

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

**BEFORE SH. A. D. JAIN, VICE PRESIDENT
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.7102/Del/2018
Assessment Year: 2014-15

M/s. Balaji Powertronics G-11, Udyog Nagar Main Rohtak Road, NewDelhi	Vs	ACIT Circle – 42 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. V. K. Bindal, CA Mrs. Rinki Sharma, ITP Sh. S. C. Gupta, Advocate
Respondent by	Shri Istiyaque Ahmed, CIT DR

Date of hearing:	16/03/2022
Date of Pronouncement:	16/03/2022

ORDER

PER A.D. JAIN, VP:

This appeal filed by the assessee is preferred against the order of the CIT(A)-14, New Delhi, dated 22.08.2018, pertaining to A.Y.2014-15.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the action of the AO in making disallowance of deduction u/s. 80 IC of the Act, amounting to Rs.24,80,44,930/-.

3. Briefly stated, the facts of the case are that during the course of the scrutiny assessment proceedings, the AO noticed that the assessee had claimed deduction @ 100% on its profit from business unit establish at the specified zone in Himachal Pradesh.

4. The AO noticed that the assessee was eligible for deduction @ 100% for the first five years after the commencement of business operations which was in A.Y. 2008-09.

5. The AO further noticed that in A.Y.2013-14, the AO had disallowed this claim since the assessee had exhausted the five year's statutory period. On the basis of the findings for A.Y.2013-14, the AO disallowed the claim of deduction for the year under consideration.

6. The assessee carried the matter before the CIT(A), but without success.

7. While dismissing the appeal of the assessee, the CIT(A) placed heavy reliance on the decision of the Hon'ble Supreme

Court in the case of 'CIT Vs. Classic Binding Industries', in Civil Appeal No.7208 of 2018, order dated 20.08.2018.

8. The Ld. Counsel drew our attention to the decision of the Delhi Bench of the Tribunal in the case of the assessee itself (APB-171-177), in ITA No.6712/Del/2018, for A.Y.2013-14, and further pointed out the decision of the Hon'ble Supreme Court in the case of 'CIT Vs. Aarham Softronics' order dated 20.02.19, in Civil appeal No.1784 of 2019 (APB 192-217).

9. Per contra, the Ld. DR strongly supported the findings of the lower authorities.

10. We have carefully considered the orders of the authorities below. We find force in the contention of the Ld. Counsel. This Tribunal in the assessee's own case (supra), in ITA No.6712/Del/2018, for A.Y.2013-14, has decided the issue in favour of the assessee. The relevant findings read as under :-

"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."

11. We find that the Hon'ble Supreme court, in the case of 'Aarham Softronics' (supra), has considered its previous judgment given in the case of 'Classic Binding Industries', at para-13 of its order and has concluded 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*

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 assesses are hereby allowed.*

12. Respectfully following the aforesaid decisions, we direct the AO to allow the claim of deduction u/s. 80IC of the Act.

13. In the result, the appeal filed by the assessee is allowed.

14. The order is pronounced in the open court on 16.03.2022 in the presence of both the rival representatives.

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- 16.03.2022

Copy forwarded to:

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

(A.D. JAIN)
VICE PRESIDENT

ASSISTANT 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	21.03.2022
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	