

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, 'B' CHANDIGARH**

**BEFORE SHRI A.D.JAIN, VICE PRESIDENT AND  
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 419/CHD/2023

निर्धारण वर्ष / Assessment Year : 2012-13

Mahesh T.Prasana, B/82-802, Shantivan, Devidas Lane, St.Lawrence School, Borivali West, Mumbai.	Vs	The ITO Ward - 1, Parwanoo.
स्थायी लेखा सं./PAN NO: AAEP3246R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Nikhil Goyal, Advocate, &  
Shri Ashok Goyal, CA

राजस्व की ओर से/ Revenue by : Dr. Ranjit Kaur, Addl.CIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 26.09.2024

उदघोषणा की तारीख/Date of Pronouncement : 18.10. 2024

**PHYSICAL HEARING**

**आदेश/ORDER**

**PER KRINWANT SAHAY, AM**

The appeal in this case has been filed against the order dated 12.02.2026 passed by the Commissioner of Income Tax (Appeals), Shimla.

2. The ground of appeal is as under :

*“Whether Ld. CIT(A), Shimla, H.P. has erred in upholding the order passed by Ld. AO in making addition of Rs. 87,45,366/- by restricting the deduction*

*u/s 80IC to the extent of 25% as against 100% claimed by the Assessee by undertaking substantial expansion during the AY 2011-12.”*

3. At the outset, it is seen from the record that there is a delay of 2614 days in filing of the appeal in the Tribunal. The ld. DR objected the condonation of delay and the Revenue has filed a letter in this regard, which is as under :

*“Sub: - Submission in Appeal before the Hon'ble ITAT, Chandigarh in the case of Sh. Mahesh T. Prasana C/o Satwik Scale Industries, HIG-24C, Sector-1, Parwanoo H.P. (PAN-AAEPP3246R) in ITA No. 419/Chd/2023 for A.Y. 2012-13-Reg.*

*Kindly refer to the subject cited above. The above mentioned case was fixed for hearing on 26.09.2024 before the Hon'ble ITAT, Bench B, Chandigarh.*

2. *During the course of hearing before Hon'ble ITAT, Bench B, Chandigarh on 26.09.2024 the clarification regarding the exact date on which the Ld. CIT (A), Shimla at Solan's order in appeal No. IT/307/14-15/Sml date 12.02.2016 for A.Y. 2012-13 was served to assessee was raised.*

3. *With regards to above contention and on verification of the records, the following fact are submitted for your kind consideration. The order in question in appeal No. IT/307/14-15/Sml for A.Y. 2012-13 was passed on 12.02.2016 and then through the common forwarding letter of the CIT(A) bearing No. CIT(A)/15-16/SML/290 dated 12.02.2016 dispatched to the DCIT Parwanoo and the assessee. The same information was submitted to Hon'ble bench by the CIT(A) unit-1, Shimla at Solan vide their letter No. 27 dated 02.05.2024. The copy of the covering letter sent is enclosed as annexure 'A' to this letter.*

4. *It is submitted here that the extract of the Dispatch register of the O/o CIT (A) Shimla shows that on 12.02.2016, there is entry at Sr. No. 290 for dispatch of the order to Shri Mahesh T Prasanna and to DCIT Parwanoo. The copy of same is attached as Annexure-B. It may be noted that the entry shows assessment year to be 2007-08 and not A.Y. 2012-13. This clearly appears to be a clerical mistake as the covering letter No. CIT (A)/15-16/SML/290 dated 12.02.2016, which bears the same dispatch Sr. No. 290 clearly mentions that the order is of A.Y. 2012-13 and relates to the appellate order in appeal No. IT/307/14-15/SML. Further, the said dispatch does not appear to be related to any order in the case of the assessee pertaining to A.Y. 2007-08 as no case was pending for the A.Y.2007-08 of the assessee. Furthermore, there is no reference to any order of A.Y. 2007-08 in brief synopsis of facts of the assessee filed before the Hon'ble ITAT.*

5. *In this context, it is submitted that as per the record of Central Dispatch it is verified that the letter/order in question was duly sent by Speed Post to Mahesh T Prasanna, Sector-1, Parwanoo, PIN-173220 on 26.02.2016 vide ticket No. EE749157541 IN. The copy of the same is attached as annexure-C. Further, it is submitted that Speed Post is considered valid as Registered Post as per the Judgement passed by Hon'ble ITAT Mumbai in Appeal No. 5818/Mum/2014 dated 17.07.2015 in the case of Color Craft Vs ITO. The copy of same is attached as Annexure 'D'.*
6. *From the above details, it is evident that the order for A.Y. 2012-13 was dispatched by speed post on 26.02.2016. There is no evidence from the available record of the same being returned for any reason and hence it can only be inferred that the order was duly served on assessee.*
7. *Submitted for kind information and record please.*
4. On the other hand, the Id. Counsel of the assessee has filed an affidavit on this issue and it is reproduced as under:

*"I, the above-named deponent do hereby solemnly affirm and declare as under :*

1. *That an Assessment was initiated against me for the AY 2012-13 and several notices under section 143(2) and 142(1) along with questionnaires were issued.*
2. *That the replies to the notices were duly given and all the returns were duly filed by me.*
3. *That after considering the replies, the Deputy Commissioner of Income Tax, Circle, Parwanoo passed an Assessment order u/s 143(3) on 25.02.2015.*
4. *That I filed First Appeal for AY 2012-13 before the Commissioner of Income Tax (Appeals) on 25.03.2015.*
5. *That I am a regular taxpayer and have always complied with all the requirements under proceedings of other AYs also which are AY 2011-12, AY 2013-14, AY 2014-15, and AY 2015-16.*
6. *In AY 2011-12 the same issue was raised by the Income Tax Department and an Assessment Order was passed. After considering the submissions made by me, the appeal was rejected and an Order dated 08.01.2015 under section 250(6) was passed by Hon'ble CIT(A), Shimla, H.P. (the same is attached herewith in Paperbook 1 at page no. 1 to 11).*
7. *Aggrieved by the same Order I appealed before Hon'ble ITAT, where again, the appeal was dismissed. Then I approached Hon'ble High Court of Himachal Pradesh, where relief was given to (the same forms part of the Paperbook 1 at page no. 12 to 46).*

8. *In AY 2013-14 the same scenario happened where the appeal was rejected by the Hon'ble CIT(A) and Hon'ble ITAT, but the High Court of Himachal Pradesh allowed the appeal. In AY 2014-15, I again filed an appeal before Hon'ble High Court of Himachal Pradesh and the Order was passed which was in my favor (the same forms part of the Paperbook 1 at page no. 47 to 48).*

9. *Whereas in the case of AY 2015-16, the proceedings are still going on. The submissions have been given and the case is pending before Hon'ble CIT(A), Shimla. The submissions and the last hearing notice under the proceedings for AY 2015-16 are attached herewith in Paperbook 1 at page no.49 to 66.*

10. *In the present case of AY 2012-13, I was participating fully in the proceedings. The replies and submissions were duly given in the Penalty Proceedings under section 271(l)(c). In fact, in the submissions made under the penalty proceedings for AY20~T2-T3, it is captured that I am waiting for the decision of the CIT(A) under the first appeal proceedings. Hon'ble CIT(A) also disposed of the penalty proceedings under section 271(l)(c) on this basis.*

11. *Therefore, I was always under bona fide belief that the quantum proceedings are still under process and pending before Hon'ble CIT(A).*

12. *Then I moved to Mumbai, Maharashtra in July 2020. The Parwanoo unit was functional only till 31.03.2021. The process of selling out the Parwanoo unit was started after that.*

13. *That upon a query from potential buyers about outstanding cases and litigation, I had inquired about the status of the Appeal from the Jurisdictional AO through my counsel where it was informed that the First Appeal Proceedings for AY 2012-13 against Appeal No. IT/307/14-15/Sml were completed, and an Order was passed under Section 250(6) of the Income Tax Act, 1961 by the Office of Commissioner of Income Tax (Appeals), Shimla, H.P. on 12.02.2016 (herein after called "the order").*

14. *That no communication regarding the Order by the Office of Commissioner of Income Tax (Appeals), Shimla, H.P. was received by me and I was completely unaware about the Order.*

15. *It is pertinent to mention that the Order was never received by me.*

16. *After the intimation, I approached the Ld. CIT(A) through my Counsel for a Certified Copy of the Order, and the Certified Copy of the Order was obtained by me on 02.06.2023.*

17. *As per section 268 of the Act, "In computing the period of limitation prescribed for an appeal or an application under this Act, the day on which the order complained of was served and, if the assessee was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order, shall be excluded. " In the present case also the copy of the order was not received by me and*

*hence the delay in filing is on account of delay in receiving the copy of the order. The order was received on 02.06.2023 and the appeal was filed within 60 days of receiving the order i.e., on 30.06.2023.*

*18. Notwithstanding the pleadings of the para above, the Appeal against the foresaid Order was filed only on 30.06.2023 whereas the same was due to be filed on or before 12.04.2016, resulting in a delay of 2635 days.*

*19. That the delay in filing the Appeal is inadvertent and bonafide and it is humbly prayed that the same may kindly be condoned and the Appeal be heard on merits It is, therefore, most respectfully prayed that the delay of 2635 days in filing the appeal may very kindly be condoned and appeal be kindly admitted.”*

5. The ld. counsel has argued that the assessee did not receive the order passed by the ld. CIT(A) while it is required as per Section 286 of the Act that the period between the date of passing of the order and the date of receiving the certified copy of the order to be excluded. The counsel submitted that the assessee had got a certified copy of the order passed by the ld. CIT(A) on 02.06.2023. Therefore, time between passing of the order and the receiving of certified copy should be excluded for the purpose of including the delay in filing of the appeal. The appeal order was passed by the ld. CIT(A) on 12.02.2016 and a certified copy of the same was received by the assessee on 02.06.2023. The counsel also claimed that the assessee came to know about the passing of the order by the ld. CIT(A) during the course of proceedings initiated by the Department for penalty under Section 271(1)(c) of the

Income Tax Act.

