IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

	I.T.A.No.2786/Del/2013	
	A.Y. : 2010-11	
M/S TIRUPATI LPG INDUSTRIES LTD., D-14, 2ND FLOOR, PREET VIHAR, DELHI (PAN:AABCT2368J)	VS.	JOINT COMMISSIONER OF INCOME TAX, RANGE-2, 13-A, SUBHASH ROAD, DEHRADUN
(APPELLANT)		**(RESPONDENT)**

Assessee by : Sh. Amit Goel, CA
Department by : Sh. V.R. Sonbhadra, Sr. DR

Date of Hearing : 03-02-2016
Date of Order : 10-02-2016

ORDER

PER H.S. SIDHU : JM

The Assessee has filed the present appeal against the impugned Order dated 22.2.2013 passed by the Ld. Commissioner of Income Tax (Appeals)-I, New Delhi on the following grounds:-

1. On the facts and circumstances of case and in law, the Commissioner of Income Tax (Appeal) erred in confirming the action of Assessing Officer of allowing deduction u/s 80lC of Income Tax Act, 1961 @ 30% instead of 100% as claimed by the assessee company.

2. On the facts and circumstances of case and in law, the Commissioner of Income Tax (Appeal) erred in confirming the action of Assessing Officer of allowing deduction u/s 80lC of Rs. 2,67,33,841/- instead of Rs.9,26,57,160/- as claimed by the assessee.

3. On the facts and circumstances of case and in law, the assessee company was entitled to deduction u/s 80lC of Income Tax Act, 1961 @ 100% of profit derived from the industrial undertaking and the CIT(A) and the assessing officer has erred in restricting the deduction to 30%. The alleged reasons giving by the A.O. and CIT(A) for restricting the deduction to 30% are erroneous.

4. On the facts and circumstances of case and in law, the Commissioner of Income Tax (Appeal) erred in confirming the action of Assessing Officer of not allowing deduction u/s 80lC on Interest income of Rs.35,44,359/-.

5. On the facts and circumstances of case and in law, the Commissioner of Income Tax (Appeal) erred in confirming the action of Assessing Officer of treating the interest income of Rs.35,44,359/- as income from other sources instead of business income.

6. The appellant craves leave to add one or more ground of appeal or to alter / modify the existing ground before or at the time of hearing of appeal."

2. Facts of the case as narrated from paras 2.1 to 2.6 of Assessing Officer's order is extracted hereunder for ready reference.

2.1 "The assessee is a Limited company incorporated in the year 2000. Its registered office is at D-14, IInd floor, Preet Vihar, Delhi. It has three directors, Shri GC Goyal AAFPG 5331 F, Shri Arun Goyal – AAIPG 7139 G and Shri Ankit Garg – AFYPG8199R.

2.2 The company is engaged in manufacturing and selling of new LPG cylinders and conductor wires. The assessee company manufactures domestic LPG cylinders for various Government Oil companies.

2.3 During the instant year, the assessee has claimed deduction u/s 80 IC amounting to Rs.9,26,57,160/-.

2.4 The manufacturing unit of the company is located at Khasra no. 235,237,238/1 and 238/2, Industrial area, Selaqui, Dehradun. This

unit completed substantial expansion during the Assessment Year 2004-05 and claimed deduction u/s 80 IC from the Assessment Year 2004-05 by declaring it to be its initial Assessment Year for the claim of deduction.

2.5 Claim of deduction u/s 80 IC was allowed by the Assessing Officer for the Assessment Year 2004-05. The claim has been allowed u/s 143(3) for the Assessment Years 2004-05 to 2008-09 @ 100% and for the AY 2009-10 @30%.

2.6 Instant Assessment Year is the seventh Assessment Year of claiming deduction u/s 80 IC of the Act. The assessee has claimed deduction @ 100% of the profits in the sixth Assessment Year while it was eligible for deduction @ 30% of its profit during the instant year."

3. The A.O. in his order u/s 143(3) rejected the claim of the assessee after analyzing the provision of S.80-IC and the government policy for the State of Uttaranchal and the State of Himachal Pradesh. The Assessing Officer held as follows.

"3.8. Now the instant case is being examined in the light of discussion above. The assessee falls in the second category i.e. an already existing unit on the cutoff date that completed substantial expansion during the Assessment Year 2004-05. The assessee claimed Assessment Year 2004-05 to be its initial Assessment Year for claiming deduction, meaning thereby, that the substantial expansion was completed during FY 2003-04 relevant to the Assessment Year 2004-05. By virtue of completing substantial expansion during the Assessment Year 2004-05 and fulfilling other conditions mentioned in the section, the assessee became eligible for claiming deduction u/s 80 IC for a period of ten years, @ 100% for first five years and @ 30 years for the balance five years.

3.9. The submission of the Ld.Counsel regarding the assessee fulfilling all the conditions claiming deduction and the claim having been allowed by the department since Assessment Year 2004-05 is well taken. Even during the instant year, the claim is not questioned for non-fulfillment of

statutory conditions. What is being questioned is the claim @ 100% of profits for the seventh Assessment Year.

3.10. The assessee is claiming that substantial expansion has been completed again during the A.Y. 2009-10 resulting in increase of installed capacity of the unit. Since the substantial expansion is completed again therefore, the initial Assessment Year is being refixed at Assessment Year 2009-10. This action of the assessee, claiming that substantial expansion can be undertaken twice and initial Assessment Year can be refixed again during the period of ten years is neither in conformity with the letter nor with the spirit of the legislature.

3.11. For the AY 2009-10 which was sixth year for the claim of deduction u/s. 80IC, the AO after detailed discussions vide assessment order dated 19.12.2011 rejected the assessee's claim of deduction @100% in the sixth year on the basis of substantial expansion. Aggrieved with this order the assessee filed appeal before CIT(A), Dehradun who rejected the the plea and upheld the decision of the AO. The relevant portion of CIT(A) order is reproduced as under:-

> "As noted above, the provision applies to an undertaking or all enterprise existing as on 07.01.2003 and achieving substantial expansion during the previous year which is reckoned as tire initial assessment year and deduction is to be allowed for 10 years beginning from the said assessment year. If the assessee's contention were accepted, it would amount to re-writing the provision of law so as to allow tire deduction to an undertaking existing as on 01.04.2009 and achieving substantial expansion during tire previous year. Clearly. if tire assessee's existence as on 07.01.2003 is kept in mind, lite initial assessment year would be AY 2004-05 (when it achieved substantial expansion). Since the law provides for only one 'initial assessment year' and a single stream of deduction for 10 assessment years with reference to the former, there is no scope for having a second initial assessment year for it. If that were allowed, it would amount

to ever greening of the incentive provision. Looked either way, there is no scope for allowing deduction @ 100% after the end of the five assessment years from the initial assessment year. The substantial expansion undertaken by the assessee during the previous year under consideration is immaterial as far as deduction u/s 80-IC is concerned. Law has recognized only one 'initial assessment year' for an undertaking/enterprise. Tire assessee's attempt amounts to abuse ofthe incentive provision.

The assessee, in support of its claim, lias relied on tire decision of tire Hon, ITAT in the case of S.R. Paryavan Engineers (P) Ltd. V. Department of Income Tax (ITA No. 340/Chd/2010), dt, 39.08.2010. In that case, tire assessee was entitled to deduction u/s 80-IC on substantial expansion but had, by mistake, claimed the same u/s 80-IB. The deduction was not allowed by the AO since tire latter deduction is not allowable on substantial expansion. On appeal, it was held that the assessee had committed a mistake in claiming deduction under a wrong section and that it should be allowed the same under the correct one, i.e. 80-IC. The facts of the case are entirly different. The assessee's claim has been made under a correct section according to it, it is found to be not allowable in law. Hence, the decision relied on by the assessee isn ot supporting its case."

