

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्रीजी.मंजुनाथ, लेखासदस्यके समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.3399 & 3400/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2012-13 & 2013-14)

The Deputy Commissioner of Income Tax, Company Circle-I(1), Chennai.	Vs	Mr. Pool Thevar Marimuthu Prop: M/s.Arun Enterprises 2 / 28, Reddy 1 st Street, Ekkattuthangal, Chennai-600 032.
		PAN: AANPM 5361M
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. Abani Kanta Nayak,CIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. Y.Sridhar, CA

सुनवाईकीतारीख/Date of hearing	:	03.03.2021
घोषणाकीतारीख /Date of Pronouncement	:	21.04.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

These two appeals filed by the Revenue are directed against the order of the learned CIT(A)-4, Chennai dated 09.10.2019 and pertains to assessment year 2012-13 & 2013-14. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off by this consolidated order.

2. The Revenue has more or less raised common grounds of appeal for both assessment years, therefore, for the sake of

brevity, grounds of appeal filed for the assessment year 2012-13 in ITA No.3399/Chny/2019 are reproduced as under:-

"1. The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.

2. The Id CIT(A) erred in holding that the formation of M/s Arun Enterprises is not spitting up or reconstruction of the existing business of M/s Arun Plasto Moulders Private Ltd (APMPL) by only relying on the fact stated by the assessee that the M/s Arun Enterprises has diversified products and new product line cater to the business of M/s Unilever Asia Pvt Ltd (UAPL) as well as third party clients without any restriction imposed by UAPL.

3. The Id. CIT(A) failed to appreciate the formation of M/s Arun Enterprises is nothing but splitting up or reconstruction of the business, already existed, of M/s Arun Plasto Moulders Private Ltd(APMPL) in view of the facts that-(i) The assessee is the proprietor of M/s Arun Enterprises as well as major stake holder along with his family in APMPL,(II) M/s Arun Enterprises was formed by transfer of machinery (more than 20% limit from APMPL, (III) M/s Arun Enterprises having huge and significant amount of related party transaction with APMPL in form of sale of raw material, finished goods, Moulds and spares, labour service charge, Purchase of raw material etc, hence catering directly to the needs of business already existed of APMPL and indirectly to UAPL as APMPL is a personal care unit of UAPL.

4. The Id. CIT(A) erred in holding that the formation of M/s Arun Enterprises was not an occurrence of Transfer of machinery to the tune of more than the specified limit of 20% from business, already existed, of APMPL, by wrongly comparing machinery available as on 31/3/2012 to the transferred in machinery in F Y 2010-11(First year of 801C claim), on the contrary transferred in machinery in F Y in F Y 2010-11(First year of 80IC claim) has to be compared with machinery available in F Y 2010-11(First year of 80IC claim)

for checking specified limit of 20% transferred in machinery at the time of formation of 80IC eligible unit, as AO has done and correctly disallowed 80IC claim of the assessee, as this transferred in machinery was more than 50% of total plant & machinery at the time of formation of 801C eligible unit i.e the First year of 80IC claim.

5. The Id. CIT(A) failed to appreciate that if any undertaking has not qualified any one or both of the two conditions specified u/s 80IC(4) regarding formation of undertaking by splitting up or reconstruction and use of transferred in machinery from a business already existed, its claim of 80IC deduction has to be disallowed and in this present case, the undertaking of the assessee has not complied with both of the condition, hence AO has rightly disallowed the claim of the assessee u/s 80IC.

6. The Id CIT(A) erred in holding the directors of STPI as competent authority for granting approval u/s 10B by relying on the Hon'ble Jurisdictional High Court Decision in the case of M/s live Connections software Solutions Pvt Ltd [2014] 51 taxmann.com 454, whereas, the relied upon case, the assessee for claiming deduction/s 10B, was not having registration with STPI for the assessment year involved and Jurisdictional High Court held that having registration with STPI is a pre-condition for claiming deduction u/s 10B, hence, the Jurisdictional High Court in the relied upon case has not decided anything regarding - whether, without any delegation of power from the Board of Approval for EOU scheme for sec 10B, Directors of STPI is a competent authority for granting approval u/s 10B or not, as the question was never before the Jurisdictional High Court.

7. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.”

3. Brief facts of the case are that the assessee, an individual and proprietor of M/s. Arun Enterprises, is engaged in manufacturing of ancillary equipments catering to plastic, paper, rubber, confectionery, food and medical industries. During the financial year relevant to the assessment year 2011-12, the assessee has started a unit at Haridwar for manufacturing of plastic components using injection moulding process and supplied to M/s. Hindustan Unilever Ltd. for manufacturing of water purifiers. The assessee has filed his return of income for the assessment year 2012-13 on 23.09.2012 declaring total income of Rs. 13,08,240/-, after claiming deduction towards profit derived from undertaking situated at Haridwar u/s.80IC of the Act, amounting to Rs.13,42,87,644/-. The case was taken up for scrutiny and during the course of assessment proceedings, the Assessing Officer has denied deduction claimed u/s.80IC of the Act, in respect of profit derived from unit situated at Haridwar for manufacturing of plastic components using injection moulding process for the following reasons:-

(i) Till the Asst year 2010-11, the assessee was engaged in the manufacturing of ancillary equipments catering to the plastic, paper, rubber, confectionary, food and medical industries During the Financial year 2010 11, the company has started a unit in Haridwar, for manufacturing and supplying of plastic components using the injection moulding process and supplied to Hindustan Unilever Limited.

(ii) The assessee and his family members are the share holders and Directors of the Company in the name and style of "Arun Plasto Moulders P Ltd (APMPL)". The APMPL is engaged in the business of making plastic components using the process of injection moulding and supplies major part of its production to Hindustan Unilever Limited. The said company started 80IC undertaking in Haridwar, for manufacturing the plastic components. The claim of 80IC by the Company was disallowed on the ground of splitting up of business from the AY 2009-10, the first year of claim.

(iii) When the companies claim u/s 80IC was disallowed, the assessee as a proprietary concern started the unit in Haridwar for manufacturing of the plastic components using injection moulding process for supplying to Hindustan Unilever Limited. It is pertinent to note that the assessee was not engaged in the business of manufacturing of plastic components till such time.

(iv) During the Financial year 2010-11 (Asst. Year 2011-12), the first year of 80IC claim by the assessee, the fixed asset schedule reveals that out of total Plant and Machinery to the worth of Rs.5981123/- installed in the Haridwar unit, Plant and Machinery to the worth of Rs.3120023/- was transferred from APMPL. This transfer of Machinery was more than 50% of the total Plant & machinery employed in the Haridwar unit. Though the assessee and the company, APMPL, are different person and the company was a corporate entity, the lifting of the Corporate veil reveals that the assessee along with his family members control the business of the company and the order placed by the Hindustan Unilever Limited is to their group. As the assessee controls the affairs of the company, he

has decided to split up the business of the company and divert some of the orders of Hindustan Unilever Limited to his proprietary concern especially to his Haridwar unit, The assessee's action is also further justified by transferring the Plant & Machinery i.e. injection moulding machine from APMPL to the worth of Rs.3120023/-."

