

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. KUL BHARAT, JUDICIAL MEMBER**

ITA No.300/Del/2019
Assessment Year: 2012-13

MNC HERS A-1/118,Safdarjung Enclave, New Delhi-110029 PAN No.AANFM1617J	Vs	ACIT Circle – 35 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant	Ms. Gunjan Jain, CA
Respondent	Sh. Jeetender Chand, Sr. DR

Date of hearing:	06/09/2022
Date of Pronouncement:	06/09/2022

ORDER

PER N.K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-12, New Delhi dated 11.10.2018 for A.Y.2012-13.

2. The grievance of the assessee read as under :-

1. Under the facts and circumstances of the case, the re-opening of already concluded assessment by the Id. Assessing Authority is grossly injudicious, unwarranted, against the facts of the case and bad at law as the said re-opening was merely based on change of opinion which is not permissible as per law.
2. Under the facts and circumstances of the case, the re-assessment order passed u/s 147 of the Act by the Id. Assessing Authority is invalid and void as the said re-assessment order has been passed without issuing notice u/s 143(2) of the Act which is mandatory as per law.
3. Under the facts and circumstances of the case, the re-assessment order passed u/s 147 of the Act by the Id. Assessing Authority is bad at law as the said order has been passed without disposing off the assessee's objections against re-opening of assessment by passing a speaking order.
4. Under the facts and circumstances of the case, the re-assessment order dt. 30.12.2017 passed u/s 147 of the Act by the Id. Assessing Authority is grossly injudicious, unwarranted, against the facts of the case and untenable at law.
5. Under the facts and circumstances of the case, the Ld. First Appellate Authority has grossly erred in upholding the action of Id. AO in restricting the appellant's claim of deduction under section 80-IC of the Act to 25% as against the claim of 100% which is highly injudicious, unwarranted, against the facts of the case and bad at law.
6. The appellant prays for leave to add, amend, alter or withdraw any grounds of appeal.

3. At the very outset the counsel for the assessee stated that under the instructions she is not pressing ground No.1 to 4, therefore, grounds No. 1 to 4 are dismissed as not pressed.

4. The only ground survives for our adjudication relates to the restriction of the of deduction u/s. 80 IC of the Act to 25% as

against the claim of 100%.

5. The entire quarrel relates to the fact that the assessee claimed 100% deduction u/s. 80 IC of the Act on the ground that there was substantial expansion under taken by the assessee which according to the amended provision make the assessee an eligible assessee for the claim of deduction @ 100%.

6. The entire claim of the assessee was rejected by the AO who was of the firm belief that the assessee is only entitled for the claim of deduction @ 25% drawing support from the decision of the Tribunal Chandigarh Bench in the case of Hycron Electronics in ITA No.798/CHD/2012 order dated 27.05.2015.

7. When the matter was agitated before the CIT(A) the CIT(A) followed the interpretation given by the Hon'ble Supreme Court in the case of Classic Binding Industries in Civil Appeal No.7208 of 2018. The CIT(A) dismissed the appeal.

8. The impugned quarrel has now been well settled by the Hon'ble Supreme Court in the case of Aarham Softronics Vs DCIT 102 taxmann.com 343 in favour of the assessee and against the revenue. The Hon'ble Supreme Court while deciding the quarrel has considered the judgment given in the case of Classic Binding Industries (supra) and Mahabir Industries 94 taxmann.com 260. The 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 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 assesseees are hereby allowed.

9. Respectfully following the decision of the Hon'ble Supreme court we direct the AO to allow the claim of deduction u/s. 80 IC of the Act @ 100%. The appeal filed by the assessee is partly allowed.

10. Decision announced in the open court on 06.09.2022.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Date:- 06.09.2022

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	06.09.2022
Date on which the typed draft is placed before the dictating Member	06.09.2022
Date on which the typed draft is placed before the Other member	06.09.2022
Date on which the approved draft comes to the Sr.PS/PS	06.09.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	06.09.2022
Date on which the fair order comes back to the Sr. PS/ PS	06.09.2022
Date on which the final order is uploaded on the website of ITAT	06.09.2022
Date on which the file goes to the Bench Clerk	06.09.2022
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	