IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SHRI KULDIP SINGH, JUDICIAL MEMBER

आ.अ.सं/.I.T.A No.5600/Del/2017
निर्धारणवर्ष/Assessment Year:2013-14

Asstt. Commissioner of Income Tax, **Circle 63(1), Room No. 2205,** **E-2, Block, Civic Centre,** **Minto Road,** **New Delhi.**	**बनाम** **Vs.**	**M/s Vanesa Cosmetics,** **116, Model Basti,** **New Delhi.**
		PAN No. AAHFV5455B
Appellant		**Respondent**

Revenue by	**Sh. S.S. Negi, Sr. DR**
Assessee by	**Sh. Salil Agarwal, Adv.** **Sh. Shailesh Gupta, Adv.** **Sh. Madhur Aggarwal, Adv.**

Date of hearing:	11.11.2020
Pronouncement on	27.11.2020

आदेश /O R D E R

PER KULDIP SINGH, J.M.

Appellant, Asstt. Commissioner of Income Tax, New Delhi (hereinafter referred to as 'the Revenue'), by filing the present appeal sought to set aside the impugned order dated 19.06.2017 passed by the Commissioner of Income Tax (Appeals)-27, New Delhi for AY 2013-14 on the following grounds: -

"On the facts & circumstances of the case, the Ld. CIT(A) erred in:

1. *Deleting the addition of Rs. 2,81,94,648/- on account of disallowance made u/s 80IC by allowing 100% deduction for 6th assessment year instead of 25% as the assessee itself started claiming deduction u/s 80IC from initial assessment year i.e. 2008-09.*

2. *Ignoring the provisions of section 80IC(3)(ii) which clearly and unambiguously state that undertakings eligible for deduction u/s 80IC shall be eligible for 100% deduction for 5 assessment years commencing with the initial assessment (as defined u/s 80IC(8)(v)) and thereafter at the rate of 25 percent.*
3. *Allowing 100% deduction u/s 80IC for the 6th assessment year whereas Hon'ble Gujarat High Court in the case of M/s Anand Food and Dairy Products Vs. ITO 394 ITR 0531 on the issue of deduction u/s 80IB has adjudicated that deduction would be available to the assessee at the rate of 25% from 6th year after completion of five years. The provisions of section 80IC and 80IVB are parallel provision in nature.*
4. *Deleting the addition of Rs. 1,28,692/- on account of personal use of the car without giving any specific reason.*
5. *Deleting the addition of Rs. 85,682/-on account of tour and travelling expenses as the assessee failed to produce vouchers of expenses and substantiate its claim that the expense were incurred wholly and exclusively for the business purpose.*
6. *Deleting the addition of Rs. 33,917/- on account of telephone expenses as the assessee failed to produce for verification the telephone call register maintained for partners, employees and personal use cannot be ruled out.*

The appellant craves the right to add or alter any ground of appeal."

2. Briefly stated facts necessary for adjudication of the issues at hand are : assessee being a partnership firm is into the business of manufacturing of perfumes, deodorants, cosmetics items and toiletry goods under the name and style of M/s Vanesa Cosmetics at Khasra No. 196/186/1113, Village, Joharan, Trilok Pur Road, Tehsil Nahan, Distt. Sirmor (known as Kala AMB, Industrial Area), Himachal Pradesh, duly notified industrial area vide Notification No. SO1269(E) dated 04.11.2003 for the purpose of 80IC. Assessee filed a return of income claiming total income of Rs. 38,65,418/- which was subjected to scrutiny assessment. AO made addition of Rs. 2,81,94,648/- while making disallowance u/s 80IC of the Act by restricting the same to 25% instead of 100% claimed by the assessee on the ground that 100% deductions u/s 80IC is available to the

units located in North Indian States for the first 5 years and @ 25%/30% for the next 5 years. AO also made *ad hoc* disallowance of Rs. 12,86,922/- i.e. @ 10% on car expenses, car insurance expenses, interest on car loan, car depreciation claimed by the assessee and thereby framed the assessment at Rs. 3,23,31,850/- u/s 143(3).

3. Assessee carried the matter before Ld. CIT(A) by way of filing the appeal who has deleted the addition by allowing the same. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. DR for the Revenue challenging the impugned order passed by Ld. CIT(A) relied upon order passed by the assessment order and contended that the entire addition/disallowance have been made by the AO on the basis of particular facts of the case. However, on the other hand, Ld. AR of the assessee relied upon the order passed by the Ld. CIT(A) and further relied upon the judgment passed by the Hon'ble Supreme Court of India in the case of Principal Commissioner of Income-tax, Shimla Vs. Aarham Softronics (supra) (2019) 412 ITR 0623 and order passed by the coordinate bench of the Tribunal in the case of Tirupati LPG Industries Ltd. Vs. DCIT (supra) (2014) 151 ITD 0001.

Ground Nos. 1, 2 & 3:

6. Undisputedly assessee has set up its business of manufacturing of perfumes, etc. in the name and style of M/s Vanesa Cosmetics at Kala AMB, Indl. Area duly notified for the purpose of 80IC. It is also not in dispute that the assessee has started commercial production in 2007-08 and successfully claimed deduction u/s 80IC for 5 years till 2012-13 and

allowed as such. It is also not in dispute that in the subsequent assessment years viz. 2014-15, 2015-16, 2016-17 and 2017-18 100% deductions have been allowed by Ld. CIT(A) on the ground that the assessee has made substantial expansion in the existing unit. It is also not in dispute that for AY 2015-16, 2016-17 and 2017-18 no appeal has been filed by the Revenue against the appeal allowed by Ld. CIT(A).

7. In the backdrop of the aforementioned facts and circumstances of the case the sole question arises for determination in this case is as to whether "assessee is entitled for deduction under 80IC @ 100% after substantial expansion carried out during financial year 2011-12.

8. When it is not in dispute that the assessee has carried out substantial expansion during financial year 2011-12 by installing plant and machinery worth Rs. 1,20,26,092.00 which is more than 50% of the total book value of Rs. 2,30,48,407.00 of the plant and machinery existing on 1st day of the previous year in which substantial expansion was took place, the claim of the deduction on account of substantial expansion u/s 80IC sub section 8 clause (ix) is admissible to the assessee irrespective of the conditions stipulated for North Indian States and North Eastern Indian States as discussed by AO.

9. Hon'ble Supreme Court of India in case cited as Principal Commissioner of Income-tax, Shimla Vs. Aarham Softronics (supra) decided the identical issue in favour of the assessee by holding that in case of substantial expansion carried out as per clause (ix) of sub section 8 of section 80IC within the aforesaid period of 10 years the said previous years in which the substantial expansion is undertaken would become initial assessment year and as such entitled for 100% deductions of profits and gains. Operative part of the judgment (supra) is extracted for ready perusal as under:

a)…..

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 @ 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 been 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.

10. In the light of the aforesaid undisputed facts, we are of the considered view that when assessee has carried out substantial expansion in the existing unit immediately on the completion of first five years i.e. in FY 2011-12 and duly complied with the conditions laid down in clause (ix)

sub section 8 of Section 80-IC it is entitled for deduction for the year under assessment @ 100%. Ld. CIT(A) by threshing the facts of this case relied upon order passed by coordinate bench of Tribunal in Tirupati LPG Industries Ltd. Vs. DCIT has rightly deleted the addition made by the AO on account of disallowance u/s 80-IC. So we find no scope to interfere into the findings returned by Ld. CIT(A). Hence Grounds No. 1, 2 & 3 are determined against Revenue.

Grounds No. 4, 5 & 6:

11. Ld. CIT(A) deleted the addition of Rs. 1,28,692/-, 85,682/- and 33,917/- on account of personal use of car, on account of tour and travelling expenses and on account of telephone expenses respectively made by the AO on *ad hoc* basis @ 10%.

12. We are of the considered view that when Assessing Officer has proceeded to make *ad hoc* disallowance without assigning any reasons but on the basis of surmises the disallowance is not sustainable in the eyes of law. When undisputedly assessee has claimed the expenses on the basis of its audited financials which have not been disputed by the AO, the *ad hoc* addition on the basis of surmises is bad in law. Moreover, when it is not case of the AO that these expenses have not been made wholly and exclusively for the purpose of business by the assessee there is no ground to disallow the same. Ld. CIT(A) has rightly deleted the addition made by the AO. We find no scope to interfere in the finding returned by Ld. CIT(A). Consequently ground nos. 4 to 6 raised by the Revenue are dismissed.

13. In view of what has been discussed above, present appeal filed by the Revenue is hereby allowed.

Order pronounced in the open court on 27th November, 2020.

Sd/-	Sd/-
(ANIL CHATURVEDI)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 27th November, 2020
**Kavita Arora, Sr. P.S.*

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, New Delhi.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi