT Appeals order upholding demand of penalty under section 271(l)(c), by considering appellant's bonafide claim of 100% deduction u/s 80-IC based on substantial expansion done by it during AY 2011-12 as an act of concealment of income or furnishing inaccurate particulars of income, where the issue of allowing such 100% deduction u/s 80-IC has been debatable for long, being wrong and unlawful, needs to be set aside, annulled and vacated;*
3. *Without appreciating facts and circumstances of the case, Ld. CIT Appeals, has erred in upholding penalty under section 271(l)(c) imposed based on addition made (by allowing 25% deduction instead of 100% deduction u/s 80-IC) by holding appellant having claimed 100% deduction without establishing substantial expansion, that too, without considering assessment order dated 31.12.2016 for AY 2011-12 itself and Hon'ble ITAT's order vide ITA No. 586/Chd/2017 dated 15.02.2018 allowing 100% deduction under section 80-IC for AY. 2013-14, in appellant's own case, order so issued, being contrary to the facts and legal position, needs to be set aside, annulled and vacated.*
4. *Ld. CIT Appeals has erred in upholding demand of penalty without considering the fact that Ld. Assessing Officer had neither provided opportunity of being heard properly nor considered all documents/submissions and information, as submitted during assessment proceedings, the order so issued,*

against the principles of natural justice, which needs to be set aside, annulled and vacated;

5. *The appellant craves leave to add, amend or delete any of the grounds of appeal and also to furnish additional evidence before or at the time of hearing of appeal/ during the course of the appeal proceedings.*

3. The brief facts relating to the issue are that the assessee had set up a new Industrial unit after first of January 2003 and had already claimed 100% depreciation u/s 80IC of the Act for the first five assessment years starting from assessment year 2006-07. As per the provisions of section 80IC of the Act, the assessee was entitled to deduction @ 100% u/s 80IC of the Act for the first five years and thereafter for another five years @ 25%. However, the assessee in the 6th year claimed deduction @ 100% on account of substantial expansion of the unit. This is the 7th year from the initial assessment year from which the assessee had started claiming deduction u/s 80IC of the Act. The Assessing Officer held that the benefit of deduction @ 100% on account of substantial expansion was not available to the units which had already claimed deduction @ 100% for first five years after setting up of the unit after 01.01.2003. The Assessing Officer, accordingly, restricted the claim of deduction @ 25%. The Assessing Officer separately initiated penalty proceedings u/s 271 (1)(c) of the Act for claiming excess deduction and thereby levied the impugned penalty for furnishing of inaccurate particulars of income.

4. The Ld. CIT(A) confirmed the penalty so levied by the Assessing Officer.

5. At the outset, the Ld. Counsel for the assessee has invited our attention to the copy of order passed by Hon'ble Supreme Court in the case of 'M/s Adley Formulations vs CIT, Chandigarh' ' in Civil Appeal No. 4587 of 2019 & Ors vide order dated May 03,2019. The contents of the said order are reproduced as under:-

*“IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION*

*CIVIL APPEAL NO. 4586 OF 2019
(Arising out of SLP (C) No. 11616/2019)
(@ D.No. 11542/2019)*

M/S ADLEY FORMULATIONS Appellants (s)

VERSUS

COMMISSIONER OF INCOME TAX, CHANDIGARH Respondent(s)

WITH

*CIVIL APPEAL NO. 4587 OF 2019
(Arising out of SLP (C) No. 11617/2019)
(@ D.No. 11953/2019)*

*CIVIL APPEAL NOS. 4588-4589 OF 2019
(Arising out of SLP (C) No. 11083-11084/2019)*

O R D E R

Delay condoned.

Leave granted.

The impugned judgments have relied upon a judgment of this Court in Commissioner of Income Tax vs. M/s Classic Binding Industries, [Civil Appeal

No. 7208 of 2018] which has since been overruled by our judgment in Pr. Commissioner of Income Tax, Shimla vs M/s Aarham Softronics [Civil Appeal No. 1784 of 2019] delivered by a three-Judge Bench on 20.02.2019.

Following the aforesaid judgment, we allow the appeals and set aside the impugned judgments of the High Court.