3.12 In view of the above discussions, the deduction u/s 80 IC is restricted to 30% of profits of the instant Assessment Year. The assessee made the claim of deduction @ 100% of profits in the seventh year while it knew fully well that it was eligible for deduction @ 30% of the profits. Therefore, I have reasons to believe that the assessee furnished inaccurate particulars of income. Accordingly proceedings u/s 271(1)(c) of the Act are being initiated separately for furnishing inaccurate particulars of income."

4. Aggrieved with the aforesaid order of the AO, assessee appealed before the Ld. CIT(A) who vide impugned order dated 22.2.2013 upheld the order of the AO on the issue of dispute and dismissed the appeal filed by the Assessee.

4.1 Against the order dated 22.2.2013 passed by the Ld. CIT(A), assessee is in appeal before the Tribunal.

5. First we take up the ground no. 4 & 5 raised by the assessee, in these grounds the grievance of the assessee is that Ld. CIT(A) has erred in confirming the action of AO of not allowing deduction u/s. 80IC on the interest income of Rs. 35,44,359/-. The AO has denied the deduction on this amount on the ground that it is not derived from the eligible business. On the other hand the submission of the assessee is that interest income has arisen not on account of any investment activity but due to compulsion of placing FDRs with Bank as margin for obtaining bank guarantee which was part of the commercial arrangement between the assessee and its supplier.

5.1 We have heard both the parties on the issues in dispute and on careful consideration, we find that full facts relating to issue are not coming out of records. The deduction u/s. 80IC on the impugned interest income can be allowed only if it is established that it is arose on account of compulsion of business. Therefore, the issues are set aside to the file of the AO for fresh adjudication for examining the assessee's claim of nexus of interest income with business. The AO shall provide proper opportunity to the assessee. Accordingly, the ground no. 4 & 5 are allowed for statistical purposes.

6. Now we deal with the ground nos. 1, 2 & 3. At the time of hearing, Ld. Counsel of the Assessee has stated that the issues involved in ground no. 1 to 3 are squarely covered by the Order dated 29/1/2014 of the Coordinate Bench of Tribunal decided in the assessee's own case in ITA No. 991/Del/2013 for the assessment year 2009-10. For the sake of convenience, he filed the copy of the Tribunal's Order dated 29.1.2014. Accordingly, he requested that the issue no. 1, 2, & 3 in the present case may be decided in favour of the assessee by following the Tribunal's order in assessee's own case.

7. On the other hand, Ld. DR relied upon the orders of the revenue authorities.

8. We have heard both the parties, perused and considered the relevant records available with us specially the impugned orders passed by the Revenue Authorities and the copy of the order dated 29.1.2014 of this Bench passed in the case of assessee titled as Tirupati LPG Industries Ltd. vs. DCIT in ITA No. 991/Del/2013 (AY 2009-10). The relevant para nos. 10.3 to 12 at page 11 to 16 is reproduced below:-

> *"10.3. There is no dispute on the fact that (a) the assessee is entitled to exemption u/s 80 IC of the Act i.e. that the assessee has satisfied all the conditions specified in the section; (b) that there is substantial expansion during the year as per requirement of the section.*
>
> *10.4. The only dispute that arises for our consideration is the interpretation of the term "initial assessment year" and whether the same comes with any restriction. The Revenue seeks to take the color from the object of introducing Section 80-IC. The A.O. referred to policy of the government for giving incentives to the State of Uttaranchal and Himachal Pradesh. It is well settled that external aids should not be taken for the purpose of interpreting the Statute, when the language of the Section is clear and unambiguous. A plain reading of Sec.80-IC(8)(v) which defines the term "initial assessment year" read with Sec.80-IC(8)(ix) which defines the term "substantial expansion" makes it clear that there is no restriction or bar on more than one substantial expansion being undertaken by an assessee. In our view, a unit can undertake any number of substantial expansions, in the absence of any specific restriction in the Section. There is no suggestion in the language of the section that incentive u/s 80 IC is not available if the assessee substantially expands for a second or third time. Substantial expansion requires additional investment and results in higher production,*

employment etc. Industrialists have to be encouraged to undertake substantial expansion. The section recognizes this fact and provides for an incentive, if an assessee undertakes "substantial expansion".