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has filed written submissions, which has been reproduced in para 6 on page 5 to 12 of the learned CIT(A) order. The sum and substance of arguments of the assessee before the learned CIT(A) are that denial of deduction claimed u/s. 80IC of the Act by the Assessing Officer is factually incorrect for simple reason that there is no splitting of existing business as alleged by the Assessing Officer, which is evident from the fact that new unit started at Haridwar is manufacturing new product for exclusive use of M/s. Hindustan Unilever Ltd. for manufacturing of water purifiers. The assessee has also negated the observations made by the Assessing Officer in light of denial of deduction claimed u/s. 80IC to sister concern of the assessee, M/s. Arun Plasto Moulders Pvt. Ltd. (APMPL) with facts and argued that the Assessing Officer has alleged that the assessee has

started new unit, because of denial of deduction to sister concern on the ground of splitting up of existing business, but fact remains that the assessee has started new unit in the year 2009 well before the Assessing Officer has denied deduction to the sister concern for the assessment year 2010-11 vide his order dated 28.12.2011. Therefore, observations of the Assessing Officer that because deduction was denied to M/s. Arun Plasto Moulders Pvt. Ltd, the assessee has started new unit is not correct. The assessee has also negated another observation of the Assessing Officer in light of Explanation 2 of section 80(IA)(3) rws 80IC of the Act that the assessee has used more than 20% of used machinery from the existing unit with facts and figures, as per which percentage of used machinery installed in the new unit is only 15.19%, when compared to total amount of plant and machinery installed at new unit at Rs.2,05,36,114/-.

5. The learned CIT(A), after considering relevant submissions of the assessee and also by relied upon plethora of judicial precedents, including the decision of Hon'ble Delhi

High Court in the case of CIT Vs.Ganga Sugar Corporation Ltd., 92 ITR 173 and a decision in the case of CIT Vs. Hindustan General Industries Ltd. 6 Taxman 360(Del), held that new unit established at Haridwar is a new undertaking, but not established by splitting or reconstructing of existing unit of the assessee at Chennai. The learned CIT(A) further observed that new unit at Haridwar is altogether different from existing unit at Chennai, because it was established to cater the needs of Hindustan Unilever Ltd. for manufacturing of water purifiers and such unit has been set up well before denial of deduction to another sister concern of the assessee M/s. Arun Plasto Moulders Pvt. Ltd.. The learned CIT(A) has also negated observations made by the Assessing Officer in light of transfer of used plant and machinery in excess of prescribed limit and observed that if you take total amount of plant and machinery installed in the new unit, then amount of old plant and machinery transferred from M/s. Arun Plasto Moulders Pvt. Ltd. is only 15.19% of total plant and machinery and which is well within the percentage specified under Explanation 2 of section 80(IA)(3) rws 80IC of the Act. Therefore, he opined that

additions made by the Assessing Officer towards disallowance of deduction claimed u/s.80IC of the Act is legally unsustainable in law and accordingly, directed the Assessing Officer to delete additions made towards disallowance of deduction claimed u/s.80IC of the Act for both the assessment years. The relevant findings of the learned CIT(A) are as under:

“8. Now, I have carefully gone through the undisputed/uncontroverted facts marshalled and presented by the AO/AR as reflected, in essence, in the excerpts from the said assessment order and the submissions of the AR quoted supra bolstered by relevant and supporting evidence as also the case laws relied on by the rival parties but on a relative and comparative consideration of the same, I am persuaded by the more substantive and meritorious reasoning/substantiation adduced by the AR on the issue at hand.

8.1 The AO disallowed the claim of deduction u/s 80IC basically for two reasons:

(i) the unit at Haridwar according to her was out of splitting up of business at Chennai unit and

(ii) on account of transfer of plant and machinery from the Chennai unit to Hardwar unit purportedly exceeding the statutory limit of 20% permissible in the said provision.

The contentions of the AO appears misplaced both on facts and in law as could be seen from the aforesaid discussion in so far as the facts that the new unit at Haridwar would be by no logic or reasoning construed to be put up by splitting or reconstruction of the unit already in existence in Chennai since from a perusal of the assessment order and material and documentation on record it is seen that in order to expand the business in new areas by having

diversified products in its fold and to cater the new line of business of supplying products to water purifier business of UAPL and also to cater independently to any third party clients without any restriction imposed by UAPL, the appellant had conceived the idea of establishing of a new unit of M/s. Arun Enterprises at Haridwar, Uttarakhand in the FY. 2009-10 and it was common for any business enterprise to expand its business without any restrictions by having diversified products to sustain in the competitive environment. Hence, the appellant's submission that the AO's simple and generic observation that the orders of UAPL to M/s. Arun Plasto Moulders Pvt. Ltd. (APMPL) is split-up and given to the appellant's new unit is not correct for the reason that the products manufactured by both units are different and it was with the above idea, the appellant established a new unit at Haridwar in Uttarkhand State in the F.Y. 2009-10 to involve manufacturing and supply of plastic components using injection moulding process to cater to the new product segment of Water Purifiers and other products independently to third party vendors, and also having a specialised assembly services.

8.2. In this regard, corroboration could be had by way of the fact that the appellant made an application on 21.11.2009 to setup a unit with SIIDCUL (State infrastructure and Industrial Development Corporation of Uttranchal Ltd) at Haridwar in the state of Uttarkand. The said authority vide its letter No. 19784/AGM(H)/SIDCUL/09 dated 24.12.2009 had given an accord and accordingly allotted Plot No.26 in Sector IB at 11E, Haridwar for setting up the new plant of the appellant. In furtherance of the above, the appellant had entered into a lease deed with SIIDCUL and took the possession of the said land on 16.02.2010. The power connection was obtained from Uttarkhand Power Corporation Limited by way of their ceiling certificate dated 05.03.2010. The appellant got its factory registration and license vide letter dated 25.02.2010 from the prescribed Authority. The ESIC registration was obtained on 28.06.2010. The registration with the Commercial Tax for VAT and CST was obtained on 06.02.2010. The registration for Service Tax was also obtained vide Form ST-2 dated 26.03.2010.

The above facts clearly proves that the appellant had initiated the process of setting up a new unit at Haridwar, Uttarkand on 29iL2009 itself (F.Y. 200940) when compared to the date of 28.12.2011, the date on which the claim u/s 80IC of APMPL was disallowed on the ground. that the unit was started by sp1ittingup its existing business from Chennai. Further, the appellant during the F.Y. 2009-10 had also spent an amount of Rs.1,62,10,320/ towards acquisition of fixed assets being land, plant and machinery and other assets for setting up of the new unit at Hardwar, The said investment in the fixed assets is reflected separately for units at Chennai and Haridwar in the audited financials field.

8.3. In the above background and facts which has not been disputed by the AO specifically and pointedly the detailed rulings in the case of CIT vs. Ganga Sugar Corporation Ltd. 92 ITR 173 Del) & CIT Vs. Hindustan General industries Ltd. 6 Taxmann 360 (Del) apart from the catena of judgements relied on by the AR aforesaid, is instructive and supports the contention of the appellant in the instant case.

CIT vs. Ganga Sugar Corporation Ltd. 92 ITR 173 (Del)

“In the reconstruction of a business, as in the reconstruction of a company, there is an element of transfer of assets and of some change, however partial or restricted it may be, of ownership of the assets. The transfer, however need not to he of all the assets. It is none the less imperative that there should be continuity and preservation of the old undertaking though in an altered from. The concept of reconstruction of business would not be attracted when a company which is already running one industrial unit set up another industrial unit. The new industrial unit would not lose its separate and independent identity even though it has been set up a company which is already running an industrial unit before the setting up of the new unit The object of Sec. 15C of the 1922 Act is to provide an incentive for the setting up of new industrial unit so as to accelerate the process of industrialization. It does not appear to have been the intention of the Legislature as envisaged by Sec. 15C of the 1922 Act, that the benefit of the said section would be confined to the industrial undertaking of those parties who had not already set up such undertakings in the past but would not be

extended to parties who have past experience of running similar undertakings.

If in the context of the total cost involved in the setting up of the new 'industrial undertaking the value of transferred building, machinery or plant constitute only a small fraction, the new industrial undertaking would not be held to have been formed by the transfer to a new business of building, machinery or plant previously used in another business. As against that, if however the value of the transferred building, machinery or plant is substantial when compared to the total cost involved in the setting up of the new industrial undertaking, the said undertaking would be hit by the concluding words of clause (i) of sub-section 15C of 1922 Act It may be stated that in sub-section (6) of Sec. 80J of the 1961 Act the Legislature has specified that the total 'value of the building machinery or plant so transferred should not exceed 20% of the total value of the building, machinery or plant used in the business of a new industrial undertaking. Although no such percentage was fixed in sec. 15C(2)(i) of the Act of 1922, the extent and quantum of value of the transferred building, machinery or plant vis-a-vis the total cost involved in the setting up of the new industrial undertaking was a relevant and material factor, the importance of which cannot be lost sight of In the light of all the facts of the case, the new industrial undertaking in the instant case could not be said to have been formed by the transfer to new business of building, machinery or plant previously used in any other business. Therefore, the assessee company was entitled to exemption from tax on profits or gains derived from the new industrial undertaking u/s 15C of the 1922 Act.

CIT Vs. Hindustan General Industries Ltd. 6 Taxman 360 (Del)

1. "The real test of finding out whether there is reconstruction or not as a result of the setting up of a new industrial undertaking. the assessee had expanded its business in the same or similar articles, but to find out whether the unit which has been set up separately is new in the sense that new plant and machinery are erected and a new independent and viable unit has come into existence for producing either the same commodities or some distinct commodities.

In the instant case, the fact clearly showed that the assessee was manufacturing certain articles at its old factory. Subsequently, as a result the order placed by the Central Government, it had to embark on construction of railway wagons. For the purpose, the existing factory was found to be totally inadequate, Fresh land was acquired, fresh capital was invested, fresh machinery and plant were installed and the new factory came into existence after more than a couple of years. It was no doubt true that in the initial stages, the new factory also turned out article perhaps of the same type as those manufactured in the old factory. But, gradually the new factory started the manufacture of railway wagons. Further the Tribunal had found as a matter of facts that the assessee's new factory was a new undertaking. There was nothing to show that as a result of setting up of this undertaking the integrity, unit or the continuity of the business transaction in the earlier undertaking were in any manner adversely affected. This was a new, independent and viable unit.

2. The mere fact while setting up of this factory, a small amount of plant and machinery was transferred from the previous business could not lead one to the conclusion that it was a case of reconstruction. Under section 84(2)(ii), the assessee could be denied exemption only where the assets transferred to the new factory constituted more than 20 percent of the assets used in the new business. This was essentially a question of fact. In the instant case, the Tribunal had looked into the figures of the balance sheets and had correctly come to the conclusion that the assets transferred constituted less than 20 per cent of the total value of the assets of the new business. Hence the assessee satisfied the aforesaid condition.

3. The emphasis is not on business but on undertakings. The exemption is granted to new undertakings and the essence of the exemption is that it is a new industrial unit that is established and that it is not merely a rehash of an already existing unit. Hence, the attempt of the Revenue to classify the assessee's business at the two factories as one of manufacturing steel structurals did not prevent the assessee from claiming that the new factory was a newly established industrial undertaking.

4. *The assessee, therefore, satisfied all the conditions laid down in section 84(2) and was entitled to the deduction contemplated in section 84(1),”*

Further again in one of its recent decisions in the case of cir V. Premier cotton Mills Ltd 240 ITR 434, the Madras High Court had discussed in more detail the splitting up or reconstruction of an existing business. It was held that there is no requirement in section 80J of Income Tax Act that the article produced in the newly established industrial undertaking should be different from the one produced by the petitioner in its existing undertakings What is material is the bringing into existence by investing fresh capital, an unit which is capable of functioning as an independent unit and is capable of / being regarded as an industrial undertaking engaged in the / production of articles.

Though the heading of the section 80J refers to newly established industrial undertaking, in the body of the section, there is no requirement that the undertaking should be new or it must be set up as an Independent unit and the new undertaking is not to be equated with legal entity which may own such undertaking. A single legal entity may own and operate more than one industrial undertakings When an existing industrial undertaking is substantially expanded and the manner of expansion is such that the newly installed plant, being regarded as an industrial undertaking, the requirements of the section are met Location . of expanded facilities vis-a-vis existing undertaking is not relevant The petitioner added the additional splindlage after securing license and claimed deduction only after completion of expansion. The Madras High court held that the petitioner is entitled to the deduction u/s. 80J of Income Tax Act.

8.4. *The case laws referred to above clearly indicate the requirements to claim that an undertaking being newly established undertaking eligible to claim deduction as provided in the section 80IC of the IT Act and such an undertaking is not established by splitting or reconstructing of an existing unit and if these yard sticks are applied to the facts prevailing in the case of the instant assessee it is evident that the Haridwar unit of the assessee is a*

new undertaking and not established by splitting up or reconstructing the existing unit of the assessee at Chennai.

8.5. It is also interesting and pertinent to mention here that as the AO in her assessment order discussed the information about disallowance of claim u/s – 80IC of the Act in its group company APMPL (Arun Plasto Moulders Pvt. Ltd.) for the A.Y. 2009-10 on the ground that there was a splitting-up of business which was in existence at Chennai that the said claim u/s 80IC of APMPL was finally allowed by the same Assessing Officer vide her order of assessment u/s.143(3) r.w.s. 254 of the Act dated 31.03.2016 whereas in the original assessment of APMPL dated 28.12.2011 the claim u/s 80C was disallowed on the grounds of splitting up of business and which was remanded back to the files of AO and the AO had after investigation and verification of the facts passed the order on 31.03.2016.

The observations/inferences of the AO on the issue of the transferred machinery which was the second ground on which the disallowance of the deduction claimed u/s 80IC was made is factually incorrect on various counts namely:

The AO had just reproduced the Para (iv) from the assessment order for the A.Y. 2012-13 and verbatim adopted the same as Para (iv) in the present assessment order. The correct fact is that the AC during the course of the assessment for the AY 2012-13 had sought details for addition to fixed assets exceeding Rs10,00,000/- during the AY, 2011- 12 and 2012-13 which was furnished by the appellant with description to the tune of Rs.59,81,123/-. However, the total value of plant and machinery available as on 31.03.2012, being the year end for the AY. 2012-13 stood at Rs.2,05,36,114/- as detailed herein below. The AO instead of computing the percentage of old transferred machinery of Rs,3 1,20,023/ - with Rs.2,05,36,114/- inadvertently appears to have adopted the said amount of Rs.59,81,123/- as the total value of plant and machinery and came to a conclusion that there was a transfer of plant and machinery for more than 50% from a group company and thereby concluded that the appellant has violated the condition laid down u/s 80IC of the Act. The percentage of

transfer of old machinery is only 15.19%, if worked out correctly as detailed hereunder:

The total gross plant and machinery as on 31.03.2012 stands at Rs 2,05,36,114/- as against the amount of Rs. 59,81,123/- as mentioned by the AC in the assessment order. The details of plant and machinery available as on 31.03.2012 as per the audited financials which has not been disputed by the AO are as under:

<i>Asset</i>	<i>F. Y.</i>	<i>Gross Amt before depreciation</i>	<i>Depreciation</i>	<i>Net Block</i>
<i>Plant & machinery</i>	<i>2009-10</i>	<i>Rs.83,32,090 plus WIP of rs.7,23,028</i>	<i>Rs.624,968</i>	<i>Rs.84,30,969</i>
<i>Plant & machinery</i>	<i>2010-11</i>	<i>Rs.98,99,901</i>	<i>Rs.27,00,684</i>	<i>Rs.1,56,30,186</i>
<i>Plant & machinery</i>	<i>2011-12</i>	<i>Rs.15,80,276</i>	<i>Rs.25,60,009</i>	<i>Rs.1,46,50,453</i>
	<i>Total</i>	<i>Rs.2,05,36,114</i>		

*If the amount of Rs.31,20,023/- being the value of old plant and machinery as mentioned by AO, when worked out for the percentage on the total plant and machinery, the same would be 15.19% only as against more than 50% as observed by the AO in her assessment order. $[31,20,023 / 2,05,36,114 * 100 = 15.19\%]$ and therefore well within the percentage specified of 20% in Explanation 2 of 80(IA)(3) rws 80IC.*

8.6. Therefore in view of the totality of the factual matrix obtained in the instant case regarding the transfer of plant & machinery to the Haridwar Unit as aforesaid and the ratio of judicial precedents quoted supra, the addition made by the AC for both the impugned

assessment years on 80IC being legally untenable is directed to be deleted. This ground is therefore allowed.”

6. The learned DR submitted that the learned CIT(A) has erred in holding that the formation of M/s Arun Enterprises is not splitting up or reconstruction of the existing business of M/s Arun Plasto Moulders Private Ltd (APMPL) by only relying on the fact stated by the assessee that M/s Arun Enterprises has diversified products and new product line cater to the business of M/s Unilever Asia Pvt Ltd (UAPL) as well as to third party clients without any restriction imposed by UAPL. The learned CIT(A) failed to appreciate that formation of M/s. Arun Enterprises is nothing but splitting up or reconstruction of the business, already existed, in view of the facts that the assessee is the proprietor of M/s. Arun Enterprises as well as major stake holder along with his family in M/s. APMPL and hence, catering directly to the needs of business already existed of APMPL and indirectly to UAPL is a personal care unit of UAPL. The learned CIT(A) has erred in holding that the formation of M/s Arun Enterprises was not an occurrence of transfer of plant and machinery to the tune of more than specified limit of 20% from business, already in existence of APMPL, by wrongly

comparing machinery available as on 31.3.2012 to the transferred machinery in the financial year 2010-11, first year of 80IC claim, on the contrary, it has to be compared with machinery available in financial year 2010-11, for checking specified limit of 20% transferred machinery at the time of formation of 80IC eligible unit. The learned CIT(A) has failed to appreciate that if any undertaking has not qualified any one or both of the two conditions specified u/s 80IC(4) regarding formation of undertaking by splitting up or reconstruction and use of transferred plant and machinery from a business already existed, its claim of 80IC deduction has to be disallowed. Although, the Assessing Officer has brought out various facts to prove that splitting up of already existing business, the learned CIT(A) has negated observations made by the Assessing Officer without bringing on record any evidence to prove that how unit set up at Haridwar is separate and independent unit different from already existing business at Chennai.

7. The learned A.R for the assessee, on the other hand, strongly supporting order of the learned CIT(A) submitted that

new unit set up at Haridwar is a separate undertaking for manufacturing of new product different from products already manufactured by the assessee in the existing unit at Chennai, which is clear from facts narrated before the learned CIT(A) that new unit had been set up at Haridwar to cater the needs of major clients of M/s. Unilever Asia Pvt. Ltd., which has established unit at Haridwar apart from having their factories all over India to have its uninterrupted procurement of goods. The assessee being one of the major suppliers of materials to UAPL has established a unit in UAPL, cluster area and entered into an agreement (Specific Master Purchase Agreement) to supply its entire products to the personal care unit of UAPL. The learned AR further submitted that apart from personal care unit, UAPL had also established another unit for manufacturing of water purifiers and spares, which product is different from personal care products. To cater the needs of UAPL for manufacturing of water purifiers, the assessee has set up a separate unit for manufacturing of plastic moulded components which are exclusively used for water purifier machines. Therefore, the Assessing Officer was totally incorrect in coming

to the conclusion that there is splitting up of business already existing at Chennai. The learned A.R further submitted that the Assessing Officer has denied deduction mainly on the ground that the assessee has started new unit, when the deduction claimed u/s. 80IC of the Act by M/s Arun Plasto Moulders Private Ltd. on the ground of splitting up of business at Chennai unit, but fact remains that new unit started by the assessee is much before denial of deduction in the year 2011, which is evident from the fact that the assessee had made an application to SIIDCUL (State Infrastructure & Industrial Development Corporation of Uttranchal Ltd) at Haridwar in the State of Uttarakhand on 21.11.2009. The said authority vide its letter dated 24.12.2009 had given approval and accordingly, allotted land for setting up new unit. In furtherance, the assessee has completed all formalities to set up unit in the financial year 2009-10 itself. Therefore, it is highly incorrect on the part of the Assessing Officer to allege that new unit has been set up, when deduction was denied to sister concern of the assessee on the ground of splitting up of business. The AR further submitted that another allegation of the Assessing

Officer in light of Explanation 2 of section 80(IA)(3) rws 80IC of the Act, regarding transfer of plant & machinery previously used for any purpose over and above the specified limit of 20% submitted that the Assessing Officer has wrongly compared plant and machinery value to the tune of Rs.59,81,123/- to arrive at 50%, ignoring fact that the assessee has installed plant and machinery as on 31.03.2012 at Rs.2,05,36,114/- and such value is considered, then percentage of plant and machinery used in the new unit is only 15.19%, which is well within the percentage specified under Explanation 2 of section 80(IA)(3) rws 80IC of the Act. Therefore, the learned CIT(A), after considering all the facts has rightly held that the assessee is eligible for deduction u/s. 80IC of the Act and hence, his order should be upheld.

8. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The Assessing Officer has denied deduction claimed u/s. 80IC of the Act in respect of profit derived from new industrial undertaking at Haridwar on the ground that new unit

at Haridwar was set up by splitting up of existing business at Chennai unit. According to the Assessing Officer, the assessee has split up its existing business and formed new unit, when the deduction claimed u/s.80IC was denied to M/s Arun Plasto Moulders Private Ltd., a sister concern of the assessee. The Assessing Officer has also denied deduction on another ground that assessee has used plant and machinery previously used for any purpose beyond the specified percentage as per Explanation 2 of section 80(IA)(3) rws 80IC of the Act. Therefore, in order to understand whether the assessee is eligible for deduction u/s. 80IC or not, it is necessary to first understand the provisions of section 80IC of the Act. The provisions of section 80IC provides for deduction in respect of profits and gains of certain undertakings in certain special category States and such deduction has been provided from the assessment year 2004-05 onwards. In order to be eligible for deduction, one has to satisfy certain conditions, as per which, new industrial undertaking is not formed by splitting up or reconstruction of business already in existence. Further, it should not be formed by transfer of machinery or plant

previously used for any purpose. However, in case machinery or plant previously used for any purpose is installed in new unit, then, if the value of transferred plant and machinery does not exceed 20% of total value of the machinery or plant used in the business, this condition is deemed to have been satisfied. In this case, main allegation of the Assessing Officer is that unit at Haridwar was out of splitting up of business at Chennai unit. The expression "splitting of business already in existence" indicates a case where integrity of business earlier in existence is broken up and different sections of activities previously conducted are carried on independently. In order to hold that there is splitting up of business already in existence, there must be some material to hold that either some asset of an existing business is divided and another business is set up from such splitting up of assets, or then two businesses are the same and one formed by was integral part of earlier one, it would only question of breaking up of the same business. In other words, where old business is carried on by the assessee and commensurate with the growth of said business new units are established, then it cannot be said that new unit was a result of

splitting up of business already in existence. The concept of reconstruction of business would not be attracted in cases where i) a concern which is already running one industrial undertaking or unit set up another industrial unit manufacturing identical goods; or ii) a concern set up ancillary unit for manufacturing of goods for captive consumption. In order that a new industrial undertaking can be said to be not formed out of already existing business, there must be new emergence of physically separate unit on its own as a viable unit. The new activity may produce same commodity of the old business or it may produce some other distinct marketable product or even products which may affect old business. What must be certain is new undertaking must be an integrated unit by itself.

9. In this legal background, if facts of the present case is examined, the reasons given by the Assessing Officer to deny deduction claimed u/s.80IC of the Act appears to be misplaced both on facts and in law. The contentions of the Assessing Officer appears to be incorrect, because new unit at Haridwar would be by no logic or reasoning can be construed by

splitting or reconstruction of the unit already in existence in Chennai. Because, the assessee in order to expand its business in new areas by having diversified products in its fold and to cater new line of business of supplying products to water purifier business of UPAL and also to cater independently to any third party clients without any restriction imposed by UAPL, had conceived idea of establishing new unit at Haridwar, Uttarakhand in the financial year 2009-10 and such unit was commenced on 21.11.2009 itself. Further, it was common in any business enterprises to expand its business without any restrictions by having diversified products to sustain in the competitive environment. Hence, the Assessing Officer's observation that orders of UAPL to APMPL is split up and given to the assessee as new unit is not correct for the reason that products manufactured by both units are different and it was with the above idea, the assessee had established new unit at Haridwar in the financial year 2009-10 to engage in manufacturing and supply of plastic components using injection moulding process to cater to the new product segment of water purifiers.

10. In this regard, the assessee has filed various corroborative evidences to prove that it has plan to set up new unit much before the event of denial of deduction claimed u/s. 80IC to M/s Arun Plasto Moulders Private Ltd. by the Assessing Officer on 28.12.2011, as per which the assessee has made an application to SIIDCUL on 21.11.2009 and said authority vide its letter dated 24.12.2009 had given approval and accordingly, allotted land for setting up new unit. In furtherance of the above, the assessee had entered into lease deed with SIIDCUL and took possession of said land on 16.02.2010. The power connection was obtained from Uttarakhand Power Corporation Ltd. on 5.3.2010. The assessee has got its factory registration and licence on 25.02.2010 from the prescribed authority. From the prescribed authority registration with commercial tax for VAT and CST was obtained on 06.02.2010. The registration for service tax was also obtained on 26.03.2010. The above facts clearly prove that the assessee has initiated process of setting up of a new unit at Haridwar on 29.11.2009 itself and hence, observations of the Assessing Officer in light of assessment

order passed on 28.12.2011 in the case of M/s. Arun Plasto Moulders Private Ltd, is totally incorrect. Therefore, we are of the considered view that findings of the Assessing Officer that new unit at Haridwar was started by splitting of existing unit at Chennai is totally incorrect and not based on any facts. The concept of split up a business would not be attracted when a company which is already running one industrial unit set up another industrial unit to its advantage. The new unit would not lose its separate and independent entity even though it was set up by a company, which is already running an industrial unit before setting up of a new unit. The real test of finding out whether there is splitting up of already existing business or not as a result of setting up of a new industrial undertaking, the assessee had expanded its business in the same or similar articles, but to find out whether unit has been set up separately as new in the sense that new plant and machinery are erected and new independent and viable unit has come into existence for producing either the same commodity or some distinct commodity. In this case, it is abundantly clear that assessee has set up a new unit to expand its business and

also to enter into new market by considering economic feasibility of business, said unit has been set up in order to benefit from new tax regime announced for setting up units in a special category States. Further, the assessee has set up its new unit to cater the needs of its major customers which is set up a separate unit for manufacturing water purifier which is altogether a new product line. The assessee considering economic benefits of business has set up new unit at Haridwar, which cannot be considered as splitting of already existing business at Chennai. It is also interesting and pertinent to mention here that the Assessing Officer has denied deduction to the assessee on the basis of denial of deduction u/s. 80IC of the Act to one of group company of the assessee, M/s. Arun Plasto Moulders Private Ltd for the assessment year 2009-10 on the ground that there was a splitting up of business which was in existence at Chennai, but said claim was finally allowed by the Assessing Officer vide her assessment order u/s.143(3) r.w.s. 254 of the Act dated 31.03.2016, wherein original assessment of M/s. Arun Plasto Moulders Private Ltd dated 28.12.2011, the claim u/s.80IC was disallowed on the ground

of splitting of business. Later, on remand back to the file of the Assessing Officer, AO has allowed the claim and accepted the fact that unit set up at Haridwar by M/s. Arun Plasto Moulders Private Ltd was not out of splitting up of already existing business.

11. Another observation of the Assessing Officer on the issue of transfer of machinery or plant previously used for any purpose beyond the specified percentage as per Explanation 2 of section 80(IA)(3) r.w.s. 80IC of the Act. The Assessing Officer alleged that assessee has used old plant and machinery previously used in the unit of M/s. Arun Plasto Moulders Private Ltd at Rs.31,20,023/- out of total plant and machinery installed at new unit of Rs.59,81,123/- and the said used plant and machinery is more than 50% of total machinery installed in new unit, which is beyond the prescribed limit of 20% in Explanation 2 of section 80(IA)(3) r.w.s. 80IC of the Act. The assessee has filed various details to prove that computation of percentage of used machinery by the Assessing Officer is incorrect. We find that the learned CIT(A) has recorded categorical finding that the

Assessing Officer has inadvertently adopted total plant and machinery installed at Haridwar unit at Rs.59,81,123/- as against total plant and machinery installed at Rs.2,05,36,114/- . If the total value of plant and machinery installed at new unit is taken into consideration for computing old plant and machinery, then it works to 15.19%. We further noted that the Assessing Officer has reproduced the plant and machinery installed at new unit at Haridwar, as per which as on 31.03.2012, the assessee has installed total plant and machinery worth Rs.2,05,36,114/-, out of which used plant and machinery taken from APMPL is at Rs.31,20,023/-. If the amount of Rs.31,20,023/- being value of old plant and machinery as mentioned by the Assessing Officer is compared to total plant and machinery installed at new unit at Rs.2,05,36,114/-, the same would be worked out to 15.19% only, as against more than 50% as observed by the Assessing Officer in her assessment order. Further, the learned DR has vehemently argued the issue of transfer of used plant and machinery on the ground that learned CIT(A) has wrongly adopted total plant and machinery installed as on 31.03.2012 instead of plant and

machinery as on 31.03.2011. The learned DR further submitted that of plant and machinery should be considered when the unit was first claimed deduction u/s.80IC of the Act. In this case, the assessee has claimed deduction for the first time in the financial year 2010-11 relevant to the assessment year 2011-12 and hence, total plant and machinery installed at the end of financial year 2010-11 needs to be considered.

12. We have considered the arguments of the learned DR in light of facts brought out by the learned CIT(A) regarding investments in new plant and machinery installed at new unit at Haridwar. Even if, the plant and machinery installed at new unit is considered as on 31.03.2011, then also assessee has invested a sum of Rs.1,82,32,810/- as on 31.03.2011 and if amount of used plant and machinery at Rs.31,20,023/-, is considered to total investment in plant and machinery as on 31.03.2011 at Rs.1,82,32,810/-, the percentage works out to Rs.17.11%, which is well within the percentage specified in Explanation 2 of section 80(IA)(3) rws 80IC of the Act. Therefore, we are of the considered view that on this count also

reason given by the Assessing Officer to deny deduction claimed u/s.80IC of the Act fails.

13. Coming back to case laws relied on by the counsel for the assessee. The learned counsel for the assessee has relied upon plethora of judicial precedents in support of his arguments. The Hon'ble High Court of Delhi in the case of CIT Vs.Ganga Sugar Corporation Ltd., 92 ITR 173 has considered an identical issue in light of the observations of the Assessing Officer of splitting up or reconstruction of business already in existence. The Hon'ble High Court in the context of provisions of section 15C of the Income Tax Act, 1922, which is similar to the provisions of section 80J of the Income Tax Act, 1961 has held as under:-

"In the reconstruction of a business, as in the reconstruction of a company, there is an element of transfer of assets and of some change, however partial or restricted it may be, of ownership of the assets. The transfer, however need not to be of all the assets. It is none the less imperative that there should be continuity and preservation of the old undertaking though in an altered form. The concept of reconstruction of business would not be attracted when a company which is already running one industrial unit set up another industrial unit. The new industrial unit would not lose its separate and independent identity even though it has been set up a company which is already running an industrial unit before the setting up of the new unit The object of Sec. 15C of the 1922 Act is

to provide an incentive for the setting up of new industrial unit so as to accelerate the process of industrialization. It does not appear to have been the intention of the Legislature as envisaged by Sec. 15C of the 1922 Act, that the benefit of the said section would be confined to the industrial undertaking of those parties who had not already set up such undertakings in the past but would not be extended to parties who have past experience of running similar undertakings.

If in the context of the total cost involved in the setting up of the new 'industrial undertaking the value of transferred building, machinery or plant constitute only a small fraction, the new industrial undertaking would not be held to have been formed by the transfer to a new business of building, machinery or plant previously used in another business. As against that, if however the value of the transferred building, machinery or plant is substantial when compared to the total cost involved in the setting up of the new industrial undertaking, the said undertaking would be hit by the concluding words of clause (i) of sub-section 15C of 1922 Act It may be stated that in sub-section (6) of Sec. 80J of the 1961 Act the Legislature has specified that the total 'value of the building machinery or plant so transferred should not exceed 20% of the total value of the building, machinery or plant used in the business of a new industrial undertaking. Although no such percentage was fixed in sec. 15C(2)(i) of the Act of 1922, the extent and quantum of value of the transferred building, machinery or plant vis-a-vis the total cost involved in the setting up of the new industrial undertaking was a relevant and. material factor, the importance of which cannot be lost sight of In the light of all the facts of the case, the new industrial undertaking in the instant case could not be said to have been formed by the transfer to new business of building, machinery or plant previously used in any other business. Therefore, the assessee company was entitled to exemption from t on profits or gains derived from the new industrial undertaking u/s 15C of the 1922 Act."

14. The learned AR for the assessee has also relied upon the decision of the Hon'ble High Court of Delhi in the case of

CITVs Hindustan General Industries Ltd. 6 taxmann.cm 360.

The Hon'ble Delhi High Court in the context of splitting up or reconstruction of already existing business has held as under:-

"1. The real test of finding out whether there is reconstruction or not as a result of the setting up of a new industrial undertaking. the assessee had expanded its business in the same or similar articles, but to find out whether the unit which has been set up separately is new in the sense that new plant and machinery are erected and a new independent and viable unit has come into existence for producing either the same commodities or some distinct commodities.

In the instant case, the fact clearly showed that the assessee was manufacturing certain articles at its old factory. Subsequently, as a result the order placed by the Central Government, it had to embark on construction of railway wagons. For the purpose, the existing factory was found to be totally inadequate, Fresh land was acquired, fresh capital was invested, fresh machinery and plant were installed and the new factory came into existence after more than a couple of years. It was no doubt true that in the initial stages, the new factory also turned out article perhaps of the same type as those manufactured in the old factory. But, gradually the new factory started the manufacture of railway wagons. Further the Tribunal had found as a matter of facts that the assessee's new factory was a new undertaking. There was nothing to show that as a result of setting up of this undertaking the integrity, unit or the continuity of the business transaction in the earlier undertaking were in any manner adversely affected. This was a new, independent and viable unit.

2. The mere fact while setting up of this factory, a small amount of plant and machinery was transferred from the previous business could not lead one to the conclusion that it was a case of reconstruction. Under section 84(2)(ii), the assessee could be denied exemption only where the assets transferred to the new factory constituted more than 20 percent

of the assets used in the new business. This was essentially a question of fact. In the instant case, the Tribunal had looked into the figures of the balance sheets and had correctly come to the conclusion that the assets transferred constituted less than 20 per cent of the total value of the assets of the new business. Hence the assessee satisfied the aforesaid condition.

3. The emphasis is not on business but on undertakings. The exemption is granted to new undertakings and the essence of the exemption is that it is a new industrial unit that is established and that it is not merely a rehash of an already existing unit. Hence, the attempt of the Revenue to classify the assessee's business at the two factories as one of manufacturing steel structurals did not prevent the assessee from claiming that the new factory was a newly established industrial undertaking.

4. The assessee, therefore, satisfied all the conditions laid down in section 84(2) and was entitled to the deduction contemplated in section 84(1),”

15. The Hon'ble Jurisdictional High Court of Madras in the case of CIT Vs. Premier Cotton Mills Ltd, 240 ITR 434 has discussed in more detail the splitting up or reconstruction of already existing business in the context of deduction u/s.80J of the Act. The relevant findings of the Hon'ble High Court are as under:-

“It was held that there is no requirement in section 80J of Income Tax Act that the article produced in the newly established industrial undertaking should be different from the one produced by the petitioner in its existing undertakings. What is material is the bringing into existence by investing fresh capital, an unit which is capable of functioning as an

independent unit and is capable of / being regarded as an industrial undertaking engaged in the / production of articles.

Though the heading of the section 80J refers to newly established industrial undertaking, in the body of the section, there is no requirement that the undertaking should be new or it must be set up as an Independent unit and the new undertaking is not to be equated with legal entity which may own such undertaking. A single legal entity may own and operate more than one industrial undertakings. When an existing industrial undertaking is substantially expanded and the manner of expansion is such that the newly installed plant, being regarded as an industrial undertaking, the requirements of the section are met location of expanded facilities vis-a-vis existing undertaking is not relevant. The petitioner added the additional spindleage after securing license and claimed deduction only after completion of expansion. The Madras High court held that the petitioner is entitled to the deduction u/s. 80J of Income Tax Act.”

16. The learned AR has also relied upon the decision of the Hon'ble Supreme Court in the case of Textile Machinery Corporation Ltd. Vs. CIT (1977) 107 ITR 195 (SC) in the context of deduction claimed u/s. 80J of the Income Tax Act, 1961, which is corresponding to section 15C of the Income Tax Act, 1922 held as under:-

“Section 15C is an exemption section. The benefit granted under this section is a partial benefit so far as the quantum of the exempted profits of the new industrial undertaking as also for a limited period or periods as specified in the section. If the two industrial undertakings, about the existence of which there can be no controversy, as found by the Tribunal, could not be held to be formed by the reconstruction of the business already in existence,

the benefit of section 15C of the 1922 Act would be available to the assessee.

Section 15C(2) of the 1922 Act has a negative as well as a positive aspect. Negatively, the new industrial undertaking of the assessee should not be formed—

*(1) by the splitting up of the business already in existence,
(2) by the reconstruction of business already in existence, or
(3) by the transfer to a new business of building, machinery or plant used in a business which was being carried on before April 1, 1948. It is not possible to exclude any new industrial undertaking other than the three categories mentioned above.*

Positively, the new industrial undertaking must produce result, that is to say, it has to manufacture or produce articles at any time within a period of 13 years from 1-4-1948. The further requirement under sub-section (2) is with regard to the personnel in the undertaking, namely, that ten or more workers have to work in the manufacturing process carried on with the aid of power or twenty or more workers have to carry on work without the aid of power. The above element with regard to the number of workers engaged in the undertaking would go to show that even small industrial undertakings, newly started, are within the exemption clause.

Again, the new undertaking must not be substantially the same old existing business. The third excluded category mentioned above is significant. Even if a new business is carried on but by piercing the veil of the new business it is found that there is employment of the assets of the old business, the benefit will not be available. From this it clearly follows that substantial investment of new capital is imperative. The words “the capital employed” in the principal clause of section 15C are significant, for fresh capital must be employed in the new undertaking claiming exemption. There must be a new undertaking where substantial investment of fresh capital must be made in order to enable earning of profits attributable to that new capital.

The assessee continues to be the same for the purpose of assessment. It had its existing business already liable to tax. It produced in the two concerned undertakings commodities different

from those which it has been manufacturing or producing in its existing business. Manufacture or production of articles yielding additional profit attributable to the new outlay of capital in a separate and distinct unit is the heart of the matter, to earn benefit from the exemption of tax liability under section 15C of the 1922 Act. Section 15C(6) also points to the same effect, namely, production of articles. The answer, in every particular case, depends upon the peculiar facts and conditions of the new industrial undertaking on account of which the assessee claims exemption under section 15C of the 1922 Act. No hard and fast rule can be laid down. Trade and industry do not run in earmarked channels and particularly so in view of manifold scientific and technological developments. There is great scope for expansion of trade and industry. The fact that an assessee by establishment of a new industrial undertaking expands his existing business, which he certainly does, would not, on that score, deprive him of the benefit under section 15C of the 1922 Act. Every new creation in business is some kind of expansion and advancement. The true test is not whether the new industrial undertaking connotes expansion of the existing business of the assessee but whether it is all the same a new and identifiable undertaking separate and distinct from the existing business. No particular decision in one case can lay down an inexorable test to determine whether a given case comes under section 15C or not. In order that the new undertaking can be said to be not formed out of the already existing business, there must be a new emergence of a physically separate industrial unit which may exist on its own as a viable unit. An undertaking is formed out of the existing business if the physical identity with the old unit is preserved. This had not happened in the case of the relevant two undertakings which were separate and distinct.

It was clear that the principal business of the assessee was heavy engineering in the course of which it manufactured boilers, wagons, etc. If an industrial undertaking produces certain machines or parts which are, by themselves, identifiable units being marketable commodities and the undertaking can exist even after the cessation of the principal business of the assessee, it cannot be anything but a new and separate industrial undertaking to qualify for appropriate exemption under section 15C of the 1922 Act. The principal business of the assessee could be carried on even if the said two

additional undertakings ceased to function. Again, the converse was also true. The fact that the articles produced by the two undertakings are used by the boiler division of the assessee would not weigh against holding that these were new and separate undertakings. On the other hand, the fact that a portion of the articles produced in these two new industrial undertakings had been sold in the open market to others was a circumstance in favour of the assessee that the new industrial units could function on their own. Use of the articles by the assessee was not decisive to deny the benefit of section 15C of the 1922 Act.

Section 15C of the 1922 Act partially exempts from tax a new industrial unit which is separate physically from the old one, the capital of which and the profits thereon are ascertainable. There is no difficulty to hold that section 15C is applicable to an absolutely new undertaking for the first time started by an assessee. The cases which give rise to controversy are those where the old business is being carried on by the assessee and a new activity is launched by him by establishing new plants and machinery by investing substantial funds. The new activity may produce the same commodities of the old business or it may produce some other distinct marketable products, even commodities which may feed the old business. These products may be consumed by the assessee in his old business or may be sold in the open market. One thing is certain that the new undertaking must be an integrated unit by itself wherein articles are produced and at least a minimum often persons with the aid of power and a minimum of twenty persons without the aid of power have been employed. Such a new industrially recognisable unit of an assessee cannot be said to be reconstruction of his old business since there is no transfer of any assets of the old business to the new undertaking which takes place when there is reconstruction of the old business. For the purpose of section 15C of the 1922 Act the industrial units set up must be new in the sense that new plants and machinery are erected for producing either the same commodities or some distinct commodities. In order to deny the benefit of section 15C of the 1922 Act, the new undertaking must be formed by reconstruction of the old business. Now, in the instant case, there was no formation of any industrial undertaking out of the existing business since that could take place only when the assets of the old business were

transferred substantially to the new undertaking. There was no such transfer of assets in the two cases.

The fact that the assessee was carrying on the general business of heavy engineering would not prevent him from setting up new industrial undertakings and from claiming benefit under section 15C of the 1922 Act if that section was otherwise applicable. However, in order to be entitled to the benefit under section 15C of the 1922 Act, the following facts have to be established by the assessee, subject always to time-schedule in the section:

- (1) investment of substantial fresh capital in the industrial undertaking set up,*
- (2) employment of requisite labour therein,*
- (3) manufacture or production of articles in the said undertaking,*
- (4) earning of profits clearly attributable to the said new undertaking, and*
- (5) above all, a separate and distinct identity of the industrial unit set up.*

There is no bar to an assessee carrying on a particular business to set up a new industrial undertaking on account of which exemption of tax under section 15C of the 1922 Act may be claimed.

The legislature has advisedly refrained from inserting a definition of the word "reconstruction" in the Act. Indeed, in the infinite variety of instances of restructuring of industry in the course of strides in technology and of other developments, the question has to be left for decision on the peculiar facts of each case.

If any undertaking is not formed by reconstruction of the old business that undertaking will not be denied the benefit of section 15C of the 1922 Act simply because it goes to expand the general business of the assessee in some directions. As in the instant case, once the new industrial undertakings were separate and independent production units in the sense that the commodities produced or the results achieved were commercially tangible products and the undertakings could be carried on separately without complete absorption and losing their identity in the old business, they were not to be treated as being formed by reconstruction of the old business.

The business of the assessee was of heavy engineering. The two new undertakings were independently producing articles which might be of aid to the principal business but yet the undertakings were distinct and not reconstruction out of the existing business of the assessee. Use by the assessee of the articles produced in its existing business or the concept of expansion are not decisive tests in construing section 15C of the 1922 Act. The High Court was not right in holding the two undertakings as formed by reconstruction of the existing business of the assessee.

Therefore, the Tribunal was justified in holding that the new units set up by the assessee company were industrial undertakings to which section 15C of the 1922 Act applied.”

17. In this view of the matter and considering case laws discussed herein above, we are of the considered view that the assessee is eligible for deduction u/s.80IC of the Act in respect of profit derived from new undertaking set up at Haridwar. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer towards disallowances u/s.80IC of the Act and hence, we are inclined to uphold the findings of the learned CIT(A) and dismiss the appeal filed by the Revenue.

18. In the result, appeal filed by Revenue for the assessment year 2012-13 is dismissed.

ITA No.3400/Chny/2019 (A.Y.2013-14):

19. The facts and issues involved in this appeal are identical to the facts and issues, which we have considered in ITA No.3399/Chny/2019 for the assessment year 2012-13. The reasons given by us in preceding paragraphs in ITA No.3399/Chny/2019 for assessment year 2012-13 shall *mutandis mutandis* apply to this appeal as well. Therefore, for similar reasons, we are inclined to uphold the order of the learned CIT(A) and dismiss appeal filed by the Revenue.

20. In the result, appeal filed by the Revenue for both the assessment years are dismissed.

Order pronounced in the open court on 21st April, 2021

Sd/-
(वी.दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 21st April, 2021
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.