

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DLEHI**

BEFORE : SMT. DIVA SINGH, JUDICIAL MEMBER

**ITA No.5252/Del/2017
Assessment Year: 2013-14**

Shri Jitendra Kumar Agarwal, Prop. M/s. Anrose Pharma, Vivekanand Nagar, Ghaziabad. PAN : AFYPA 8167P (Appellant)	vs.	Income-tax Officer, Ward 1(3), Ghaziabad. (Respondent)
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Appellant by:	Mr. K. Sampath, Advocate & Mr. V. Raja Kumar, Advocate
Respondent by:	Ms. Rinku Singh, Sr. DR.

Date of hearing	:	05.02.2020
Date of Pronouncement	:	06.02.2020

ORDER

The present appeal has been filed by the assessee, wherein correctness of the order dated 27.04.2017 of CIT(A), Ghaziabad pertaining to 2013-14 assessment year is assailed on 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. Passing order u/s. 143(3) of the I.T. Act, 1961 at an income of Rs.13,84,253/- against nil returned;*
- 2. Restricting deduction claimed u/s. 80IC of the Act at 25% as against 100% of the income claimed by the assessee.*

Both the above actions being most arbitrary, erroneous, unlawful and unjust must be quashed with directions for relief.

2. The Id. AR, relying upon the orders of the ITAT in assessee's own case pertaining to 2011-12 and 2012-13 assessment years, made a prayer that the issues may be remanded back to the file of Assessing Officer in terms of decision of Hon'ble Supreme Court in the case of PCIT vs. Aarham Softronics, 412 ITR 623 (SC). Copies Tribunal orders dated 11.05.2018 and 30.10.2019 are placed on record.

3. The Id. Sr. DR relies upon the orders of the tax authorities.

4. I have heard the submissions of both the parties and perused the material available on record. It is an admitted fact that the legal issue as addressed by the Apex Court in the case of Classic Binding Industries was subsequently re-visited by the Hon'ble Supreme Court in the case of Aarham Softronics (supra). The Apex Court clarified the legal position therein by holding 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. It is seen that the Tribunal, relying on the aforesaid decision of Hon'ble Supreme Court, has remanded the issue back to the Assessing Officer. For ready reference, relevant extract of the Tribunal order dated 30.10.2019 is reproduced as under :

"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.”

6. Accordingly, respectfully following the precedents, the issue is restored back to the file of Assessing Officer with the direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. The said order was pronounced in the open court.

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

Order was pronounced in the open court.

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

Dated: 06/02/2020
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