

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**(THROUGH VIDEO CONFERENCE)**

**ITA No.3841/Del./2018  
(ASSESSMENT YEAR : 2014-15)**

ACIT, Circle 63 (1),  
New Delhi.

vs. M/s. Vanesa Cosmetics,  
116, Model Basti,  
Delhi – 110 005.

**(PAN : AAHFV5455B)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Madhur Aggarwal, Advocate  
REVENUE BY : Shri Farhat Khan, DR

**Date of Hearing : 08.04.2021**

**Date of Order : 23.04.2021**

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, ACIT, Circle 63 (1), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 31.03.2018 passed by the Commissioner of Income-tax (Appeals)-20, New Delhi qua the assessment year 2014-15 on the grounds inter alia that :-

*“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by AO by disallowing the deduction u/s 80-IC of Rs.3,85,61,355/-, ignoring the fact that once an initial assessment year had been determined for a*

*claim of deduction (as made by the assessee), then there cannot be second initial assessment year for a claim under same section by the same undertaking. If such an interpretation is made that would not only result into an absurdity but absolutely an improbable and unworkable situation.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made u/s 80-IC ignoring the fact that the interpretation of the assessee that deduction u/s 80-IC shall be available to the new undertaking or enterprises for the initial five years and then shall be available @ 100% for another five years in case the undertaking or the enterprises carries out substantial expansion has the effect of creating a great anomaly because this section will result in a disadvantageous situation for the pre-existing undertakings while the newly established undertakings shall be in a position to avail 100% deduction for a continuous period of 10 years if they carry out substantial expansion after five years of the commencement of manufacture or production and the pre-existing undertaking shall be able to avail 100% deduction for a period of five years after carrying out the substantial expansion and thereafter five years they shall be entitle to only 25%/30% of the deduction.*

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made u/s 80-IC ignoring the fact that the benefit of substantial expansion was meant only for units existing as on 07.01.2003. If the contention of the assessee is accepted, then 100% deduction will be available to the assessee for 1<sup>st</sup> five years thereafter 100% deduction will be available to the assessee for next five years on expansion of the undertaking and 25% / 30% deduction will be available for next 5 years. While 80-IC (6) provides that no deduction shall be allowed to any undertaking or enterprise under this section, where the total period of deduction inclusive of the period of deduction under this section, or under the second proviso to sub-section (4) of section 80-IB or under section 10C, as the case may be, exceeds ten assessment years.*

4. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in holding that 100% deduction in section 80-IC would be available to the assessee after completing 5 years if the assessee substantially expands its undertaking as held by Hon'ble Gujrat High Court in the case of M/s Anand Food & Dairy Products vs. ITO 394 ITR 0531 inter-alia that in case of deduction u/s 80-IB, deduction would be available to the assessee 25% after completion of 5 years. The provisions of section 80-IB and 80-IC are parallel provisions in nature.*

5. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.41,711/- on account interest expense of car on account of personal use of the car without giving any specific reason. It is settled position of law that personal use of the cars cannot be ruled out.*

6. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.66,099/- on account of Tour and Travelling expenses without giving any specific*

*reason. As the assessee during the course of assessment proceedings failed to produce for verification the vouchers of expenses and also to substantiate claim that the expenses were incurred wholly and exclusively for the business purpose.*

*7. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.58,714/- on account of Conveyance expenses without giving any specific reason. As the assessee during the course of assessment proceedings failed to produce for verification the vouchers of expenses and also to substantiate claim that the expenses were incurred wholly and exclusively for the business purpose.”*

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : M/s. Vanesa Cosmetics, the assessee, a partnership firm, is into the business of manufacturing of perfumes, deodorants, cosmetic 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 section 80IC of the Income-tax Act, 1961 (for short ‘the Act’) . Assessee filed return of income claiming total income of Rs.37,66,522/- which was subjected to scrutiny assessment. Assessing Officer (AO) made addition of Rs.3,85,61,355/- while making disallowance under section 80IC of the Act by restricting the same to 25% instead of 100% claimed by the assessee on the ground that 100% deduction u/s 80IC is available to the units located in North Indian states for the first 5

years and for the next 5 years @ 25%/35%. AO also made ad hoc disallowance of Rs.41,711/- on account of interest expenses on car on account of personal use of the car. AO also made addition of Rs.66,099/- by way of disallowance on account of tour and travelling expenses @ 10% of the total amount of Rs.6,60,988/-. AO also made addition of Rs.58,714/- by way of disallowance on account of conveyance expenses being 10% of Rs.5,87,144/-.

4. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has deleted the additions by allowing the same. Feeling aggrieved by the order passed by the Id. CIT (A), the Revenue has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. 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.

6. Ld. DR for the Revenue challenging the impugned order passed by Ld. CIT(A) relied upon the assessment order and contended that the entire additions/disallowances 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 earlier order passed by the Ld. CIT(A) in assessee's own case for AY 2013-14

which has been confirmed by the Tribunal and further relied upon the judgment passed by the **Hon'ble Supreme Court in the case of Principal Commissioner of Income tax, Shimla Vs. Aarham Softronics (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 NO.1, 2, 3 & 4**

7. 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 section 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 AYs 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 aforesaid undisputed facts and circumstances of the case, the sole question arises for determination in this case is :

*“as to whether ld. CIT (A) has erred in deleting the disallowance of addition made u/s 80IC by the AO by granting 25%/30% of the deduction instead of 100% claimed by the assessee during the year under assessment?”*

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 1<sup>st</sup> 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 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 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. However, this 100% deduction would be for remaining three years, i.e., 8th, 9th and 10th assessment years.”*

10. However, on the other hand, ld. DR for the Revenue relied upon the decision rendered by **Hon’ble Supreme Court in case of CIT vs. Classic Binding Industries (2018) 407 ITR 429 (SC)** and contended that when initially assessee has availed deduction u/s 80IC for a period of 5 years @ 100%, it would be entitled to

deduction on substantial expansion for remaining five assessment years @ 25%/30%. However, **Hon'ble Supreme Court in case of Aarham Softronics** (supra) in the preceding para after duly discussing the decision rendered by **Hon'ble Supreme Court in case of Classic Binding Industries** (supra), reached the conclusion that when the assessee has carried out substantial expansion in the existing unit immediately on completion of first five years i.e. FY 2011-12 and duly complied with the conditions laid down in clause (ix) sub-section 8 of section 80IC, it is entitled for deduction u/s 80IC for the year under assessment. So, we are of the considered view that Id. CIT (A) has decided the issue in controversy in favour of the assessee by duly relying upon the order passed by the **coordinate Bench of the Tribunal in case of Tirupati LPG Industries Ltd.** (supra) and has rightly deleted the addition made by the AO on account of disallowance u/s 80IC. So, finding no scope to interfere into the findings returned by the Id. CIT (A), grounds no.1, 2, 3 & 4 are determined against the Revenue.

#### **GROUND NO.5, 6 & 7**

11. Ld. CIT (A) also deleted the addition of Rs.41,711/-, Rs.66,099/- & Rs.58,714/- made by the AO on ad hoc basis @ 10% on account of interest expenses on car having element of personal

use, tour and travelling expenses and conveyance expenses respectively.

12. 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 additions on the basis of surmises are not permissible under law. Moreover when it is not the 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. So, we are of the considered view that when AO has proceeded to make aforesaid disallowances without assigning any reason but on the basis of surmises, the disallowances are not sustainable in the eyes of law, hence there is no scope to interfere into the deletion made by the Id. CIT (A). Consequently, grounds no.4, 5 & 6 raised by the Revenue are dismissed.

13. Resultantly, the appeal filed by the Revenue is dismissed.

**Order pronounced in open court on this 23<sup>rd</sup> day of April, 2021.**

*Sd/-*

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

*Sd/-*

**(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 23<sup>rd</sup> day of April, 2021**

**TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-20, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.

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