6. We have considered the submissions filed by the Revenue on this issue as well as the detailed affidavit filed by the assessee on this issue of condonation of delay. We find that the Revenue has conceded that the Dispatch Register in the office of the Id. CIT(A) Shimla shows that the order was dispatched on 12.02.2016 vide its entry at Sr.No. 290 for dispatch of this order, however, the Revenue has also conceded that by mistake the entry showed assessment year to be 2007-2008 instead of the correct assessment year of 2012-13. The Revenue has argued that it is just a clerical mistake committed by the Dispatch Clerk. On the other hand, the assessee has claimed that the Section in their office dealing with the assessment and appeal for assessment year 2012-13 did not receive any such letter/order of the Id. CIT(A) for assessment year 2012-13.

7. After going through the documents filed by the Revenue as well as the affidavit filed by the assessee, we are of this opinion that there is a mistake on the part of the Revenue that even if the order for 2012-13 was issued, on the cover of it the year was mentioned as 2007-08, therefore, there may

be a genuine confusion at the end of the assessee because of this error committed by the Dispatch Clerk in the office of the Id. CIT(A). So, we are of this considered view that the benefit of doubt has to be given to the assessee keeping in view the element of natural justice. Accordingly, the delay in filing of the appeal is hereby condoned and now we proceed to decide this case on merit.

8. The only ground of appeal in this case is against the sustenance of addition of Rs.87,45,366/- by the Id. CIT(A) restricting the deduction claimed under Section 80IC to the extent of 25% as against 100% claimed by the assessee.

9. Brief facts of this case as per the submission filed by the counsel of the assessee are as under :

**1. Brief Facts**

- 1.1 This is the case of an Assessee who declared an income of Rs. 34,85,950/-, after claiming deduction u/s 80IC of Rs. 1,16,60,488/-, in his return, e-filed on 28.09.2012. The case was selected for scrutiny through CASS and accordingly, statutory notices u/s 143(2)/142(1) were issued by the Income Tax Officer, Parwanoo and subsequently the case was transferred to the Dy. Commissioner of Income Tax, Circle, Parwanoo.
- 1.2. The Assessee firm is engaged in manufacturing electronic weighing scale. As per the information provided in Form no. 10CCB filed for the year under assessment, the Assessee started its business activity/operation on 22.04.2005 and initial Assessment year for claiming the deduction under section 80IC of the Act was mentioned as AY 2006-07.

- 1.3. Thereafter, during the financial year 2011-12, the Assessee firm had a substantial expansion, based on which, it claimed 100% deduction under section 80IC taking AY 2011-12 as the initial assessment year.
- 1.4. An order was passed against the Assessee on 25.02.2015 wherein, the Ld. AO held that in the view of the provisions of section 80IC of the Income Tax Act, 1961 Assessee firm had already claimed deduction under section 80IC of the Act at a rate of 100% for five years from AY. 2006-07 to AY 2010-11 i.e., from the date of setting up of the Industrial undertaking and it would be allowed to claim deduction of only @25% of its eligible business profits for the remaining five years i.e., from AY 2011-12 to AY 2015-16.
- 1.5. The Ld. AO denied the claim of the substantial expansion and accordingly, deduction claimed @100% was restricted to 25% of eligible profits of the assessment year under consideration and passed an order as on 25.02.2015 computing the Total Taxable Income as Rs. 1,23,22,043/-.

**2. Order under Section 250 of the Income Tax Act, 1961**

- 2.1 Aggrieved by the Assessment order dated 25.02.2015, the Assessee filed an appeal before the Hon'ble CIT(A), Shimla, H.P. on 08.02.2016.
- 2.2 Before the Hon'ble CIT(A), Shimla the Assessee made ground wise submissions as how the Ld. AO was wrong in making addition of Rs. 87.45.366/- by restricting the deduction u/s 80IC to the extent of 25% as against 100% claimed by Assessee by undertaking substantial expansion during the AY 2011-12.
- 2.3 The Ld. CIT(A) Shimla, after considering the submissions, dismissed the appeal and upheld the Order of the Ld. AO, under section 250(6) of The Income Tax Act, 1961 by an order dated 12.02.2016. However, copy of the order was not served on the Assessee and a Certified Copy of the decision was made available on 02.06.2023.

10. During proceedings before us, the counsel of the assessee argued that this issue is squarely covered by the order of the jurisdictional High Court of Himachal Pradesh, Shimla in assessee's own case on the same issue for assessment year 2013-14 where the Hon'ble High Court has given its findings as under :

*"Undisputedly, issues involved in the present appeal already stand adjudicated by this Court in ITA No. 20 of 2015, titled as M/s Stovekraft India V. Commissioner of Income Tax, decided on 28.11.2011. As such, making the directions in M/s Stovekraft India (supra) applicable mutatis mutandis, also to the present appeal, the same is disposed of. Pending application(s), if any, also stand disposed of accordingly."*

11. The Hon'ble High Court had given its finding in the case of Stovekraft India Vs Commissioner of Income Tax [2017] 88 taxmann.com 225 (Himachal Pradesh) as under :

*"(a) Such of those undertakings or enterprises which were established, became operational and functional prior to 7-1-2003 and have undertaken substantial expansion between 7- 1-2003 upto 1-4-2012, should be entitled to benefit of section 80-IC, for the period for which they were not entitled to the benefit of deduction under section 80-IB.*

*(b) Such of those units which have commenced production after 7-1-2003 and carried out substantial expansion prior to 1-4-2012, would also be entitled to benefit of deduction at different rates of percentage stipulated under section 80-IC.*

*(c) Substantial expansion cannot be confined to one expansion. As long as requirement of section 80-IC(8)(ix) is met, there can be number of multiple substantial expansions.*

*(d) Correspondingly, there can be more than one initial assessment years.*

*(e) Within the window period of 7-1-2013 upto 1-4-2012, an undertaking or an enterprise can be entitled to deduction at the rate of 100 per cent for a period of more than five years.*

*(f) All this, of course, is subject to a cap of ten years. [Section 80-IC(6)J.*

*(g) Units claiming deduction under section 80-IC shall not be entitled to deduction under any other section, contained in Chapter VI-A or section 10A or 1 OB [Section 80-IB (5)]. [Para 55] Substantial questions of law are answered accordingly. [Para 56]*

*On facts, the revenue has not disputed, (a) the units having carried out substantial expansion within the definition of the section, (b) their entitlement and extent of deduction would be dependent upon interpretation of the relevant provisions. [Para 58] "*

12. The counsel of the assessee also brought on record the order of the Hon'ble Supreme Court in the case of Pr. Commissioner of Income Tax, Shimla Vs Aarham Softronics [2019] 102 taxmann.com 343 (S.C.), wherein the Hon'ble Supreme Court held as under :

*".....there is no reason as to why 100 per cent deduction of the profits and gains be not allowed to even those units who had availed this deduction on setting up of a new unit and have now invested huge amount with substantial expansion of those units. [Para 20] The aforesaid discussion leads to the following conclusions:*

*(a) Judgment in CIT v. Classic Binding Industries [2018] 96 taxmann.com 405/257 Taxman 324 (SC) 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, it is opined 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 7-1-2003 and 1-4-2012 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 per cent 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 per cent (or 30 per cent 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 subsection (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 per cent deductions of the profits and gains.*

*(d) Such deduction, however, would be for a total period of 10 years, as provided in subsection (6). For example, if the expansion is carried out immediately, on the completion of first five years, the assessee would be entitled to 100 per cent 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 per cent deduction for the first five years, deduction at the rate of 25 per cent of the profits and gains for the next*

*two years and at the rate of 100 per cent again from 8th year as this year becomes 'initial assessment year' once again.*

*(e) However, this 100 per cent deduction would be for remaining three years, i.e., 8<sup>th</sup> 9<sup>th</sup> and 10<sup>th</sup> assessment years. [Para 24] In view of the aforesaid, the judgment of the High Court on this issue is affirmed and all appeals of the revenue are dismissed. Likewise, appeals filed by the assesseees are hereby allowed. [Para 25].*

13. On the other hand, the ld. DR relied on the order of the AO as well as that of the ld. CIT(A) on this issue.

14. We have considered the findings given by the ld. CIT(A) on this issue and the arguments of the ld. DR during proceedings before us. We have also considered the written submission filed by the counsel of the assessee as well as various case laws brought on record. We find that this issue is clearly covered by the order of the jurisdictional High Court of Himachal Pradesh in the case of assessee itself for assessment year 2013-14. Therefore, respectfully following the ratio decided by the Hon'ble High Court in assessee's own case on this issue, the assessee's appeal on this issue is allowed.

15. In the result, the appeal of the assessee is allowed.

Order pronounced on 18.10. 2024.

**Sd/-**  
**(A.D.JAIN )**  
**VICE PRESIDENT**

**Sd/-**  
**(KRINWANT SAHAY)**  
**ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar