

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

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.6712/Del./2018
(ASSESSMENT YEAR : 2013-14)**

ACIT, Circle 41 (1),
New Delhi.

vs. M/s. Balaji Powertronics,
G – 11, Main Rohtak Marg,
Udyog Nagar,
Delhi – 110 041.

(PAN : AAGFB0501M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S.C. Gupta, Advocate
REVENUE BY : Shri Om Prakash, Senior DR

Date of Hearing : 27.10.2021

Date of Order : 12.11.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, ACIT, Circle 41 (1), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 19.07.2018 passed by the Commissioner of Income-tax (Appeals)-18, New Delhi qua the assessment year 2013-14 on the grounds inter alia that :-

“On the facts and circumstances of the case and in law the Ld. CIT(A) has erred in-

1. On the facts & circumstances of the case and in law, the Ld. CIT(A) has erred in granting relief and allowing 100% deduction u/s 80IC of the I.T. Act on the ground that on substantial expansion, assessee is again entitled for claiming deduction @100% for next 5 years ignoring the provisions of section 80IC of Income Tax Act, 1961,

2. On the facts & circumstances of the case and in law, the Ld. CIT (A) has erred in relying upon the decision of Hon'ble Supreme Court in Civil Appeal No. 4767 of 2018 dated 18.05.2018 in the case of M/s. Stovekraft India & other similar cases in' which initially deduction were claimed u/s 80IA & 80IB of Income Tax Act, 1961 while in the case of assessee, the deduction is being claimed u/s 80IC of the I.T. Act.

3. On the facts and circumstances the Ld. CIT (A) has erred in granting relief to the assessee as the assessee is not entitled for deduction @ 100% u/s 80IC in view of the decision of Hon'ble Supreme Court in the civil appeal no.(s), 7208 of 2018 & others dated 20.08.2018, in the case of CIT vs. M/s. Classic Binding Industries and the instant case is squarely covered by the decision of the Hon'ble Apex Court.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee is into the business of manufacturing of electrical goods and has established its unit at Specified Zone in Himachal Pradesh. Assessee claimed deduction @100% for AY 2013-14, the year under consideration. Assessing Officer (AO) made disallowance @ 75% of the deduction claimed i.e. Rs.35,56,99,716/- and made addition thereof to the total income of the assessee on the ground that the assessee is entitled for deduction @ 100% for the first 5 years and @ 50%/30% for the next 5 years for the units located in North Indian State. AO

accordingly framed the assessment @ Rs.36,82,47,820/- under section 143(3) of the Income-tax Act, 1961 (for short 'the Act').

3. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has deleted the disallowance/additions by allowing the appeal. 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.

4. 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.

5. The sole issue raised by the Appellant/Revenue is qua admissibility of deduction claimed by the assessee @ 100% u/s 80IC of the Act on ground of substantial expansion.

6. Undisputedly, assessee has established its unit for manufacturing of electrical goods at Baddi, Himachal Pradesh and started its commercial production in FY 2007-08. It is also not in dispute that the assessee company has claimed deduction u/s 80IC @ 100% for AYs 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13.

7. Now, the assessee has again claimed deduction in AY 2013-14 @ 100% on ground of undertaking substantial expansion before 01.04.2012. However, AO restricted the deduction u/s 80IC(2)

@25%. Assessee claimed to have carried out substantial expansion of its unit by adding plant and machinery in the existing industrial unit during FY 2009-10 (relevant to AY 2010-11) as under :-

Year	Particular	Total book value of the plant and machinery as on first day of the FY in which substantial expansion took place	Value of increases in the plant and machinery in the year of substantial expansion
2009-10	Plant and machinery	5,76,52,555.00	4,94,82,740.00

8. Assessee also claimed that since AY 2013-14 is fourth year after completion of substantial expansion, AY 2010-11 being the first assessment year as well as initial year after completing substantial expansion, thus claimed deduction @ 100% of the profits and gains from the industrial undertaking u/s 80IC of the Act. However, AO by relying upon Circular No.7/2003 dated 05.09.2003 issued by the Central Board of Direct Taxes (CBDT) restricted the same to 25%.

9. In the light of the aforesaid undisputed facts, Id. CIT (A) deleted the disallowance made by the AO and allowed 100% deduction as claimed by the assessee by determining the following findings :-

“4.2 I have gone through the facts of the case and the submission made by the AR. It has been contended that the appellant had carried out substantial expansion in FY 2009-10. This fact is not disputed as it is seen from the assessment order for AY 2010-11 furnished by the AR that the AO has mentioned in the assessment order that the appellant firm had carried out substantial expansion at the same industry unit during the year by investing further amount of Rs.4,94,82,740/- in plant & machinery in terms of the provisions of section 80IC(8)(ix) of the Act. The AR has further relied on the decision of Hon'ble High Court of Himachal Pradesh (the State where the manufacturing unit of the appellant is located) in the case of M/ s Stovekraft India Vs. CIT in ITA No.20/2015 vide order dated 28.11.2017. A perusal of the order shows that it is a bunch of orders decided by the Hon'ble High Court and includes the case of M/s Hycron Electronics on which the AO has relied in the assessment order.