Sd/-

*..... J.
(ROHINTON FALI NARIMAN)*

Sd/-

*..... J
(VINEET SARAN)
New Delhi; May 03, 2019.”*

The Ld. Counsel for the assessee has further submitted that assessee is a proprietor of M/s Adley Formulations. That the appeal before the Tribunal was filed in the quantum proceedings in the name of the assessee Shri Vijay Kumar Batra, Prop. of M/s Adley Formulations bearing ITA No. 241/Chd/2016 for assessment year 2012-13, which was dismissed by the Tribunal vide order dated 21.11.2016 following the decision of the Coordinate Chandigarh Bench of the Tribunal in ‘M/s Hycron Electronics, Baddi, Solan vs ITO’ in ITA No. 798/Chd/2012 dated 27.5.2015. Further, the assessee preferred the appeal against the said order of the Tribunal before the Hon'ble High Court in the name of the proprietorship concern of the assessee i.e. M/s Adley Foundations. The Ld. counsel has invited our attention to the common order of the

Hon'ble jurisdictional High Court of Punjab & Haryana dated 6.9.2018 including ITA No.303 of 2017 in the name styled as 'M/s Adley Formulations PAN No. AEJPB0879B vs Commissioner of Income Tax, Chandigarh' which was dismissed by the Hon'ble High Court vide order dated 6.9.2018 following the decision of the Hon'ble Apex Court in the case of 'CIT vs M/s Classic Binding Industries', Civil Appeal No(s) 7208 of 2018 decided on 20.8.2018, wherein, the Hon'ble Supreme Court has held that the assessee, who had availed 100% deductions for first five years on setting up of a manufacturing unit as prescribed under sub section (2) of section 80IC of the Act, cannot claim deduction @ 100% again for the next five years on account of substantial expansion. However, the said decision of the Hon'ble Supreme Court has been recalled and the issue has been decided in favour of the assessee in the bunch of appeals with the lead case being 'Pr. CIT, Shimla vs M/s Aarham Subtonics' in Civil No. 1784 of 2019 dated 20.2.2019. Following the said decision, the Hon'ble Supreme Court vide order dated 03.05.2019 (supra) has allowed the appeal of the assessee.

6. We find that the Special Leave Petition (Civil) No.11542/2019 before the Hon'ble High Court was filed against the order of the Punjab & Haryana High Court dated 6.9.2018 passed in ITA No. 303/ 2017. As observed above, ITA No. 303 of 2017 was filed by the assessee against

the order of the Tribunal dated 21.11.2016 in ITA No. 241/Chd/2016 for assessment year 2012-13, which belong to the same assessee.

In view of this, the issue in the quantum proceedings has been decided by the Hon'ble Supreme Court in favour of the assessee.

7. Since the quantum additions, on the basis of which the impugned penalty was levied, already stood deleted by the Hon'ble Supreme Court, hence, the very basis on which the penalty was levied had ceased to exist. In view of this, the impugned penalty levied by the Assessing Officer is not sustainable in the eyes of law, the same is accordingly ordered to be deleted.

8. So far as the findings of the Ld. CIT(A) that the Assessing Officer has made a observation that the assessee has not proved that any substantial expansion has been carried out, in our view, the said observation of the Ld. CIT(A) is misplaced. We have gone through the order of the Assessing Officer in quantum proceedings as well as the order of the Assessing Officer in penalty proceedings and find that the Assessing Officer has made a general observation by picking up certain lines as such from the order of the Tribunal in the case of 'M/s Hycron Electronics, Baddi, Solan vs ITO' (supra) and no separate observation has been made by the Assessing Officer in the case of the assessee that no substantial expansion has been carried out.

In view of this, the order of the CIT(A) is not sustainable in the eyes of law and the same is hereby set aside.

The penalty levied by the Assessing Officer is accordingly ordered to be deleted.

ITA No.121/Chd/2019 (A.Y. 2015-16)

9. This appeal is relating to the quantum proceedings in respect of denial of deduction @ 100% in the assessment year under consideration which is the fifth year of claiming deduction @ 100% after the initial assessment year 2011-12 for claiming of deduction on account of substantial expansion.

As observed above, the issue is already settled by the decision of the Hon'ble Supreme Court in the case of assessee 'M/s Adley Formulations vs CIT, Chandigarh' ' in Civil Appeal No. 4587 of 2019 & Ors vide order dated May 03, 2019 (supra)

10. In view of this, the disallowance made by the lower authorities is set aside and it is directed that the assessee is entitled to deduction @ 100% on account of substantial expansion. However, as laid down by the Hon'ble Supreme Court in the case of 'Pr. CIT, Shimla vs M/s Aarham Subtonics' dated 20.2.2019 (supra), the total deduction period u/s 80IC of the Act will not exceed 10 years from the initial year of setting up / commencement of the unit. To be made more clearer, since

the assessment year 2015-16 under consideration is the 10th year of claiming deduction u/s 80IC of the Act, thus, the assessee will not be entitled to claim deduction u/s 80IC of the Act for any subsequent year.

With the above observations, both the appeals of the assessee stand allowed.

Order pronounced in the Open Court on 31.12.2019.

Sd/-

(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

Dated : 31.12..2019

“आर.के.”

Sd/-

(संजय गर्ग / SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

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