

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,  
NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE MS. DIVA SINGH JUDICIAL MEMBER, AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 665/DEL/2021 [A.Y 2015-16]

Shri Sudhir Kumar Gupta  
B-123, Main Najafgarh Road  
Ganesh Nagar, Delhi

Vs. The Pr.C.I.T  
15, Delhi

PAN: AAIPG 0075 D

(Applicant)

(Respondent)

Assessee By : Shri Ved Jain, Adv  
Department By : Shri H.K. Choudhary, CIT- DR

Date of Hearing : 30.11.2021  
Date of Pronouncement : 03.12.2021

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

This appeal by the assessee is preferred against the order of the Principal Commissioner of Income Tax - 15, New Delhi dated 27.03.2021 pertaining to Assessment Year 2015-16 framed u/s 263 of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

2. The solitary grievance of the assessee is that the PCIT erred in invoking the provisions of section 263 of the Act and further erred in remanding the matter back to the Assessing Officer to examine and verify the evidences with regard to quantum of addition u/s 80IC of the Act.

3. Briefly stated the facts of the case are that the assessment under section 143(3) of the Act was framed by the Assessing Officer vide order dated 30.11.2017.

4. During the course of scrutiny assessment proceedings, the Assessing Officer verified the claim of deduction u/s 80IC of the Act @ 100 % and after verification and after being convinced with the claim, the Assessing Officer allowed the deduction. Invoking the provisions of Section 263 of the Act, the PCIT issued the following show cause notice:

**NOTICE FOR THE HEARING****M/s/Mr/Ms**

**Subject:** Notice for Hearing in respect of Revision proceedings u/s 263 of the **THE INCOME TAX ACT, 1961** – Assessment Year **2015-16**.

In this regard, a hearing in the matter is fixed on **16/03/2021** at **11:37 AM**. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: **[incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in)**

Assessment, was completed u/s 143(3) of the I.T. Act, 1961 for the A.Y. 2015-16 on 30.11.2017 determining income NIL. Subsequent, to the assessment, it was noticed that the assessment order was erroneous and prejudicial to the interest of revenue for the following reason.

“On perusal of the Form 10CCB it is found that the date of commencement of operation of assessee’s business was 14.12.2006 hence the initial assessment year from when the assessee was eligible for claiming of deduction u/s 80IC was 2007-08 and accordingly he was eligible for 100 % profit deduction only up to A.Y. 2011-12. However, the assessee had claimed 100% profit deduction for the A.Y. 2015-16 while he is eligible only 25 % of profit. In Assessment Order u/s 143(3) of the I.T. Act, 1961 100% profit deduction is allowed.

In view of the above observation, you are required to file reply with supporting evidence explaining as to why the assessment framed u/s 143(3) of the Income Tax Act may not be modified or enhanced or cancelled.

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Kindly note that in case of non compliance it will be presumed that you have nothing to say and the matter will be decided accordingly.

5. The assessee filed reply to the notice as under:

Sir,

Please refer to the above notice asking the assessee to explain why the assessment order dated 30.11.2017 for the above mentioned assessment year framed u/s143(3) of the Income Tax Act may not be modified or enhanced or cancelled u/s 263 of the Income Tax Act. In this connection, I would like to submit as under:-

1. The assessee is proprietor of M/S S V Enterprises having factory and godown at 227, HPSIDC Industrial Area, Baddi Distt Solan (Himachal Pradesh). This is a Industrial Undertaking in Himachal Pradesh registered with SWCA, Department of Industry, Baddi, Distt Solan (HP) vide registration No 02/09/11/70137 dated 05-11-2007( provisional Reg No 020911234 dated 06-12-2005). The said unit is engaged in the manufacturing of Water Heaters (Gysers) and Fans. It started its commercial production w.e.f. 14-12-2006. The firm is also registered with Sales Tax Department, Baddi (HP) vide LST No Sol-III-9892 dated 18-03-2006 and CST No 9928 dated 18-03-2006 with liability to pay tax fixed w.e.f 14-12-2006, the date of commercial production.
2. That the assessee is regularly claiming 100% deduction u/s 80-IC of the Income Tax Act and the same has regularly been assessed and allowed since start of the business i.e. Asstt Year 2007-2008 extending up to Asstt Year 2011-12.
3. That during the Asstt year 2012-13 the assessee has undertaken substantial expansion complying with the provisions of section 80-IC(2)(b) of the Income Tax Act, 1961, and claimed deduction of 100% of profits and gains of the aforesaid business u/s 80-IC.
4. That as per sub section (3) (ii) of section 80-IC the deduction referred to in sub section (1) Shall be "in the case of any undertaking or enterprises referred to in sub-clause (ii) of clause(a) or sub-clause(ii) of clause (b), of sub-section (2), one hindered percent of such profits and gains for five assessment years commencing with the initial assessment year."
5. That **initial assessment year** has already been defined in sub clause (v) of sub-section 8 of section 80-IC that **Initial assessment year** means the assessment year relevant to the previous year in which the undertaking or the enterprise begins to manufacture or produce articles or things or commences operation or completes substantial expansion;
6. That as per above definition of **initial assessment year** contained in clause (v) of sub-section (8) of section 80-IC ,there can be **initial assessment year**, relevant to previous year, in any of the following contingencies:
  - i) The previous year in which the undertaking or the enterprise begins to manufacture or produce article or things; or
  - ii) Commences operation; or
  - iii) Completes substantial expansion

7. That those first two events are relatable to new units whereas third incident would occur in respect of existing units. The benefit of section 80IC is, thus, admissible not only when as undertaking or enterprise sets up new unit and starts manufacturing or producing article or things. The advantage of these provisions is also accrued to those existing units, if they carry out **substantial expansion** of their unit by investing required capital, in the assessment year relevant to the previous year.
8. That **substantial expansion** has also been defined in sub clause (ix) of sub-section 8 of section 80-IC which means increase in the investment in the plant and machinery by at least fifty percent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which substantial expansion is undertakes.
9. That as per the aforesaid definition, an existing unit would be treated as having carried out substantial expansion when there is increase in the investment in the plant and machinery by at least 50 per cent of the book value of the plant and machinery (before taking depreciation in any year). As already noted above that the assessee had initially set up new industry in the State of Himachal Pradesh of the nature specified under section 80-IC, as a result , the assessee became entitled to avail the concession provided in the said provision. It is also admitted fact that after five years and before the expiry of ten years, the assessee had carried substantial expansion of his unit in terms of the aforesaid definition. When the definition of **initial assessment year** is considered, keeping in view the above factors, it is crystal clear that there can be another **initial assessment year** on the fulfillment of the condition mentioned in the said definition, namely completion of substantial expansion of the existing unit.
10. That the Hon'ble High Court of Himachal Pradesh has decided in the case of **Aarham Softronics Vs Commissioner of Income Tax**

"that when the assessee started availing exemption of 100 per cent tax on setting up of a new industry of the kind mentioned in sub-section (2) of section 80IC, which is admissible for 5 years, and either on the expiry of 5 years or thereafter (but within 10 years) from the date when these assessee started availing exemption, they carried out substantial expansion of its industry, from that year the assessee become entitled to claim exemption@ 100% again.

On appeal by the revenue to the **Hon'ble Supreme Court, the Hon'ble Supreme court of India has affirmed the judgment of the Hon'ble High Court with the following conclusions:**

“that 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 enterprises, within the aforesaid period of ten 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% deduction of the profit and gains.

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 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 8<sup>th</sup> year by an assessee such a n assessee would be entitled to 100% deduction for the first 5 years, deduction @ 25% of the profit 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% would be for remaining three years.

Copy of Hon'ble Supreme Court order in the case of of **Principal Commissioner of Income –Tax, Shimla Vs Aarham Softronics** is enclosed for your kind consideration.

11. That in the present case during the Asstt Year 2012-13 the assessee had made addition in the plant and machinery of more than 50% of the book value of the plant and machinery before taking depreciation in any year in terms of definition of substantial expansion as defined in section 80-IC (8) (ix) of the Income Tax Act, 1961 and claimed deduction @ 100% for the next five years u/s 80-IC.

Keeping in view the above submission, it is humbly prayed that since the assessee has rightly and lawfully claimed deduction u/s 80-IC for the asstt year 2015-16 which was also allowed by the learned assessing officer, you are therefore, requested to kindly drop the revision proceedings u/s 263 of the Income Tax Act, 1961, in the light of Hon'ble Supreme Court Judgment in the case of **Principal Commissioner of Income –Tax, Shimla Vs Aarham Softronics** and oblige.

6. Not convinced with the reply of the assessee, the PCIT invoking the powers conferred upon him by provisions of section 263 of the Act, annulled the assessment being erroneous in so far as it is prejudicial to the interest of the revenue and remanded the matter back to the AO to

examine and verify evidences afresh especially with regard to quantum of deduction allowable under section 80IC of the Act.

7. Before us, the ld. counsel for the assessee vehemently stated that the claim of deduction on substantial expansion has been now well settled in favour of the assessee and against the revenue by the decision of the Hon'ble Supreme Court in the case of Arham Softronics (supra).

8. The counsel further vehemently stated that during the course of assessment proceedings itself the Assessing Officer has examined the claim with supporting evidences which is apparent from para 5 of the assessment order and therefore, the PCIT should not have remanded the matter for verification of same evidences once again.

9. It is the say of the ld. counsel that even before the PCIT, the assessee had furnished supporting evidences for claim of deduction u/s 80IC of the Act and the PCIT could have himself examined the claim of deduction as held by the Hon'ble High Court of Delhi in the case of DG Housing Project 343 ITR 329.

10. Per contra the ld. DR strongly supported the findings of the PCIT.

11. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that this is not the first year of claim of 100% deduction on substantial expansion. Substantial expansion was done in Assessment Year 2012 which year became initially Assessment Year for claim of 100% deduction for another five years. In the preceding Assessment Years 2012-13 and 2013-14 assessments were framed under section 143(3) of the Act wherein the claim of 100% deduction was thoroughly examined by the Assessing Officer which is evident from the assessment order placed at pages 101 and 114 of the paper book. It is also not in dispute that the claim was thoroughly examined by the Assessing Officer during the assessment proceedings of the year under consideration.

12. We find that vide reply exhibited elsewhere, the assessee had brought to the notice of the PCIT claim of deduction with supporting evidences. Therefore, the findings of the Hon'ble Jurisdictional High Court of Delhi in the case of DG Housing Projects [supra] squarely apply wherein the Hon'ble High Court has held that the ld. CIT(A), after

analyzing the records, ought to have recorded a categorical finding as to how assessment order is erroneous.

13. In the present case also, when the assessee took a specific plea in its reply that it has made substantial expansion for Assessment Year 2011-12 and it has produced these details, then the commissioner ought to have considered the same and should have recorded a categorical finding. Had that been done, then it would have avoided the second round of litigation at the level of the Assessing Officer.

14. Further, we find that the impugned quarrel has now been settled by the Hon'ble Supreme Court in the case of Arham Softronics. Relevant findings read 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 foresaid judgment does not lay down the correct law.

(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 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-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.

25. In view of the aforesaid, we affirm the judgment of the High Court on this issue and dismiss all these appeals of the Revenue. Likewise, appeals filed by the assesseees are hereby allowed."

15. Considering the facts of the case in hand in light of the decision of the Hon'ble Supreme Court [supra] we set aside the order of the PCIT and restore that of the AO.

16. In the result, the appeal of the assessee in ITA No. 665/DEL/2021 is allowed.

The order is pronounced in the open court on 03.12.2021.

Sd/-

[DIVA SINGH]  
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]  
ACCOUNTANT MEMBER

Dated: 03<sup>rd</sup> December, 2021

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

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

