

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH 'B', CHANDIGARH**

BEFORE MS.DIVA SINGH, JUDICIAL MEMBER  
AND MS.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

**ITA No.86/Chd/2017**  
(Assessment Year : 2010-11)

The D.C.I.T.,  
Circle Parwanoo.

Vs.

Sh.Vipan Gupta Prop.  
M/s Jayanti Polymers Industries,  
Plot No.30, DIC, Distt. Solan,Baddi,  
PAN: ABXPG0206E

(Appellant)

(Respondent)

Appellant by : Shri Manjit Singh, Sr.DR  
Respondent by : Shri Manoj Kumar, CA

Date of hearing : 01.11.2017  
Date of Pronouncement : 17.11.2017

**ORDER**

**Per ANNAPURNA GUPTA, A.M.:**

This appeal has been preferred by the Revenue against the order of Ld. Commissioner of Income Tax(Appeals), Shimla (hereinafter referred to as 'CIT(Appeals)') dated 05.10.2016, relating to assessment year 2010-11, deleting the penalty levied u/s 271(1)© of the Income Tax Act,1961(in short 'the Act').

2. The relevant facts of the case are that the Assessing Officer had restricted the assessee's claim of deduction u/s 80 IC of the Act to 25% of the eligible profits as against 100% claimed by the assessee on account of substantial expansion undertaken by it, for the reason that it was the 8<sup>th</sup> year since commencement of production by the assessee in the area specified by the section, while as per the section deduction @100% of the eligible profits was allowable only for the first five years from the date of

commencement of production and thereafter @ 25% of the profits for the next five years. The said disallowance was upheld in further appeals, both by the CIT(A) and the ITAT.

3. In view of the confirmation of the order of the AO with respect to restriction of deduction u/s 80IC, the AO proceeded with the penalty proceedings and levied penalty u/s 271(1)(c) amounting to Rs.19,87,760/- vide order dated 29/01/2016 for furnishing inaccurate particulars of income. Against the order of the Assessing Officer, the assessee filed appeal before the Ld.CIT(Appeals).The Ld.CIT(Appeals) deleted the penalty levied u/s 271(1)(c) of the Act relying upon the order of the Coordinate Bench of the Tribunal in the case of M/s Hycron Electronics Vs. ITO for assessment year 2009-10 in ITA No.326/Chd/2005.

4. Aggrieved by the action of the Ld.CIT(Appeals), the Revenue has come up in appeal before us. The Ld. DR relied upon the order of the Assessing Officer while the Ld. counsel for assessee placed reliance upon the order of the Ld.CIT(Appeals).

5. We have heard the contentions of both the parties, and gone through the orders of the authorities below. We find no infirmity in the order of the Ld.CIT(Appeals) in deleting the penalty levied following the decision of the Coordinate Bench in the case of M/s Hycron Electronics Vs. ITO in ITA No.326/Chd/2015 relating to assessment year 2009-10. On perusal of the said order we find that the I.T.A.T., in the said case, was seized with an identical issue

of penalty levied u/s 271(1)© , on account of restriction of deduction u/s 80 IC to 25% as against 100% claimed by the assessee, beyond five years from the commencement of production, on account of substantial expansion undertaken by it. The coordinate Bench , taking note of and agreeing with the assessee's contention that the claim was based on interpretation of the section so as to allow 100% deduction of profits on substantial expansion undertaken, found the claim of the assessee to be bonafide and not false or wrong. Further taking note of the fact that the Delhi Bench of the ITAT had allowed identical claim in the case of Tirupati LPG and that the appeal of the assessee was pending before the High Court, held that the issue was debatable. Thus the coordinate Bench of the ITAT deleted the penalty levied holding that the assessee's claim of deduction u/s 80IC of the Act was debatable and bonafide and merely because its claim was disallowed, it could not be treated as concealment or furnishing of inaccurate particulars of income. The I.T.A.T. relied upon the decision of the Hon'ble Apex Court in the case of CIT Vs. Reliance Petroproducts (P) Ltd., 322 ITR 158 in this regard.

6. Since the facts in the present case are identical to that in the case of M/s Hycron Electronics (supra) and no distinguishing facts have been brought to our notice by the Ld. DR in this regard, we agree with the Ld.CIT(Appeals) that the decision of the I.T.A.T. in the case of M/s Hycron Electronics (supra) will squarely apply in the present case. The order of the Ld.CIT(Appeals) is, therefore, upheld and

penalty levied u/s 271(1)©, amounting to Rs. 19,87,760/- is deleted.

7. In the result, appeal of the Revenue stands dismissed.

Order pronounced in the open court.

Sd/-

**(DIVA SINGH)**  
**JUDICIAL MEMBER**

Sd/-

**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Dated : 17<sup>th</sup> November, 2017

\*Rati\*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Assistant Registrar,  
ITAT, Chandigarh