

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)
BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 3486/Del/2017, A.Y. 2012-13

M/s. A.G.Peripherals D-7, Udyog Nagar, Rohtak Road, New Delhi-110041 PAN : AAMFA1680L	Vs.	Pr. CIT-14, New Delhi
Appellant		Respondent

Assessee by	None
Revenue by	Sh. Girish Kohli, Sr. DR

Date of hearing:	27.06.2023
Date of Pronouncement:	10.07.2023

ORDER

Per Anubhav Sharma, JM :

The appeal is preferred by the Assessee against the order dated 29.03.2017 of PCIT(A)-14, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in arising out of an appeal before it against the assessment order dated 30.12.2017 passed u/s 263/143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Circle-41(1), New Delhi (hereinafter referred as the Ld. AO).

2. Heard and perused the record.

3. As the case was called for hearing, non-appeared for the assessee on 27.06.2023. Record shows earlier on 6.10.2022, non-appeared for assessee. Thereafter, on 18.04.2023 Sh. Ankit Dawar had appeared and filed the authority letter and again today none has appeared. Ld. DR pointed out that information is received from the AO that in consequence to the order of Id. PCIT the effect giving order u/s 263/143(3) of the Act has been passed. No further opportunity by way of notice is justified.

4. It comes up from the record that assessment order dated 27.02.2015 was made subject to the revision u/s 263 by Ld. PCIT as he had found the assessment order to be erroneous and prejudicial to the interest of the revenue for the failure of Ld. AO to examine the issue of deduction in excess of eligibility u/s 80IC of the Act. The expansion of industrial unit of the assessee was undertaken by installing new plant and machinery of Rs. 25,787,858/- in the F.Y. 2011-12 and it was more than 50% of existing plant and machinery for which assessee claimed. There was substantial expansion as per the provision of Section 80IC (8)(ix) of the Act.

5. Ld. CIT(A) observed that Ld. AO had given benefit without taking into consideration the Chandigarh Tribunal decision in **Hycron Electronics, Baddi Solan v. ITO Ward-2, Baddi ITA No. 798/Chd./2012** wherein it was observed that this benefit of substantial expansion is not available to the assessee. As it is only industrial undertaking which is already claiming 100% deduction u/s 80IC of the Act as newly established unit cannot be allowed to claim 100% deduction u/s 80IC on substantial expansion undertaken by the same firm simultaneously. The Ld. AO was apprised on behalf of the assessee that Hon'ble Himachal Pradesh High Court in the case of Hycron Electronics ITA no. 20/105 dated 28.11.2017 has held the issue in favour of the assessee and the Chandigarh Tribunal judgment has been reversed. However, Ld. AO

observing that the revenue may be filing a SLP, thus, to protect the interest of revenue 75% disallowance was made.

6. Ld. DR submitted that in a subsequent judgment of Hon'ble Supreme Court in the case of **CIT vs. M/s. Classic Binding Industries** order dated 20.08.2018 Civil Appeal no. 7208 of 2018 has settled the issue. The assessee will be entitled for deduction of remaining assessment years @ 25% as there cannot be two initial assessment years within the span of 10 years from the initial assessment year. However, Ld. DR has escaped the judgment of Hon'ble Supreme Court of India in **DCIT vs. M/s. Aarhan Softronics** dated 20.02.2019 in Civil appeal no. 1784 of 2019 wherein judgment in Classic Binding Industries case was held to be not good law.

7. In the light of aforesaid, the Bench is inclined to **allow the appeal for statistical purposes** and direct the Ld. AO to consider the aforesaid judgments of Hon'ble Supreme Court of India, and pass afresh order u/s 263 / 143(3) of the Act.

Order pronounced in the open court on 10th July, 2023.

Sd/-

**(M. BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 10.07.2023

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI