IN THE INCOME TAX APPELLATE TRIBUNAL,
DEHRADUN BENCH, DEHRADUN

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER
(THROUGH VIDEO CONFERENCING)

ITA Nos.4746 & 4747/Del/2017
Assessment Years: 2012-13 & 2013-14

With
ITA Nos.3557 & 5425/Del/2018
Assessment Years: 2014-15 & 2015-16

Natural Herbals & Seeds, Ramraj Road, Bazpur, Udham Singh Nagra, Uttarakhand	**Vs.**	ACIT, Circle-2, Kashipur
PAN: AAIFN7092D		
(Appellant)		**(Respondent)**

With
ITA Nos.4671 & 5399/Del/2017
Assessment Years: 2012-13 & 2013-14

DCIT, Circle-2(2), Kashipur	**Vs.**	Natural Herbals & Seeds, Ramraj Road, Bazpur, Udham Singh Nagra, Uttarakhand
		PAN: AAIFN7092D
(Appellant)		**(Respondent)**

Assessee by	None
Department by	Sh. S.K. Chatarjee, CIT(DR)

Date of hearing	07.01.2025
Date of pronouncement	29.01.2025

ORDER

PER SATBEER SINGH GODARA, JM

The instant batch of six appeals pertains to a single assessee herein i.e. M/s. Natural Herbals & Seeds. It's four appeals ITA Nos.4746 & 4747/Del/2017 (for AY 2012-13 and 2013-14); 3557 & 5425/Del/2018 (for AY 2014-15 and 2015-16) along with Revenue's cross appeals ITA Nos. 4671 & 5399/Del/2017 (for AYs 2012-13 and 2013-14 only); arise against the CIT(A)'s Haldwani's different orders dated 26.04.2017 in former twin; dated 12.02.2018 in third and 31.05.2018 in last assessment year(s), in case nos. 81/CIT(A)/HLD/2015-16; 82/CIT(A)/HLD/2015-16; 10151/CIT(A)/HLD/2016-17 and 10237/CIT(A)/HLD/2017-18, involving proceedings herein are under section 153C read with section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') in assessment year 2012-13 and in the latter three assessment years 2013-14, 2014-15 and 2015-16 under section 143(3) of the Act, respectively.

2. Cases called twice. None appears at the assessee's behest. It also appears to have never appeared on the earlier occasions as well as evident from the "lead" appeal ITA No. 4671/Del/2017

herein. We thus proceed ex-parte against the assessee in this factual backdrop.

3. The "lead" assessment year 2012-13 herein involves the Revenue's and assessee's cross appeals ITA No. 4671 & 4746/Del/2017 wherein the sold substantive issue canvassed is that of the latter's entitlement to claim the impugned section 80IC deduction on the basis of CBDT's Notification No. 177/2004. Learned CIT(DR) invites our attention to the Revenue's appeal ITA No. 4671/Del/2017 canvassing the following substantive grounds:

> *(ii) Whether on the facts of the case Ld.CIT(A) is right in deciding that the activity or article or thing or operation in the case of the assessee falls within S.No. 2 and S.No. 12 of Part C of XIV Schedule of Income Tax Act.*
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> *(iii) Whether on the facts and circumstances, Ld.CIT(A) is right in holding that" Menthol" production is from processing of "Mentha Herb and Aromatic Herb" when the same is actually being processed out of "Mentha Oil".*
>
> *(iv) Whether on the facts of the case Ld. CIT(A) is right in holding "Menthol" as a "Pharma Product".*
>
> *(v) Whether on the facts and circumstances of the case Ld. CIT(A) is right in deciding that Menthol which is processed by Mentha Oil is eligible for deduction under section 80IC in the light of Schedule XIV Part'C'. of the Income Tax Act, 1961.*
>
> *(vi) Whether Ld. CIT(A) has rightly upheld the version of the assessee regarding purchase of raw material in cash without any documentary evidences.*
>
> *(vii) Whether CIT (A) has rightly upheld the version of the assessee that production was initiated without installation Machine up to 11/01/2012.*

(viii) *Whether Ld.CIT (A) accepted the ground of the assessee firm without considering the fact that the date of production is different in the books of account and certificate given by DIC.*

(ix) *Whether CIT(A) has rightly accepted the claim of assessee firm that the purchase of Machinery made from M/s Meenu Enterprises Sambhal which is dealing in Metha Oil and not in Machinery.*

(x) *Whether CIT(A) has rightly accepted the version of assessee that assessee has purchased in bulk of diesel and store without any storing capacity and run the DG Sets for production.*

4. It next transpires that the assessee's cross appeal ITA No.4746/Del/2017 raises the following substantive grounds:

- *We are not agreed with the order u/s 250(6) of income Tax Act 1961*
- *Order of Commissioner of Income tax (Appeals) is Prejudicial to us and, if ITAT appeal is not allowed to be proceeded, it amounting to against the law.*
- *As per Assessee View :-*

1. We filed an appeal before Commissioner of Income tax (Appeals) Haldwani for Our Firm Named Natural Herbals and Seeds situated at Ram Raj Road, Bazpur, District Udham Singh Nagar for Deduction under section 801C, on the basis of Section 80IC and CBDT Notification No. 177/2004 which specifies the notified industrial area

As per Section 80IC If an Enterprises or undertaking manufacture or produce any article or things in:-

1. Export Processing Zone or Integrated Infrastructure Development Centre or
2. Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park
3. Industrial Area or Theme Park,
4. in the State of Sikkim
5. in the State of Himachal Pradesh
6. the State of Uttaranchal

7. North-Eastern States.

100% of such profits and gains for ten assessment years commencing with the initial assessment year;

This section applies to any undertaking or enterprises which fulfill following Conditions for deduction under section 80IC:-

a) *Business unit not formed by splitting up, or the reconstruction, of a business already in existence.*
b) *Business unit not formed by the transfer to a new business of machinery or plant previously used for any purpose.*

All the above conditions are followed by us to claim the deduction under section 80IC. And CBDT notification no- 177/2004 dated 28-06-2004 Department Notified the industrial area

2. Commissioner of Income Tax (Appeal) is satisfied with us on all conditions but he disallowed deduction u/s 80IC on the basis of CBDT Notification No 177/2004 dated 28.06.2004 that this notification has not notified the area "NANDPUR NARKA TOPA" .

3. We have filed the writ Petition No 1230/2015 with Hon'ble High Court Nainital for correction in CBDT Notification to rectify the notification no 177/2004 dated 28.06.2004. We state that Natural Herbals and Seeds Manufacturing unit is situated at Khasra no 3/3/3 and 3/3/1 in village NANDPUR NARKA TOPA tehsil Bazpur, Udham Singh Nagar in the leased premises owned by M/s Continental Seeds and chemical Ltd. We also shown the certificate of Incorporation of the Company along with the certificate issued by Registrar of Company and Hon'ble High court decision came in favour of us and directed to State government of Uttrakhand to forward a fresh proposal to Central Government for correcting the name of village as "Nandpur Narka Topa" instead of "Nandpur Ka Ropa" in said notification of CBDT,

During the hearing State Government also acknowledged that the name of village was wrongly mentioned in proposal sent to Central Goverment as "Nandpur Narka Ropa" but the Correct name of village is "Nandpur Narka Topa".

4. We also shown the Copy of Khatoni of land in which undertaking is situated in support of fact that leased property of M/s Continental Seeds and Chemical Ltd is situated in village NANDPUR NARKA TOPA.
5. We have also shown the lease deed copy to Hon'ble High Court Between M/s Continental Seeds and chemical Ltd. and Natural Herbals & Seeds

6. We have also brought on record a true copy of villages falling under the jurisdiction of Bazpur Tehsil, a report submit by Halka

Patwari Mr. Lawkesh Kumar Sharma and counter signed by Tehsildar, Bazpur, certifying that there is no village in tehsil in the name & style of "NANDPUR KA ROPA" and due to typing mistake "NANDPUR NARKA TOPA" has erroneously has been mentioned as "Nandpur ka Ropa"

On the basis of above Contention Assessee want Tax relief on tax under Section 80IC."

5. We now advert to the basic relevant facts as per the assessment herein dated 27th March, 2015 framed u/s 153C r.w.s. 143(3) of the Act. The assessee appears to be a partnership firm comprising of its twin partners; constituted on 29.05.2012, w.e.f. 30th July, 2011. It is stated to be manufacturing of Menthol, DMO and other related products. The assessee had filed its return on 17.09.2012 declaring "nil" income after claiming section 80IC deduction on it's entire profits of Rs.9,66,78,560/-. The assessment order herein indicates that the department had seized an amount of Rs.1 crore(s) from one Sh. Vijay Kumar, c/o- M/s. Natural Herbals & Seeds, Bazpur. Learned departmental authorities thereafter recorded section 153C satisfaction on 06.02.2015 in case of the said person that the above seized cash in fact belonged to the assessee. All this led to initiation of section 153C proceedings against the assessee vide notice dated 06.02.2015. The latter appears to have filed reply on 13th March,

2015 reiterating the earlier return filed in regular assessment proceedings.

6. Learned CIT(DR) further invites our attention to the assessment findings disallowing the assessee's section 80IC deduction claim, inter alia, on the ground that the corresponding "undertaking or an enterprise" was not situated in the notified industrial area, and therefore, the said deduction could not be allowed. And that the Assessing Officer had further doubted the assessee's commencement of business activity as well for the purpose of rejecting it's section 80IC deduction. The assessee preferred its appeal wherein the CIT(A) has partly accepted it's corresponding substantive grounds:

> *"5. The contention of the Appellant and Remand Report thereon and its Rejoinder have all been considered. The issue in Appeal is with regards to the claim of deduction u/s 80IC. The first basis of disallowance of this deduction by the AO, is that as per Notification No. 177/2004 (So 741) dated 28.06.2004 issued by the CBDT, the notified village and Khasra numbers to be considered as notified industrial area, at Serial no. 96 of the Distt Udham Singh Nagar, is 'Nandpur ka Ropa' and Khasra nos. 72/1, 2mi, 3mi. same village name was found mentioned in the Notification No. 50/2003 by the Central Excise Department. The AO has observed that the Appellant's plant is located in a leased premises owned by M/s Continental Seeds and Chemicals, the Ramraj (Bazpur) with Khasra no 3/3/3 and as per the document of land produced, the said land was that there was a mistake in the notification by the Government and actual name of the village is 'Nandpur Narka Topa' only since there was no village of the name of 'Nandpur Ka Ropa' in Bazpur Tehsil. But the A.O based himself on the Notification and held Appellant's unit was not eligible for deduction u/s 80IC of the Act since it was not located in the*

notified Industrial Area. However apart from the above, the AO has dented the disallowance on the product i.e Mentha not being eligible for this deduction it is not established that the production had commenced before 01.04.2012 as required u/s 80IC(2)(b) of the Act. Now the Appellant moved a Writ Petition before the Hon Uttrakhand High Court, which was disposed off by the Hon Court vide its order dated 19th December, 2016 in which it has been held as under-

"8. From the bare perusal, it reveals that the facts of the instant case and the facts of Writ Petition (M/B) No. 628 of 2005 are slightly different. In that case, a request was made by the State Government for addition of Khasra no. 60 and 61; but, request of State Government was not acceded to by the Central Government. In that case in hand, there is nothing on record to show that any such request was made and was rejected by the Central Government. It appears that, due to some mistake committed by someone in the district level itself at the time of sending of the proposal, the name of village, within which petitioner's Unit is situated, was not mentioned correctly and incorrect name was mentioned and, due to this reason, the petitioner's Unit could not get the benefit of that notification. The question is whether any injustice, which is caused to the party by some wrong action of the government official, should be permitted to continue on the technical ground? My answer to this query is no. The law is made to give justice to all. In my view, this Court, under Article 226 of the Constitution of India, can pass appropriate order for giving justice to the aggrieved party. The Principal Secretary Micro, Small & Medium Enterprises, Government of Uttarakhand, in her counter affidavit, has, in clear words, written that the actual name of the village is "Village Nandpur Narka Topa" and there is no village in the name of "Village Nandpur Narka Topa" in Tehsil Bazpur. The mistake was certainly committed by some official working in the revenue department of district Udham Singh Nagar. The petitioner or that mistake. Considering all cannot be held responsible for that mistake. Considering all the those facts mentioned herein above and also considering the statement given by the learned Assistant Solicitor General for Union of India on 04.06.2015 that appropriate decision correcting name of the village can be taken, the writ petition is disposed in the following manner:

(1) Petitioner is directed to serve a certified copy of this judgment on the Principal Secretary, Micro, Small & Medium Enterprises, Government of Uttarakhand within a period of two weeks from today.

(ii) Thereafter, the State Government will again verify the facts about the name of the village on the basis of the revenue records and, if it is found that the name has wrongly been mentioned at the time of proposal/recommendation, the State Government shall send a fresh

proposal/ correction of name in the notification. Such proposal/ recommendation shall be sent within a period of two weeks's from the date of production of a certified copy of this judgment.

(iii) In case such proposal/recommendation is sent, the Central Government is requested to take decision on the same within a period of two months thereafter.

(iv) After taking decision such proposal/ on recommendation, the Central Government shall inform its decision to the State Government, Income Tax Department and also to the petitioner at the address given by him in the writ petition.

(v) The State Government is also directed to take action against the person, who is responsible for the mistake committed in sending wrong name of the village of the petitioner at the proposal/recommendation." time of sending of

In compliance to the above order, the Uttarakhand State government has forwarded its recommendation vide letter dated 27 January, 2017, however no information has been provided till date of any CBDT Notification regarding the correction of the name of the village. Accordingly in the absence of such a notification the Appellant remains ineligible for claim of deduction u/s 80IC.

5.1 With regards to claim of the Appellant for deduction u/s 80IC on merit, the contentions and the Report of the AO have been considered. As explained in Appeal the product being made by the Appellant i.e Menthol is an organic compound made by Mentha oil. It is waxy, crystalline substance, clear or white in colour, which is solid at room temperature and melts slightly above. Menthol has wide usage in pharma industry including as local anesthetic and counterirritant qualities, and Menthol liquid essential oil is an effective treatment in aromatherapy and is used for treatment of various ailments and dental product. Therefore these items comes in Item No 2 "Medicinal Herb and Aromatic Herb etc processing" and item no 12 "Pharma Product" of part e of schedule-XIV of the Income Tax Act: Accordingly considering the above the AO's conclusion in this regard that it was not an eligible pharma product cannot be accepted. With regards to the AO's observations and contentions regarding the Appellant's manipulation of production of Menthol, purchase of Mentha it, the set up of its production unit by 17.01.2012, and the question raised by the AO in Assessment proceedings about the authenticity of purchases in cash from farmers and the DIC Certificate obtained by it etc, all these points have been considered by me with due gravity. The AO has thus raised suspicion and doubts about whether the Appellant had actually commenced production by 31.03.2012 in order to be

eligible for deduction u/s 80IC. The Appellant has however provided details regarding the supply and installation of machinery and has also provided a detailed explanation of the production process involved in producing Menthol crystals. Regarding the purchase of machinery including the Deep Freezers, the Appellant has provided not only copies of Bills but also transport challans and Form 16 in respect of machinery issued by the Uttrakhand Trade Tax department, for bringing the same to the site. Further the Appellant's claim in respect of cash purchases from farmers has also been considered, and it is seen that cash payment is not Sambhal (UP) prior to the set up of this unit, thus admittedly it had indepth knowledge of the business as well as contacts in the area.

5.1.1 The Appellant has also submitted details of its electricity connection in December 2011 and Electricity Bills of December 2011 & January 2012 (wherein 4520 Units had been consumed) which are admitted under Rule 46A. Therefore, it is incorrect to say that there was no electricity consumption by the Appellant. The AO has also raised doubts about veracity of the DIC Certificate countersigned by the General Manager DIC, Udham Singh Nagar and issued on 24.03.2012, where the commencement of production has been mentioned as 17.01.2012. However, the same is a further verification has been made at the Assessment stage by the AO independently, it is not correct on part of the AO to simply challenge the authenticity of the facts mentioned therein including the commencement of production. Thus while the questions raised by the A.O about the purchases and production disclosed by the Appellant upto 31.03.2102, may have required further investigation but this has not been done by the A.O. It is also not enough of the A.O to say that the Appellant's disclosed Sales were of another unit, when no proof of this claim has been placed on record. Therefore it cannot be held that production could not have commenced by 31.03.2102. The Appellant has thus submitted plausible explanation on all points red flagged by the A.O. Besides the above there is evidence from two government departments i.e from that production held commenced electricity connection and bills of December and January 2012, when substantial electricity consumption is there which substantiates claim of production in January, 2012. These evidences cannot be ignored. In fact for the AO to hold that the production did not happen before 31/03/2012 i.e in the Financial Year is by itself faulty unless the entire sales and books of accounts are also rejected.

5.2 Therefore with regards to the issue of commencement of production prior to 01.04.2012, the various discrepancies pointed by the AO have been considered as above, as against the detailed explanation provided by the Appellant in its submissions dated 28.03.2017 and 20.04.2017, the A.O's conclusion that the Appellant

> *had not commenced production before 01.04.2012 is not established therefore disallowance on this ground is not justified. However considering the fact as mentioned in para 5 above, the Appellant is otherwise ineligible for claim u/s 80IC in the absence of the correction of Notification No. 177/2004 by the CBDT post the order of the Hon. Uttarakhand High Court, accordingly the disallowance of deduction u/s 80IC is upheld on this ground.*
> *As a result, the Appeal is "Partly Allowed".*

This leaves both the parties aggrieved, who have filed their respective cross appeal.

7. Learned CIT(DR) vehemently submits in this factual backdrop that the assessee is not entitled for the impugned relief once it's undertaking or enterprise, as the case may be, does not satisfy the relevant conditions in notification no. 177/2004 is not situated in the notified area.

8. We have given our thoughtful consideration to both the assessee's and Revenue's rival pleadings in the instant cross appeals. It emerges that there arises first and foremost issue of validity of the impugned assessment itself as we are dealing with the assessment year 2012-13, involving section 153C proceedings (supra).

9. Learned CIT(DR) submits that the impugned assessment year is AY 2012-13 and the date of search before us is 27.09.2012 (supra), and, therefore, it is an "abated" assessment only which need not result in addition based on the seized material only.

10. We are of the considered view that the Revenue's instant arguments seeking to treat assessment year 2012-13 as an "abated" are under section 153(A)(1) 2nd proviso does not deserve to be accepted. This is for the precise reason that section 153C(1) 1st proviso is itself very clear that the date of initiation of search in such an instances of assessment of a third person, other than the searched assessee, reads "shall be construed as reference to the date of receiving the books of account or documents or assets by the Assessing Officer having jurisdiction over such other person". It is very much clear that the date of search herein has to be taken as the date on which the corresponding satisfaction under section 153C was recorded in assessee's case on 06.02.2015 by the learned Assessing Officer.

11. That being the case, we are of the considered view that assessment year 2012-13 herein forming subject matter of the assessee's and Revenue's instant cross appeals turns out to be that involving an "unabated" assessment; counted backwards from 06.02.2015, and, therefore, keeping in mind the fact that the learned Assessing Officer had not made any disallowance/addition based on the specific seized material, we hereby quote PCIT Vs.

Abhisar Buildwell Pvt. Ltd. (2023) 454 ITR 212 (SC) to quash the impugned section 153C assessment itself. Ordered accordingly.

12. Needless to say, we further quote section 153A(2) of the Act that it shall indeed be open to the learned Assessing Officer to revive the assessee's regular scrutiny proceedings once we have quashed the assessment herein u/s 153C of the Act, subject to all just exceptions.

13. All other pleadings herein on merits stand rendered academic.

14. This Revenue's appeal ITA No. 4671/Del/2017 fails and the assessee's cross appeal ITA No. 4746/Del/2017 succeeds in very terms.

15. Coming to the second assessment year 2013-14, involving assessee's and Revenue's cross appeals ITA Nos. 4747 & 5399/Del/2017, learned CIT(DR) could hardly dispute the clinching fact that the same stands on identical footing once it involves an "unabated" assessment year going by the date of section 153C satisfaction, dated 06.02.2015 and no proceedings were pending as on 06.02.2015 (supra). Same order to follow in the instant twin cross appeals as well going by the very analogy as in the preceding paragraphs.

16. Next come the latter twin assessment years herein involving the assessee's as many appeals ITA No. 3557 & 5425/Del/2018 involving section 143(3) assessment, raising the following identical substantive grounds:

- *We are not agreed with the order u/s 250(6) of income Tax Act 1961*
- *Order of Commissioner of Income tax (Appeals) is Prejudicial to us and, if ITAT appeal is not allowed to be proceeded, it amounting to against the law.*
- *As per Assessee View :-*

1. We filed an appeal before Commissioner of Income tax (Appeals) Haldwani for Our Firm Named Natural Herbals and Seeds situated at Ram Raj Road, Bazpur, District Udham Singh Nagar for Deduction under section 801C, on the basis of Section 80IC and CBDT Notification No. 177/2004 which specifies the notified industrial area

As per Section 80IC If an Enterprises or undertaking manufacture or produce any article or things in:-

1. Export Processing Zone or Integrated Infrastructure Development Centre or
2. Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park
3. Industrial Area or Theme Park,
4. in the State of Sikkim
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7. North-Eastern States.

100% of such profits and gains for ten assessment years commencing with the initial assessment year;

This section applies to any undertaking or enterprises which fulfill following Conditions for deduction under section 80IC:-

c) *Business unit not formed by splitting up, or the reconstruction, of a business already in existence.*
d) *Business unit not formed by the transfer to a new business of machinery or plant previously used for any purpose.*

All the above conditions are followed by us to claim the deduction under section 80IC. And CBDT notification no- 177/2004 dated 28-06-2004 Department Notified the industrial area

2. Commissioner of Income Tax (Appeal) is satisfied with us on all conditions but he disallowed deduction u/s 80IC on the basis of CBDT Notification No 177/2004 dated 28.06.2004 that this notification has not notified the area "NANDPUR NARKA TOPA" .

3. We have filed the writ Petition No 1230/2015 with Hon'ble High Court Nainital for correction in CBDT Notification to rectify the notification no 177/2004 dated 28.06.2004. We state that Natural Herbals and Seeds Manufacturing unit is situated at Khasra no 3/3/3 and 3/3/1 in village NANDPUR NARKA TOPA tehsil Bazpur, Udham Singh Nagar in the leased premises owned by M/s Continental Seeds and chemical Ltd. We also shown the certificate of Incorporation of the Company along with the certificate issued by Registrar of Company and Hon'ble High court decision came in favour of us and directed to State government of Uttrakhand to forward a fresh proposal to Central Government for correcting the name of village as "Nandpur Narka Topa" instead of "Nandpur Ka Ropa" in said notification of CBDT,

During the hearing State Government also acknowledged that the name of village was wrongly mentioned in proposal sent to Central Goverment as "Nandpur Narka Ropa" but the Correct name of village is "Nandpur Narka Topa".

4. We also shown the Copy of Khatoni of land in which undertaking is situated in support of fact that leased property of M/s Continental Seeds and Chemical Ltd is situated in village NANDPUR NARKA TOPA.
5. We have also shown the lease deed copy to Hon'ble High Court Between M/s Continental Seeds and chemical Ltd. and Natural Herbals & Seeds

6. We have also brought on record a true copy of villages falling under the jurisdiction of Bazpur Tehsil, a report submit by Halka Patwari Mr. Lawkesh Kumar Sharma and counter signed by Tehsildar, Bazpur, certifying that there is no village in tehsil in the name & style of "NANDPUR KA ROPA" and due to typing mistake "NANDPUR NARKA TOPA" has erroneously has been mentioned as "Nandpur ka Ropa"

On the basis of above Contention Assessee want Tax relief on tax under Section 80IC."

17. Learned CIT(DR) vehemently argues during the course of hearing that once it stands concluded in the preceding assessment year that the assessee's corresponding alleged eligible undertaking, does not satisfy the geographically prescribed area as per the CBDT's foregoing notification (supra), the impugned section 80IC deduction claimed at its behest has been rightly disallowed. Our attention is further invited to the preceding assessment years' corresponding assessment and the lower appellate findings as well at the Revenue's behest that we ought to adopt judicial consistency in this factual backdrop.

18. We have given our thoughtful consideration to the assessee's pleadings and Revenue's vehement contention against and in support of the impugned disallowance. Suffice to say, the crux of the learned lower authorities' reasoning is that once the assessee's manufacturing unit/undertaking is situated in khasra no. 3/3/3 and 3/3/1 in village Nandpur Narka Topa, Tehsil Bazpur, Udham Singh Nagar and the same does not confirm to the concerned prescribed revenue's state of village Nandpur Ka Topa, the same could not be accepted.

19. A perusal of the case file on the other hand indicates that the assessee had filed its Writ Petition No.1230 of 2015 (M/S) before the hon'ble jurisdictional High Court of Uttarakhand at Nainital which came to be disposed of on 19th December, 2016 as under:

> *"Petitioner has approached this Court seeking the following relief:*
>
> > *"(i) A writ, order or direction in the nature of mandamus directing the respondents to treat the name of Village Nandpur Ka Ropa as occurring in Notification No. 177 of 2004 dated 28th June, 2004 issued by the respondent no 4 (Annexure No. 7 to the writ petition) and or correct the aforesaid as Nandpur Narka Topa instead of Nandpur Ka Ropa and to extend the benefit of income tax exemption to the petitioner's Unit."*
>
> *2. The case of the petitioner is that, after formation of the State of Uttarakhand, in order to promote industrialization in the State, a Policy was framed by the Central Government, under which various industries situated in notified Khasra numbers of notified villages, were granted Central Excise and Income Tax benefits. The benefits of tax holiday under Section 80 IC of the Income Tax Act, 1961 were available to the units situated in the notified Khasra numbers of notified villages on the establishment of new industry or on extension of installed capacity, as specified in the section. The petitioner's manufacturing unit is situated in Khasra numbers 3/3/3 and 3/3/1 in village Nandpur Narka Topa, Tehsil Bazpur, District Udham Singh Nagar in the leased premises owned by M/s Continental Seeds and Chemicals Ltd. It is the case of the petitioner that proposal for industrialization of villages and some of their khasra numbers in Tehsil Bazpur, District Udham Singh Nagar was forwarded under the signatures of Tehsildar, Bazpur, General Manager District Industry Centre, Udham Singh Nagar and District Magistrate, Udham Singh Nagar to the State of Uttarakhand. Later on, the State Government recommended the aforesaid identified villages and khasra numbers to the Central Government for grant of Central Excise and Income Tax exemptions as per its policy. The name of village "Nandpur Narka Topa" was included in this proposal. However, the name of village "Nandpur Narka Topa" was erroneously written as "Nandpur Narka Ropa" due to some typing or clerical mistake. It is also the case of the petitioner that name of village "Nandpur Narka Ropa", as erroneously mentioned in the proposal forwarded by the District Magistrate, Udham Singh Nagar, is the distorted version of its actual name*

"Nandpur Narka Topa". It is further case of the petitioner that, in the Notification dated 28th June, 2004 at Serial No. 96 under Bajpur Tehsil of Udham Singh Nagar, village "Nandpur Ka Ropa" has also 3 2016:UHC:8080 been notified; whereas, no village of this name and style exist in Tehsil Bazpur, nor name of any such village can be found in the list of villages recognized for industrialization and forwarded by the District Magistrate, Udham Singh Nagar to the State Government. Thereafter, petitioner submitted the representation and Halka Patwari, namely, Mr. Lawkesh Kumar Sharma submitted a report, certifying, in writing, that there is no village in Tehsil Bazpur in the name and style of "Nandpur Ka Ropa" and, due to typing mistake, village "Nandpur Narka Topa" has erroneously been mentioned as "Nandpur Ka Ropa" in the CBDT notification. The said report was countersigned by the Tehsildar, Bajpur. Thereafter, the petitioner applied for the benefit of income tax exemption under notification; but, the same was denied to it, due to incorrect name of the village. It is the contention of the learned Senior Advocate for the petitioner that there is no fault of the petitioner and wrong name of the petitioner's village has been mentioned in the said notification. He submitted that the State Government should have, in fact, sent the proposal for correction of the name of the petitioner's village and the said notification should have been corrected accordingly.

3. When the matter was listed on 04.06.2015, this Court passed the following order:

> *"Mr. Arvind Vashistha, learned Senior Counsel appearing for the petitioner, submits that correct name of village is "Nandpur Narka Topa", which was wrongly mentioned in the Notification dated 28.06.2004 as "Nandpur Ka Ropa".*
>
> *Further contends that there is no village in the name and style of "Nandpur Ka Ropa".*
>
> *Mr. Rakesh Thapliyal, learned Asst. Solicitor General of India appearing for respondent no. 1, submits that in the Notification dated 28.06.2004, names of the villages were recommended by the State Government; if the State Government says that correct name of village is "Nandpur Narka Topa" instead of "Nandpur Ka Ropa", appropriate decision correcting the name of the village can be taken.*
>
> *Mr. R.C. Arya, learned Standing Counsel appearing for respondent nos. 2 & 3, shall file specific affidavits of respondent nos. 2 & 3 within two weeks stating therein as to whether the name of the village is "Nandpur Narka Topa" or the name of village is "Nandpur Ka Ropa". They will further clarify as to whether there is any village in the name and style of "Nandpur Ka Ropa" in Tehsil Bajpur, District Udham Singh*

> *Nagar. Along with the affidavit, copy of the recommendation made by the State Government shall also be annexed."*

4. In compliance of the order dated 04.06.2015, the Principal Secretary, Micro, Small & Medium Enterprises, Government of Uttarakhand filed the counter affidavit. In the counter affidavit, it is submitted that, at Tehsil Bazpur, there is no village in the name of Village Nandpur Narka Ropa and, in fact, the correct name of village is Village Nandpur Narka Topa, which falls under Tehsil Bazpur. In the counter affidavit, it is, inter alia, stated as follows:

> *"7. That in reply to the contents of para 6 & 7 of the writ petition it is submitted that at Tehsil Bazpur no village in the name of Village Nandpur Narka Ropa in fact the correct name of village is Village Nandpur Narka Topa, which falls under Tehsil Bazpur. Copy of the report of Tehsildar, Bajpur is being filed herewith and marked as Annexure CA-2 to this affidavit.*
> *8. That the contents of para 8 & 9 of the writ petition call for no comment. However, it is submitted that any Khasra no.72/1, 2 Mi, 3Mi of village Nandpur Narka Topa has been included in the notification.*
> *9. That in reply to the contents of para 10 & 11 of the writ petition it is submitted that at Tehsil Bazpur no village in the name of Village Nandpur Narka Ropa in fact the correct name of village is Village Nandpur Narka Topa, which falls under Tehsil Bazpur.*
> *12. That in reply to the contents of para 16 of the writ petition it is submitted that the unit of the petitioner is situated at Revenue Village "Nandpur Narka Topa" at Tehsil Bazpur. It is submitted that there is no village in the name of Village Nandpur Narka Ropa in Tehsil Bazpur."*

5. Mr. Rakesh Thapliyal, learned Assistant Solicitor General for Union of India would submit that, in the order dated 04.06.2015, the Court has directed the State Government to file an affidavit alongwith the recommendation made by the State Government; but, in fact, no such recommendation was sent by the State Government, therefore, there is no question of amendment in the notification. He submitted that there is no averment in this regard that any proposal was sent to the Central Government. He relied on paragraph no. 4 of judgment passed by the Division Bench of this Court in Writ Petition (M/B) No.628 of 2005, wherein the Court has held that the Court cannot issue mandamus asking the Central Government to amend its notification and such direction would be doing something, which the Court is not competent to do. He submitted that, in view of the judgment of Division Bench, no order should be passed in favour of the petitioner.

6. Mr. H.M. Bhatia, Advocate appearing for the Income Tax submitted that since the name of the petitioner's village was not mentioned in the said notification, therefore, the petitioner was not granted benefit of the said notification. He further submitted that the petitioner has approached this Court only after assessment order was passed, therefore, the benefit of income tax exemption cannot be granted to the petitioner's Unit.

7. I have considered the submission advanced by the learned counsel for the parties and have perused the papers available on record. So far objection raised by the learned Assistant Solicitor General that the Court cannot issue any direction to the Central Government to amend its notification is concerned, I am also of the firm view that no such direction can be issued to the Central Government to amend its notification. First of all, I would like to refer to paragraph nos. 4 & 5 of the judgment passed by the Division Bench of this Court in Writ Petition (M/B) No.628 of 2005, which read as under:

> *"4. Assuming, as has been canvassed before us, that the State of Uttarakhand at the time of furnishing particulars to denote the subject industrial estates, by mistake omitted to include Khasra Nos. 60 (d) and 61 and later on realizing the said mistake, wanted to incorporate the same in the notification dated 10th June 2003, but the fact remains that the request of the State Government has not been acceded to by the Central Government and, accordingly, the same has not been incorporated in Annexure – II to the notification dated 10th June 2003. It is not the contention of the Central Government that it made a mistake. As would be evident from the judgment of this Court dated 3rd March 2005, the Central Government, though may have had conceded that there had been mistake on the part of the State Government, but, nevertheless, it never contended that there was any mistake on its part in the matter of making the notification dated 10th June 2003. Therefore, even if on the basis of mistake committed by the State Government the notification dated 10th June 2003 had been made by the Central Government, the question is, can the writ Court rectify the said mistake and, if the writ Court rectifies the same, what would be the effect thereof? If a mandamus is issued to incorporate those two Khasra numbers in the notification dated 10th June 2003, the same would tantamount to expansion of the policy, which the writ Court cannot do. The effect of such direction would be doing something which the Court is not competent to do. In the circumstances, we are constrained to hold that, although it appears to us that Khasra Nos. 60 (d) and 61 were not incorporated in Annexure – II to the notification dated 10th*

> *June 2003 for the blunder on the part of the State in furnishing appropriate information to the Union of India, but we are incompetent to incorporate the same in the said notification, particularly, in view of the fact that when the said mistake was pointed out, the Central Government agreed to give advantage to new industrial units situated 8 2016:UHC:8080 on the said Khasra numbers by incorporating Annexure – III to the notification dated 10th June 2003 by the amendment effected on 19th May 2005 and, accordingly, the same should be deemed to be a conscious decision of the Central Government and, in as much as the same pertains to a policy decision, the scope of intervention by the judiciary in that regard is absolutely limited. Apart from contending that the action complained of is discriminatory in nature, nothing else has been highlighted in the petition, on the basis whereof the said action can be called in question. In so far as discrimination is concerned, the policy granted benefit to industries situated at one place, but refused to give benefit to industries situated at other places. The policy itself discriminated one industry from another only on the basis of their location. Therefore, on the ground of discrimination, as such, there is no scope of interference in the matter.*
> *5. We, accordingly, close the matter, but, however, before doing so, having noted the judgment of this Court dated 3rd March 2005, which has reached finality, we are of the view that the petitioner was entitled to know from the Central Government of the result of the consideration by the Central Government of the representation of the petitioner made pursuant to the said order of this Court and the same, having not yet been received, we ask the Central Government to make the same available to the petitioner within a period of six weeks from the date of service of a copy of this order upon Revenue Secretary, Government of India. We make it absolutely clear that, although there are pleadings to the effect that the petitioner has made substantial expansion in terms of the policy in question, but we have not gone into that aspect of the matter."*

8. From the bare perusal, it reveals that the facts of the instant case and the facts of Writ Petition (M/B) No.628 of 2005 are slightly different. In that case, a request was made by the State Government for addition of Khasra no. 60 and 61; but, request of State Government was not acceded to by the Central Government. In the case in hand, there is nothing on record to show that any such request was made and was rejected by the Central Government. It appears that, due to some mistake committed by someone in the district level itself at the time of sending of the proposal, the name of village, within which petitioner's Unit is situated, was not mentioned

correctly and incorrect name was mentioned and, due to this reason, the petitioner's Unit could not get the benefit of that notification. The question is whether any injustice, which is caused to the party by some wrong action of the government official, should be permitted to continue on the technical ground? My answer to this query is no. The law is made to give justice to all. In my view, this Court, under Article 226 of the Constitution of India, can pass appropriate order for giving justice to the aggrieved party. The Principal Secretary Micro, Small & Medium Enterprises, Government of Uttarakhand, in her counter affidavit, has, in clear words, written that the actual name of the village is "Village Nandpur Narka Topa" and there is no village in the name of "Village Nandpur Narka Ropa" in Tehsil Bazpur. The mistake was certainly committed by some official working in the revenue department of district Udham Singh Nagar. The petitioner cannot be held responsible for that mistake. Considering all the those facts mentioned herein above and also considering the 10 2016:UHC:8080 statement given by the learned Assistant Solicitor General for Union of India on 04.06.2015 that appropriate decision correcting name of the village can be taken, the writ petition is disposed in the following manner:

(i) Petitioner is directed to serve a certified copy of this judgment on the Principal Secretary, Micro, Small & Medium Enterprises, Government of Uttarakhand within a period of two weeks from today.

(ii) Thereafter, the State Government will again verify the facts about the name of the village on the basis of the revenue records and, if it is found that the name has wrongly been mentioned at the time of proposal/recommendation, the State Government shall send a fresh proposal/ recommendation to the Central Government for making correction of name in the notification. Such proposal/ recommendation shall be sent within a period of two weeks' from the date of production of a certified copy of this judgment.

(iii) In case such proposal/ recommendation is sent, the Central Government is requested to take decision on the same within a period of two months thereafter.

(iv) After taking decision on such proposal/recommendation, the Central Government shall inform its decision to the State Government, Income Tax Department and also to the petitioner at the address given by him in the writ petition.

(v) The State Government is also directed to take action against the person, who is responsible for the mistake committed in sending wrong name of the village of the petitioner at the time of sending of proposal/recommendation."

20. It is thus clear that the assessee had duly impleaded both Union of India as well as the income tax department in the array of respondents, wherein, the hon'ble high court has concluded that gross injustice has indeed been made out in the given facts as the corresponding Revenue estate's name has been wrongly mentioned. We further refer to the learned ASG's statement dated 04.06.2015 in the hon'ble jurisdictional high court that the instant issue requires proper direction regarding correction of the name in the notification issued by the CBDT to this limited extent. We, therefore, are of the considered opinion that in the instant peculiar factual backdrop indeed requires the tribunal to restore the assessee's eligibility u/s 80IC deduction back to the learned Assessing Officer for his afresh appropriate adjudication, as per law, after verifying all the necessary facts in very terms. We order accordingly.

21. It is further made clear in the given fact that the foregoing "unabated" assessments have been quashed, which would result in revival of the normal assessment proceedings under section 153A(2) of the Act, learned Assessing Officer shall redecide the assessee's eligibility to claim section 80IC relief identically pleaded

in all these assessment years by way of common adjudication so as to avoid multiplicity of proceedings. These assessee's last twin appeals ITA No.3557/Del/2018 and 5425/Del/2018 are allowed for statistical purposes.

22. To sum up, assessee's instant former twin appeals ITA Nos. 4746 & 4747/Del/2017 are allowed and its latter as may cases ITA Nos. 3557 & 5425/Del/2018 stand allowed for statistical purposes. The Revenue's twin cross appeals ITA Nos. 4671 & 5399/Del/2017 are hereby dismissed, in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 29th January, 2025

Sd/-	***Sd/-***
(NAVEEN CHANDRA)	**(SATBEER SINGH GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 29th January, 2025.
RK/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi