

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 4753/DEL/2019 [A.Y 2015-16)

The Dy. C.I.T
Central Circle - 7
New Delhi

Vs.

M/s High Valley Industries
Village Kondi, P.O. Thana
Baddi

PAN: AADFH 8325 A

(Applicant)

(Respondent)

Assessee By : Ms. Supriya Mehta, CA

Department By : Shri M. Baranwal, CIT-DR

Date of Hearing : 25.08.2022

Date of Pronouncement : 25.08.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A) - 24 New Delhi dated 07.03.2019 pertaining to Assessment
Year 2015-16.

2. The sum and substance of the grievance of the Revenue is that the Id. CIT(A) erred in holding that the assessee is eligible to claim deduction @ 100% of the eligible profits u/s 80IC of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] when the assessee started business operations on 16.08.2005 and has claimed Assessment Year 2006-07 as initial Assessment Year for the purpose of claiming deduction.

3. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed deduction u/s 80IC of the Act. On perusal of Form No. 10CCB, the Assessing Officer found that the assessee has started its business on 16.08.2005 and has claimed initial Assessment Year as Assessment Year 2006-07 for claiming deduction u/s 80IC of the Act.

4. The Assessing Officer was of the firm belief that 100% deduction is available to the assessee upto Assessment Year 2010-11. Therefore, the assessee was asked to show cause as to why claim of 100% deduction should not be denied for the year under consideration.

5. In its reply, the assessee stated that in Assessment Year 2011-12 substantial expansion in plant and machinery was made and, therefore, 100% deduction was claimed for Assessment Year 2011-12 claiming it as initial Assessment Year.

6. The contention of the assessee was denied by the Assessing Officer who allowed deduction only @ 25% of eligible profits and made disallowance of Rs. 1,7784,904/-.

7. The assessee carried the matter before the Id. CIT(A) and reiterated its claim of deduction and pointed out that the issue is now well settled by the decision of the Hon'ble Supreme Court in the case of Aarham Softronics in Civil Appeal No. 1784/2019 order dated 20.02.2019.

8. After considering the facts and submissions and after perusing the decision of the Hon'ble Supreme Court [supra], the Id. CIT(A) was convinced with the claim of deduction @ 100% and directed the Assessing Officer to allow the same.

9. Before us, the ld. DR heavily relying upon the findings of the Assessing Officer, referred to the decision of the Hon'ble Supreme Court in the case of Classic Binding Industries 407 ITR 429 and pointed out that the Hon'ble Supreme Court has not accepted the substantial expansion to determine a new initial Assessment Year for claim of deduction u/s 80IC of the Act.

10. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities. The ld. counsel for the assessee further drew our attention to the decision of this Tribunal in ITA No. 1384/Chd/2016 and CO No. 55/Chd/2017 wherein this Tribunal has accepted Assessment Year 2011-12 as new initial Assessment Year.

11. We have given thoughtful consideration to the orders of the authorities below. It is an undisputed fact that the assessee took substantial expansion in the plant and machinery in Assessment Year 2011-12 and claimed Assessment Year 2011-12 as a new initial Assessment Year for 100% deduction u/s 80IC of the Act which means that deduction is being allowed to the assessee @ 100% from Assessment Year 2011-12 onwards. The impugned Assessment Year

before us is Assessment Year 2015-16. This means that this is not the first year of claim of deduction @ 100%.

12. Moreover, this Tribunal in Assessment Year 2011-12 has allowed the claim of deduction @ 100%. Decision in the case of Classic Binding Industries [supra] relied upon by the ld. DR has been reversed by the Hon'ble Supreme Court in the case of M/s Aarham Softronics [supra]. The relevant observations of the Hon'ble Supreme Court 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 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 10U% deduction would be for remaining three years, i.e., 8th, 9th and 10th assessment years.

23. 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."

13. In light of the above facts, respectfully following the ratio laid down by the Hon'ble Supreme Court [supra], we decline to interfere with the findings of the Id. CIT(A).

14. In the result, the appeal of the Revenue in ITA No. 4753/DEL/2019 is dismissed.

The order is pronounced in the open court on 25.08.2022.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 25th August, 2022.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

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