

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "A" : DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A Nos. 243 & 244/Del/2019
निर्धारणवर्ष /Assessment Years: 2012-13 & 2015-16

M/s. A. G. Peripherals, D-7, Udyog Nagar, Main Rohtak Road, New Delhi - 110 041.	<u>बनाम</u> Vs.	ACIT, Circle : 41 (1) New Delhi.
PAN No. AAMFA1680L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितीकीओरसे /Assessee by :	N o n e;
राजस्वकीओरसे / Department by :	Shri Kanav Bali, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	12/07/2022
उद्घोषणाकीतारीख/Pronouncement on :	15/09/2022

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. These two appeals are filed by the assessee against different orders of the ld. Commissioner of Income Tax (Appeals)-14, New Delhi [hereinafter referred to CIT (Appeals)] dated 12.11.2018 for assessment years 2012-13 and 2015-16 in confirming

the action of the Assessing Officer in disallowing deduction under section 80-IC of the Income Tax Act, 1961 (the Act).

2. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought. We dispose of these appeals after hearing the ld. DR.

3. On hearing the ld. DR and perusing the orders of the lower authorities we find that the ld. CIT (Appeals) sustained the disallowance of deduction claimed by the assessee under section 80-IC of the Act following the decision of the Hon'ble Supreme Court in the case of Classic Binding Industries [(2018) 407 ITR 429 (SC)] wherein the Hon'ble Apex court held that once the assessee had started claiming deduction under section 80-IC of the Act and the initial assessment year has commenced within the period of 10 years there cannot be any initial year thereby allowing 100% deduction in the next 5 years on the basis of substantial expansion of the unit.

4. However, we observe that this decision of the Hon'ble Supreme Court was held to be not good law in the case of Pr. CIT Vs. Aarham Softronics [(2019) 412 ITR 623 (SC)] by the Hon'ble Supreme Court by three judges bench wherein the Apex court held that an assessee is availing of deduction of 100% for the first 5 years and thereafter at 25% for the next 5 years, carries out substantial expansion within 10 years period the year of substantial expansion would be initial year for claiming 100% deduction. It was also held that the total period of deduction should not exceed 10 years. While holding so the Hon'ble Apex court held as under:-

“23. Having examined the matter in the aforesaid perspective, judgment in the case of [Mahabir Industries v. Principal Commissioner of Income Tax](#)² would, in fact, help the assessee. The fine distinction pointed out in [Classic Binding Industries](#) elopes thereby. To recapitulate, in [Mahabir Industries](#), it was held that if an assessee get 100% 2 Civil Appeal Nos. 4765-4766 of 2018 decided on May 18, 2018 exemption under [Section 80-IB](#) of the Act for five years and thereafter carries out the substantial expansion because of which said assessee becomes entitled to exemption under the new provision i.e. [Section 80-IC](#) of the Act, the assessee would be entitled to deduction @ 100% even after five years. This ruling was predicated on the ground that there can be two initial assessment years, one for the purpose of [Section 80-IB](#) and other for the purposes of [Section 80-IC](#) of the Act. Once we find that there can be two initial assessment years, even as per the definition thereof in [Section 80-IC](#) itself, the legal position comes at par with the one which was discussed in [Mahabir Industries](#).

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."

5. Since the Hon'ble Supreme Court in the case of Pr. CIT Vs. Aarham Softronics (supra) held that the decision of Classic Binding Industries (supra) is no more good law the ratio laid down by the Hon'ble Apex court in its latter judgement i.e. Pr. CIT Vs. Aarham Softronics (supra) applies to the facts of the assessee's case.

6. On perusal of the assessment order passed by the Assessing Officer we notice that the assessee firm is engaged in the business of manufacturing battery components and the assessee had set up its unit on 2.06.2006 relevant to the assessment year 2007-08. The assessee subsequently had undertaken substantial expansion during the financial year 2011-12 and continued to claim deduction at 100% on substantial expansion undertaken by the assessee. The claim of the assessee was denied while passing the order pursuant to the order passed under section 263 of the Act.

The ratio of the decision of the Hon'ble Supreme Court in the case of Pr. CIT Vs. Aarham Softronics (supra) applies to the facts of the case as it was held that there can be two initial assessment years and the year in which there was substantial expansion that year is the initial assessment year within the period of 10 years for the purpose of claiming deduction under section 80-IC of the Act.

7. Thus respectfully following the decision of the Hon'ble Supreme Court we hold that the assessee is entitled for deduction under section 80-IC of the Act for the assessment years 2012-13 and 2015-16 which are under consideration. We reverse the order of the Id. CIT (Appeals) and direct the Assessing Officer to allow the claim of the assessee under section 80-IC of the Act. Ground raised by the assessee in both these appeals is allowed.

8. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on : 15/09/2022.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 15/09/2022.

MEHTA

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1. Appellant;
2. Respondent;

3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	12.09.2022
Date on which the typed draft is placed before the dictating member	13.09.2022
Date on which the typed draft is placed before the other member	15.09.2022
Date on which the approved draft comes to the Sr. PS/ PS	15.09.2022
Date on which the fair order is placed before the dictating member for pronouncement	15.09.2022
Date on which the fair order comes back to the Sr. PS/ PS	15.09.2022
Date on which the final order is uploaded on the website of ITAT	15.09.2022
Date on which the file goes to the Bench Clerk	15.09.2022
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	