

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एकल सदस्यीय", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH  
BENCH 'SMC' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य  
BEFORE: SMT. DIVA SINGH, JM

आयकर अपील सं./ITA No. 369/CHD/2019

निर्धारण वर्ष / Assessment Year : 2015-16

M/s K.T. Inc, Village-Gumma, Sector-6, Parwanoo, Distt. Solan (HP)	बनाम VS	The DCIT, Circle, Parwanoo.
स्थायी लेखा सं./PAN No: AAHFK9210H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None

राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Sr.DR

सुनवाई की तारीख/Date of Hearing : 10.10.2019

उदघोषणा की तारीख/Date of Pronouncement : 17.10.2019

**आदेश/ORDER**

The present appeal has been filed by the assessee wherein the correctness of the order dated 31/01/2019 of CIT(A) Shimla pertaining to 2015-16 assessment year is assailed on the following ground :

*"The Id. CIT(A) is wrong in disallowing the benefit of substantial expansion u/s 80IC(2) and confirming the deduction u/s 80IC only to the extent of 25% as against 100% claimed by assessee on undertaking substantial expansion."*

2. At the time of hearing no one was present on behalf of the assessee. The appeal was passed over. In the 2<sup>nd</sup> round also the position remained the same. However, on considering the aforementioned ground it was deemed appropriate to proceed

with the present appeal ex-parte qua the assessee appellant on merits after hearing the ld. Senior DR.

3. On a reading of the impugned order, the ld. Sr.DR agreed that the order cannot be upheld. A perusal of the record shows that the assessing officer in the year under consideration restricted the 80IC claim to 25% in view of the fact that this was the 9<sup>th</sup> year of commencement of production in the activity of the manufacturing of watches. It is seen that the assessee challenged this before the CIT(A) who relying upon the decision of the Apex Court in the case of CIT Vs M/s Classic Binding Industries & Ors. in Civil Appeal No. 7208 and others of 2018 dated 20.08.2018. It is seen that the said view has been reconsidered by the Apex Court in the case of M/s Aarham Softronics & others in Civil Appeal No. 1784 of 2019 dated 20.02.2019 wherein the Court held as under :

*22. It would be pertinent to point out that in Para 20 of the judgment in Classic Binding Industries, this Court observed that if deduction @ 100% for the entire period of 10 years, it would be doing violence to the language of sub-section (6) of Section 80-IC. However, this observation came without noticing the definition of 'initial assessment year' contained in the same very provision.*

*"23. Having examined the matter in the aforesaid perspective, judgment in the case of Mahabir Industries v. Principal Commissioner of Income Tax would, in fact, help the assessee. The fine distinction pointed out in Classic Binding Industries elopes thereby. To recapitulate, in Mahabir Industries, it was held that if an assessee get 100% 2 Civil Appeal Nos. 4765-4766 of 2018 decided on May 18, 2018 24 exemption under Section 80-IB of the Act for five years and thereafter carries out the substantial expansion because of which said assessee becomes entitled to exemption under the new provision i.e. Section 80-IC of the Act, the assessee would be entitled to deduction @ 100% even after five years. This ruling was predicated on the ground that there can be two initial assessment years, one for the purpose of Section 80-IB and other for the purposes of Section 80-IC of the Act. Once we find that there can be two initial assessment years, even as per the definition thereof in Section 80-IC itself, the legal position comes at par with the one which was discussed in Mahabir Industries.*

*“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. 26 However, this 100% deduction would be for remaining three years, i.e., 8th, 9th and 10th assessment years.*

*25. In view of the aforesaid, we affirm the judgment of the High Court on this issue and dismiss all these appeals of the Revenue. Likewise, appeals filed by the assesseees are hereby allowed.”*

3.1 Accordingly, the position of law as appreciated by the Id. CIT(A) is no longer a correct law. The issue of having carried out substantial expansion in the context of 80IC claim in a similar matter has already been elaborated by the Apex Court as has been brought out herein above. Accordingly, the impugned order is set-aside following the legal position as addressed by the Apex Court and the issue for consideration on facts is restored back to the file of the assessing officer with the direction to grant necessary relief in accordance with

law. Needless to say that the assessing officer shall grant a reasonable opportunity of being heard to the assessee .

4. Accordingly, the appeal of the assessee is allowed for statistical purposes. Said order was pronounced in the Open Court at the time of hearing itself.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 17<sup>th</sup> October,2019.

Sd/-

(दिवा सिंह)

**(DIVA SINGH)**

**न्यायिक सदस्य/Judicial Member**

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्था/ 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