

IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'E' NEW DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]

ITA No.3650 & 3651/Del/2018
Assessment Year: 2013-14 & 2014-15

DCIT Circle – 36 (1) New Delhi	Vs.	MNC HERS E-3/6, Model Town, New Delhi -110009
		PAN No. AANFM1617J
(Appellant)		(Respondent)

Appellant by	Sh. Rupesh Agarwal, SR. DR
Respondent by	Ms. Gunjan Jain, CA

Date of hearing	15.07.2021
Date of pronouncement	15.07.2021

ORDER

PER O.P. KANT, AM:

These two appeals by the revenue are directed against a common order dated 13/12/2017 passed by the Ld. CIT(Appeals)-12, New Delhi [in short the Ld. CIT(A)] for assessment year 2013-14

and 2014-15. As common issues are involved, both these appeals were heard together and disposed off by way of this consolidated order for convenience.

2. The grounds of the appeal raised by the revenue are reproduced as under:

MNC HERS (A.Y. 2013-14)

“1. The Ld. CIT(A) erred in law and on fact in deleting the addition of Rs. 1,34,77,105/- for A.Y. 2013-14 & Rs. 55,00,478/- for A.Y. 2014-15 by holding that the assessee is eligible to claim further deduction @ 100% u/s 80IC of the Act by making substantial expansion even after the assessee has already availed 100% deduction u/s 80IC of the Act for the initial five years after the commencement of manufacturing or production of the industrial undertaking. The Ld. CIT(A) has not appreciated the provisions of sub-clause (ii) of sub-section 3 of section 80IC which enumerates that the deduction referred to in sub-section 1 shall be restricted to 100% of such profit and gains for five assessment years commences with the initial assessment year and thereafter 25% of the profit and gains.

2. The Ld. CIT(A) erred in law and fact by not appreciated the fact that section 80IC of the I.T. Act, 1961 has been enacted in order to promote industrial growth and employment generation in a backward area either through commencement of manufacturing or production by a new industrial unit or substantial expansion by a pre-existing industrial unit. The law has been enacted in such a way that the pre-existing undertaking or enterprises do not suffer from any handicap merely on account of the fact that they were existing prior to the introduction of section 801C. The condition of substantial expansion has made a pre-requisite for allowing deduction u/s 80IC in the case of old undertaking or enterprise. It is however, clear that there is no overlapping of the two kinds of undertaking or enterprises made eligible for deduction u/s 80IC. These

are two distinct categories with distinct conditions of eligibility laid down for deduction u/s 80IC. Since the pre-existing units cannot possibly crossover into the zone of new undertakings or enterprises, the new undertakings also obviously cannot be allowed to cross over into the zone meant for old, pre-existing undertakings. The rules have to be same for all the participants or stakeholders.

3. The Ld. CIT(A) erred in law and on fact by not considering the decision of the ITAT, Chandigarh in the case of M/s Hycron Electronics Vs. ITO, Baddi and the CBDT Circular 1/2016 dated 15.02.2016 wherein it has been held that an assessee who is eligible to claim deduction u/s 80IA has the option to choose the initial/first year, he shall be entitled to claim deduction for ten consecutive years from the year in respect of which he has exercised such option subject to the fulfillment of the conditions prescribed in the section.

4. The Ld. CIT(A) erred in law and on fact in interpreting Section 80IC of the IT Act in manner whereby substantial expansion in the new units is interpreted on basis of deduction at the rate of 100% which will lead to absurdity as that would mean that deduction would become perpetual as long as assessee has carried out substantial expansion but such interpretation would render provisions of sub section 6 of Section 80IC otiose/meaningless/redundant and therefore such interpretation cannot be permitted.

5. The Ld. CIT(A) erred in law and on fact in accepting claim of deduction of assessee u/s 80IC of IT Act by allowing changing of "initial assessment" year, whereas as per Clause V of Sub section 8 of Section 80IC it can be either on commencement of operation or at completion of substantial expansion but it cannot be both.

6. Notwithstanding, the tax effect is also above the monetary limit as prescribed by the CBDT circular No. 21/2015 dated 10.12.2015, therefore, further appeal is recommended in this case."

MNC HERS (A.Y. 2014-15)

“1. The Ld. CIT(A) erred in law and on fact in deleting the addition of Rs. 1,34,77,105/- for A.Y. 2013-14 & Rs. 55,00,478/- for A.Y. 2014-15 by holding that the assessee is eligible to claim further deduction @ 100% u/s 80IC of the Act by making substantial expansion even after the assessee has already availed 100% deduction u/s 80IC of the Act for the initial five years after the commencement of manufacturing or production of the industrial undertaking. The Ld. CIT(A) has not appreciated the provisions of sub-clause (ii) of sub-section 3 of section 80IC which enumerates that the deduction referred to in sub-section 1 shall be restricted to 100% of such profit and gains for five assessment years commences with the initial assessment year and thereafter 25% of the profit and gains.

2. The Ld. CIT(A) erred in law and fact by not appreciated the fact that section 80IC of the I.T. Act, 1961 has been enacted in order to promote industrial growth and employment generation in a backward area either through commencement of manufacturing or production by a new industrial unit or substantial expansion by a pre-existing industrial unit. The law has been enacted in such a way that the pre-existing undertaking or enterprises do not suffer from any handicap merely on account of the fact that they were existing prior to the introduction of section 80IC. The condition of substantial expansion has made a pre-requisite for allowing deduction u/s 80IC in the case of old undertaking or enterprise. It is however, clear that there is no overlapping of the two kinds of undertaking or enterprises made eligible for deduction u/s 80IC. These are two distinct categories with distinct conditions of eligibility laid down for deduction u/s 80IC. Since the pre-existing units cannot possibly crossover into the zone of new undertakings or enterprises, the new undertakings also obviously cannot be allowed to cross over into the zone meant for old, pre-existing undertakings. The rules have to be same for all the participants or stakeholders.

3. *The Ld. CIT(A) erred in law and on fact by not considering the decision of the ITAT, Chandigarh in the case of M/s Hycron Electronics Vs. ITO, Baddi and the CBDT Circular 1/2016 dated 15.02.2016 wherein it has been held that an assessee who is eligible to claim deduction u/s 80IA has the option to choose the initial/first year, he shall be entitled to claim deduction for ten consecutive years from the year in respect of which he has exercised such option subject to the fulfillment of the conditions prescribed in the section.*

4. *The Ld. CIT(A) erred in law and on fact in interpreting Section 80IC of the IT Act in manner whereby substantial expansion in the new units is interpreted on basis of deduction at the rate of 100% which will lead to absurdity as that would mean that deduction would become perpetual as long as assessee has carried out substantial expansion but such interpretation would render provisions of sub section 6 of Section 80IC otiose/meaningless/redundant and therefore such interpretation cannot be permitted.*

5. *The Ld. CIT(A) erred in law and on fact in accepting claim of deduction of assessee u/ s 80IC of IT Act by allowing changing of “initial assessment” year, whereas as per Clause V of Sub section 8 of Section 80IC it can be either on commencement of operation or at completion of substantial expansion but it cannot be both.*

6. *Notwithstanding, the tax effect is also above the monetary limit as prescribed by the CBDT circular No. 21/2015 dated 10.12.2015, therefore, further appeal is recommended in this case.”*

3. At the outset, the Ld. Departmental Representative submitted that the deduction disallowed in assessment year 2013-14 is of Rs.1,34,77,105/- and for assessment at 2014-15 is of Rs.55,00,478/-. He submitted that tax effect involved in these two appeals is less than the tax effect prescribed for filing appeal before

the Tribunal as communicated by the Central Board of direct taxes in circular No.17/2019 dated 08.08.2019.

4. In view of tax effect lower than the limit prescribed for filing appeal by the revenue, these appeals are deemed to be withdrawn by the Revenue and hence dismissed as infructuous.

5. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 15th July, 2021.

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation:	26.07.2021
2.	Date on which the draft of order is placed before the Dictating Member:	26.07.2021
3.	Date on which the draft of order is placed before the other Member:	26.07.2021
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	26.07.2021
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	26.07.2021
6.	Date on which the final order received after having been signed/pronounced by the Members:	26.07.2021
7.	Date on which the final order is uploaded on the website of ITAT:	26.07.2021
8.	Date on which the file goes to the Bench Clerk	
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	