4.2.1 A perusal of the Order relied upon by the AR shows that the Hon'ble High Court has, in a batch of over 40 cases, ruled in favour of the taxpayer and has held that an undertaking/ enterprise, established after 7 January 2003, carrying out "substantial expansion" within the specified window period, i.e. on or after 7 January 2003 but before 1 April 2012 (Time Window), would be entitled to 100% deduction on profits, under Section 80-IC of the Income-tax Act, 1961 (IT Act). In the instant case, the appellant had set up an Undertaking in the state of Himachal Pradesh during the Time Window and thus, claimed the deduction for 100% of profits derived from such Undertaking for the Initial Period on account of falling within the New Business Category. After the expiry of this Initial Period, the quantum of deduction available to the taxpayer would have been reduced to 25% of profits. However, the taxpayer undertook Substantial Expansion before 1.04.2012 and thus, sought to claim the deduction in respect of 100% profits for another period of five years - this time, on account of falling within the Substantial Expansion Category. Thus, in total, the appellant has claimed the deduction in respect of 100% profits for 10 years (5 years under the New Business Category and 5 years under the Substantial Expansion Category). The assessing officer has held that while the appellant can claim the deduction in respect of 100% profits under the New Business Category, the appellant was not entitled to claim the deduction under the Substantial Expansion Category. His reason for denying this benefit is that this benefit is available only to an Undertaking which is set up prior to the Time Window (i.e. on or after 7 January 2003 but before 1 April 2012) and not to an Undertaking which is set up during this Time Window. The Hon'ble High Court has analyzed the relevant legislative

provisions and has noticed that section 80-IC of the Act does not create distinction between the old units, i.e. the units which stand established prior to 7 January 2003 (the cutoff date), and the new units established thereafter. In view of this, the High Court has held that the artificial distinction (between units established prior to 7 January 2003 and units established thereafter) sought to be inserted by the income-tax authorities results in discrimination and therefore, the Court has reversed the ruling of the ITAT and has held that even though the taxpayer was established after 7 January 2003 (the cutoff date), it was entitled to claim deduction in respect of its 100% profits for the second batch of five years even under the Substantial Expansion Category. This was in addition to the deduction in respect of its 100% profits already claimed for five years under the New Business Category. The argument of the Department that this would amount to claiming deduction at the rate of 100% for ten years, and not just the first five years of being set up/Substantial Expansion, did not find merit with the High Court. In coming to its conclusion, the High Court also observed that the object, intent and purpose of section 80-IC of the IT Act is only to provide incentive for economic development, industrialization and enhanced employment opportunities in these states. It is also noted that the Hon'ble Supreme Court has upheld the High Court decision vide its order dated 18.05.2018 in Civil Appeal No. 4767 of 2018. Keeping in view the facts of the case and the legal position as laid down by the Hon'ble High Court of Himachal Pradesh and affirmed by Hon'ble Supreme Court, I am of the opinion that the appellant is entitled for deduction u/ s 80IC of the Act @ 100%. The AO is directed accordingly.”

10. We have perused the order passed by the Id. CIT (A) and of the view that after thrashing facts, the issue has been decided in the light of the decision rendered by **Hon'ble High Court of Himachal Pradesh in case of Stovekraft India vs. CIT in ITA No.20/2015 order dated 28.11.2017, upheld by Hon'ble Supreme court in Civil Appeal No.4767 of 2018 order dated 18.05.2018**, on the ground that the taxpayer has carried out substantial expansion before 01.04.2012 by making addition of

plant and machinery to the tune of Rs.5,76,52,555/- which thereby increases value of the plant and machinery in the year of substantial expansion to the tune of Rs.4,94,82,740/- in Financial Year 2009-10. It is decided by **Hon'ble High Court in Stovekraft India** case (supra) that section 80IC does not create distinction between the old units i.e. units established prior to 07.01.2003 and the new units established thereafter. So, in view of the matter, since assessee has carried out substantial expansion in AY 2010-11 it is entitled for deduction u/s 80IC of the profit & gains being into 4th year of substantial expansion, hence we find no scope to interfere into the order passed by the Id. CIT (A). Resultantly, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this day of November, 2021.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 12th day of November, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-18, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**