

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER  
(THROUGH VIDEO CONFERENCING)**

ITA No.3765/Del/2018  
Assessment Year: 2013-14

<b>DCIT Sector-33 Noida</b>	<b>Vs</b>	<b>International Cylinders P. Ltd. E-14, Preet Vihar, New Delhi-110092 PAN No. AAACI7605J (RESPONDENT)</b>
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Appellant by	Ms. Anima Barnwal, SR. DR
Respondent by	Sh.Nipun Mittal, CA

Date of hearing:	29/07/2021
Date of Pronouncement:	29/07/2021

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the CIT(A)-4, Delhi dated 15.01.2018 pertaining to A.Y.2013-14.

2. The grievance of the revenue read as under :-

- 1 *Whether, the Ld CIT(A) was correct in holding that the provision of section 80IC of the I.T. Act, 1961 allowed existence of multiple “initial assessment years” and consequently deduction @ 100% of the profit where, it was otherwise allowable @ 30% only.*
- 2 *Whether, the interpretation of section 80IC of I.T. Act, by the Ld CIT(A) does not amount to re-writing the provision of law so as to allow the deduction to an undertaking existing and achieving substantial expansion during the previous year.*
- 3 *The Ld CIT(A) failed to appreciate the decisions of Hon’ble Supreme Court in the case of M/s CIT vs United General Trust Ltd 200ITR 488/SC) in which it was held that expenditure in relation to earning of the exempt income are embedded in the indirect expenditures.*
- 4 *The Ld CIT(A) failed to appreciate that Circular No 5/2014 of Ministry of Finance CBDT which provides for disallowance of expenditure even where tax payer in the particular year has not earned any exempt income.*
- 5 *That the order of the Ld. CIT (A) being erroneous in law and on facts which needs to be vacated and the order of the AO be restored.*
- 6 *That the appellant craves leave to add or amend any one or more of the ground of the appeal as stated above as and when need for doing so may arise.*

3. Briefly stated the facts of the case are that during the course of the scrutiny assessment proceedings the AO noticed that the assessee has claimed deduction u/s. 80IC of the Act amounting to Rs.95273997/-. While examining the details the AO noticed that the business of manufacturing and trading of LPG Cylinders has been established in the year 2003-04 relevant to A.Y.04-05.

The AO was of the firm belief that the assessee is entitled for 100% deduction u/s.80IC of the Act for initial five years i.e. 04-05 to 08-09 and thereafter for another five years i.e. A.Y. 2009-10 to 13-14 @ 30%. The AO accordingly restricted the claim of deduction to 30% and disallowed Rs.65691800/-.

4. Proceeding further the AO noticed that the assessee has earned exempt income on which expenses need to be disallowed u/s.14A r.w.r. 8D. Accordingly the AO computed the disallowance at Rs.1343086/-.

5. The assessee assailed the additions before the CIT(A). It was brought to the notice of the CIT(A) that due to substantial expansion in A.Y.2009-10 the assessee became eligible for 100% deduction u/s. 80IC of the Act for five years starting from A.Y.2009-10. The assessee explained the amended provisions of section 80IC and strongly contended for 100% deduction.

6. The CIT(A) after considering the facts and the submissions and drawing support from various judicial decisions allowed the claim of 100% deduction.

7. On the disallowance made u/s. 14A of the Act the CIT(A) found that assessee had sufficient own funds to meet the investment and therefore, there was no reason for the disallowance of interest on borrowed capital and accordingly deleted the disallowance.

8. Before us the DR strongly supported the assessment order. It is the say of the DR that there cannot be two initial assessment years for the eligibility of deduction u/s. 80IC of the Act. On the

disallowance made u/s. 14A, the DR read the relevant findings of the AO.

9. The Counsel for the assessee reiterated what has been stated before the lower authorities.

10. We have carefully considered the orders of the authorities below. We find that the AO has disallowed the claim of deduction of 100% u/s. 80IC of the Act on the ground that the initial assessment year is A.Y. 2004-05 and therefore, for the year under consideration the assessee is eligible for only 30% deduction. We find that the AO has simply misunderstood the amendment brought u/s. 80IC and further misunderstood “the substantial expansion” brought by the assessee from A.Y.2009-10. In our considered opinion in the light of the notification issued by the Ministry of Commerce and Industry and in the light of the amendment brought in the Act u/s. 80IC of the Act, the eligibility of 100% deduction would start from initial A.Y. 2009-10.

11. We further find that the AO has allowed the deduction from A.Y.2009-10 to 2012-13 which is evident from the assessment orders of the relevant assessment years on record. In our considered view the AO was not correct in disturbing the claim in the 5<sup>th</sup> year when earlier assessment years has not been disturbed.

12. Moreover, the Hon’ble Supreme Court in the case of PCIT Vs. Aarham Softronics (2019) 102 taxman.com 343 has decided this controversy in favour of the assessee and against the revenue. The operative part of the judgment is extracted as under :-

***“24. The aforesaid discussion leads us to the following conclusions:***

***(a) Judgment dated 20th August, 2018 in Classic Binding Industries case omitted to take note of the definition 'initial assessment year' contained in Section 80-IC itself and instead based its conclusion on the definition contained in Section 80-IB, which does not apply in these cases. The definitions of 'initial assessment year' in the two sections, viz. Sections 80-IB and 80-IC are materially different. The definition of 'initial assessment year' under Section 80-IC has made all the difference. Therefore, we are of the opinion that the aforesaid judgment does not lay down the correct law.***

***(b) An undertaking or an enterprise which had set up a new unit between 7<sup>th</sup> January, 2003 and 1<sup>st</sup> April, 2012 in State of Himachal Pradesh of the nature mentioned in clause (ii) of sub-section (2) of Section 80-IC, would be entitled to deduction at the rate of 100% of the profits and gains for five assessment years commencing with the 'initial assessment year'. For the next five years, the admissible deduction would be 25% (or 30% where the assessee is a company) of the profits and gains.***

***(c) However, in case substantial expansion is carried out as defined in clause (ix) of sub-section (8) of Section 80-1e 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 8<sup>th</sup> year as this year becomes 'initial assessment year' once again. However, this 100% deduction would be for remaining three years, i.e., 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> assessment years."*

13. Respectfully following the decision of the Hon'ble Supreme Court (supra) we decline to interfere with the findings of the CIT(A), ground No. 1 and 2 taken together are dismissed.

14. Coming to the grievance relating to the deletion of the disallowance u/s.14A of the Act we find that the interest free funds (own funds) available with the assessee is far in excess of the investment in share. Therefore, following the ratio laid-down by the Hon'ble Bombay High Court in the case of HDFC Bank Limited 366 ITR 505 and Reliance Utilities and Power Limited 313 ITR 340, we do not find any error or infirmity in the findings of the CIT(A) ground No. 3 and 5 are dismissed.

15. In the result, the appeal filed by the revenue is dismissed.

16. Decision announced in the open court in the presence of both the representatives on 29.07.2021.

Sd/-  
**(K.NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

\*NEHA\*

Date:-29.07.2021

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
 ITAT NEW DELHI

Date of dictation	29.07.2021
Date on which the typed draft is placed before the dictating Member	29.07.2021
Date on which the typed draft is placed before the Other member	29.07.2021
Date on which the approved draft comes to the Sr.PS/PS	29.07.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	29.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	29.07.2021
Date on which the final order is uploaded on the website of ITAT	29.07.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	