10.5. The term 'substantial expansion' is stated in S.80-IC(8)(ix) requires investment in plant & machinery exceeding atleast 50% of the book value of plant and machinery i.e. gross value before taking depreciation into account. If such substantial expansion is completed, then, for the purpose of this section, the Assessment Year relevant to the P.Y. in which such substantial expansion is completed becomes the initial assessment year. Once it becomes the initial Assessment Year consequently under sub section (3) the assessee would be entitled to 100% deduction of profits and gains for a period of 5 years commencing from such initial Assessment Year, and thereafter the % of deduction from profits come down. The term "initial year" has been defined, as a year in which substantial expansion is completed. There is nothing to suggest that there cannot be a second initial year if a second substantial expansion is completed. Even if an existing unit which is claiming 80 IC, undertakes first substantial expansion then also the year of completion of the substantial expansion will be the "initial year". If the literal meaning of the term "initial assessment year" is to be taken, then there is no requirement of defining this term in the section. We have to go by the language of the section.

10.6. The CIT(A) denies the deduction on the ground that it would amount to evergreening of an incentive provision. Sub section (6) of S.80-IC reads as follows.

"6) Notwithstanding anything contained in this Act, no deduction shall be allowed to any undertaking or enterprise under this section, where the total period of deduction inclusive of the period of deduction under this section, or under the second proviso to sub-section (4) of section 80-IB or under section 10C, as the case may be, exceeds ten assessment years."

This section imposes a restriction for a total period of 10 years for claiming the deduction in question, irrespective of the fact whether the deduction is claimed u/s 80-IC or u/s 80-IB or u/s 10C as the case may be. Thus there is no evergreening of the provisions. The assessee cannot claim the said deduction for a total period exceeding 10 years. The deduction could be allowable only for the balance period of 5 years including this Assessment Year 2009-10. Only the rate of deduction goes up.

10.7. The Chandigarh "B" Bench of the Tribunal in the case of M/s S.R.Paryavaran Engineers P.Ltd. (supra) was considering a case where the assessee originally claiming deduction u/s 80 IB(iv) of the Act from the A.Y. 1999-2000. For the first 5 years it had claimed exemption of 100%. Thereafter it undertook substantial expansion and claimed deduction u/s 80 IB(iv). The AO rejected the same and observed that benefit could be availed u/s 80 IC and as the substantial expansion was less than 50% of the value of plant

and machinery the claim is to be rejected. The Tribunal observed that the assessee is entitled to deduction u/s 80-IC. It held that mere mention of a wrong Section would not disentitle the assessee to claim the above said deduction. To our mind this case law is not directly on the point.

11. In view of the above discussion, as on a plain reading of the section and interpretation of the term initial Assessment Year, we conclude that the claim of the assessee is admissible. Even if a view is taken that there is some ambiguity in the language of the section, then, being an incentive provisions, the ratio of the decisions of the Hon'ble Supreme Court in the case of Bajaj Tempo (supra), Gwalior Rayon Silks Mfg.Co.Ltd.(supra) have to be followed and benefit given to the assessee. We also make it clear that the deduction cannot be extended beyond the period of 10 years from the A.Y. 2004-05.

12. In the result the appeal of the assessee is allowed."

9. After going through all the relevant facts and circumstances, all records as well as the Tribunal's order dated 29.1.2014 in assessee's own case, as aforesaid, we are of the view that the facts and circumstances of the case involved in the issue in dispute is squarely covered by the Tribunal's Order dated 29.01.2014 in assessee's own case. Therefore,

respectfully following the precedent, as aforesaid, we delete the addition in dispute and quash the orders of the revenue authorities and allowed the ground no. 1, 2 & 3 raised by the assessee.

10. In the result, the appeal of the Assessee is allowed.

Order pronounced in the Open Court on 10/2/2016.

Sd/-	**Sd/-**
[L.P. SAHU] **ACCOUNTANT MEMBER**	**[H.S. SIDHU]** **JUDICIAL MEMBER**

Date 10/2/2016

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches