

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "F": NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. Nos. 5513 & 5514/Del/2018
(Assessment Years: 2012-13 & 2013-14)

ACIT, Circle, Karnal, (Appellant)	Vs.	M/s.Zeiss Pharmaceuticals Pvt. Ltd., 3 – Arya Niwas, The Mall, Karnal. PAN: AAACZ2089F (Respondent)
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Assessee by :	Shri Ved Jain, Advocate; & Shri Ashish Sacdeva, C. A.;
Department by:	Shri Hemant Gupta, Sr. DR;
Date of Hearing :	24/11/2021
Date of pronouncement :	27/01/2022

ORDER

PER AMIT SHUKLA, J. M.

The aforesaid appeals have been filed by the Revenue against the order dated 22.06.2018 for the assessment year 2012-13 and 20.06.2018 for assessment year 2013-14 passed by the Id. CIT (Appeals), Karnal.

2. Since in both the appeals the issues involved are common and have been identical on facts and, therefore, same are heard together

and are being disposed of, for the sake of convenience, by this common order. For the sake of ready reference the grounds of appeal raised by the Revenue for assessment year 2012-13 are reproduced here under:-

“1. Whether on the facts and in the circumstances of the case, the CIT(A) is allowing the deduction u/s 80IC of the Income Tax Act @100% even after expiry of 5 years from initial assessment year by merely relying upon the judgement of Hon’ble High Court of Himachal Pradesh in the case of Stoverkraft India & ors. Vs. CIT ignoring the fact that the Department has not accepted the decision and challenged it before Hon’ble Apex Court, which is pending for adjudication?”

*2. Whether on facts and in law, the CIT(A) has erred in holding that there can be multiple “initial assessment years” within the exemption period of ten years, by completely overlooking the definition of “initial assessment year” as given in section 80IC(8)(v), which makes it amply clear that the initial assessment year could be reckoned with reference to only one of the given basis, i.e. year in which the manufacture **or** production is begun, **or** operation is commenced, **or** substantial expansion is completed.*

3. Whether on facts and in law, the CIT(A) has erred in holding that there can be multiple “initial assessment years” within the exemption period of ten years, and thus completely obliterating the distinction in the exemption benefits allowed by the legislature to State of Sikkim and North Eastern States from those allowed to the State of Himachal Pradesh and Uttaranchal.

4. Whether on facts and in law, the CIT(A) has erred in holding that there can be multiple expansions, and that 100% exemption period of 5 years would be triggered off with each such expansion.

5. Whether on facts and in law, the CIT(A) has erred in ignoring the CBDT Circular No.7/2003 and the Memorandum to the Finance Bill, 2003, thereby leading to a perverse interpretation of the entire scheme and spirit of section 80IC.

6. Whether on facts and in law, the CIT(A) has erred in allowing benefit of enhanced exemption to the assessee that is clearly not intended by the legislature and the statute.

7. *Whether on facts and in law, the CIT(A) has erred in holding that the benefit of substantial expansion shall be available even to those undertakings or enterprises which have commenced production after 07.01.2003.*

8. *Whether on facts and in law, the CIT(A) has erred in not appreciating that the benefit of substantial expansion is intended only for those pre-existing undertakings or enterprises which were established on or before 07.01.2003, so as to bring them at par with those which commenced production after 7.01.2002. “*

3. Exactly similar grounds have been raised in the appeal for the assessment year 2013-14 also.

4. At the outset, the ld. Counsel submitted that this issue now stands covered by the decision of Hon'ble Supreme Court in the case of Pr. CIT Vs. M/s. Pr. CIT of Shimla Vs. M/s Aarham Softronics (Civil Appeal No. 1784 of 2019) dated. 20.02.2019. The ld. DR strongly relied upon the order of the ld. Assessing Officer.

5. In this case the only issue involved is whether the claim of deduction by the assessee under Section 80-IC on the profits from the eligible units after assessee carried out substantial expansion. The facts in brief are that the assessee is engaged in the business of manufacturing of pharmaceutical medicines at Baddi, Himachal Pradesh. The assessing officer noted that the assessee is a business undertaking which started its production from 1.04.2006 and was entitled for claiming of deduction under Section 80IC of the Act from AY 2007-08. As per the provisions of Section 80-IC, the assessee was eligible for claim of deduction @ 100% on the profits for the first 5 years starting from the initial assessment year during which its commenced production; and 30% for the next 5 years. The initial assessment year for claiming deduction was assessment year 2007-08 and, therefore, according to the Assessing Officer assessment year

2012-13 was the sixth year from the initial year, therefore, the claim allowable was only @ 30%, whereas the assessee claimed deduction at 100%. The assessee's case before the Assessing Officer was that it had undergone expansion by investing more than 50% on plant and machinery in the assessment year 2009-10 and in terms of Section 80-IC(8)(ix) of the Act had submitted a report of accountant in Form 10CCB. Therefore, as per the assessee, initial assessment year would be shifted to assessment year 2009-10 and, therefore, up to assessment year 2013-14 assessee is eligible for deduction @ 100%. The ld. Assessing Officer however, following the decision of ITAT, Chandigarh Bench in the case of **Hycron Electronics, Baddi in ITA. No. 798/CHD/2012** held that the claim of the assessee should be restricted to 30% because substantial expansion cannot shift in initial assessment year.

6. The ld. CIT (Appeals) had decided this issue in favour of the assessee following the judgement of **Hon'ble High Court of Himachal Pradesh** in the case of **Stovekraft India Vs. CIT dated 28.11.2016**. The relevant observation of the ld. CIT (Appeals) reads as under:-

“ The only issue at hand is whether the initial assessment year can be changed consequent upon substantial expansion carried out by the assessee in terms of section 80IC(8)(ix) of the IT Act. In a similar case, the Hon'ble Himachal Pradesh High Court in its judgement dated 28.11.2016 in the case of Stovekraft India Vs. CIT has held that the initial assessment shall be taken afresh after substantial expansion has been carried out by the assessee.

The Hon'ble High Court at page 33 in para 55 has held as under:-

“55. Thus, in view of the above discussion, these appeals are allowed and orders passed by the Assessment Officer as well as

the Appellate Authority and the Tribunal, in the case of each one of the assesseees, are quashed and set aside, holding as under:

a)Such of those undertakings or enterprises which were established, become operational and functional prior to 7.01.2003 and have undertaken substantial expansion between 7.01.2003 up to 1.04.2012, should be entitled to benefit of Section 80-IC of the Act, for the period for which they were not entitled to the benefit of deduction under Section 80-IB.

b)such of those units which have commenced production after 7.01.2003 and carried out substantial expansion prior to 1.04.2012, would also be entitled to benefit of deduction rates of percentage stipulated under Section 80-IC.

c)substantial expansion cannot be confined to one expansion. As long as requirement of section 80-IC(8)(ix) is met, there can be number of multiple substantial expansion.

d)Correspondingly, there can be more than one initial Assessment Years.

e)Within the window period of 7.01.2003 up to 1.04.2012, an undertaking or an enterprise can be entitled to deduction @ 100% for a period of more than five years.

f) All this, of course, is subject to a cap of ten years. [Section 80-IC(6)].

g)Units claiming deduction under Section 80-IC shall not be entitled to deduction under any other Section contained in Chapter VI-A or Section 10A or 10B of the Act [Section 80IB(5)]. “

Following the above judgement of the Hon'ble H.P. High Court, the Hon'ble ITAT, Chandigarh in ITA. No. 1046/CHD/2017 dated 12.03.2018 in the case of M/s E. G. Pharmaceuticals Vs.

DCIT, Parwanoo has also allowed deduction under Section 80IC of the IT Act, 1961 on similar grounds.

Therefore, respectfully following the judgements of the Hon'ble Himachal Pradesh High Court and the Hon'ble ITAT, Chandigarh mentioned above, the claim of the appellant for deduction for this assessment year under Section 80IC of the IT Act @ 100% is allowed. “

7. After considering the submissions and on perusal of the impugned order, we find that it is not in dispute that the initial assessment year from the starting of commercial production was initially thus assessment year 2007-08. However, the assessee has undertaken substantial expansion in assessment year 2009-10 for which relevant documents and audit report in Form 10CCB was filed. In fact, it has been stated by the assessee that substantial expansion was made by making installation of plant and machinery by more than 100% and therefore, initial year for claim of deduction under Section 80-IC of the Act would be from assessment year 2009-10. These facts are not in dispute. Now in view of these facts, principle laid down by the Hon'ble High Court of Himachal Pradesh in the case of *Stovekraft India Vs. CIT* (supra) would be squarely applicable as noted by the Id. CIT (Appeals). Further, the issue which has been decided by the Hon'ble High Court of Himachal Pradesh has been affirmed by the Hon'ble Supreme Court in the case of that **Stovekraft India Vs. CIT (supra) vide judgement dated 28.11.2016 (supra)** wherein the relevant observation of the Hon'ble Supreme Court in para 13 reads as under:-

“Para 13 Learned counsel appearing for the assessee pointed out before us that clause (v) of sub-section (8) of Section 80-IC is the concerned provision which provides definition of ‘initial

assessment year’, for the purpose of this very Section, i.e., Section 80-IC, which was not noticed while pronouncing the judgment in Commissioner of Income Tax vs. M/s. Classic Binding Industries case. We find substance in this submission of the assessee. We have no hesitation to accept this mistake which occurred in the aforesaid judgment. The Court specifically dealt with ‘initial assessment year’ and came into conclusion that there cannot be two initial assessment years within a span of 10 years which is the maximum period for allowing deduction as per sub-section (6) of Section 80-IC. As the issue directly concerned with initial assessment year, its definition contained in that very Section was missed out. To that extent, there is an error in the judgment dated 20th August, 2018 in Classic Binding Industries case”

8. Thus, this issue stands now stands covered in favour of the assessee by the judgement of Hon’ble Supreme Court. Accordingly, the grounds raised by the Revenue are dismissed.

9. Since similar issues are involved in assessment year 2013-14, therefore, the aforesaid findings will apply mutatis mutandis for this year also and accordingly, the appeal of the Revenue for assessment year 2013-14 is also dismissed.

10. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on : 27/01/2022.

**Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated : 27/01/2022.

MEHTA

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	25.01.2022
Date on which the typed draft is placed before the dictating member	27.01.2022
Date on which the typed draft is placed before the other member	27.01.2022
Date on which the approved draft comes to the Sr. PS/ PS	27.01.2022
Date on which the fair order is placed before the dictating member for pronouncement	27.01.2022
Date on which the fair order comes back to the Sr. PS/ PS	27.01.2022
Date on which the final order is uploaded on the website of ITAT	27.01.2022
date on which the file goes to the Bench Clerk	27.01.2022
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	

