

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Sh. A.D. Jain, Vice President

Dr. B. R. R. Kumar, Accountant Member

**ITA Nos.3566 & 3567/Del/2019
Asstt. Years: 2013-14 & 2014-15**

Spinks Impex, C/o-M.K. Bhatt & Co. Chartered Accountants, 302, Triveni Complex, E-10/12 Jawahar Park, Laxmi Nagar, New Delhi-110092	Vs	ITO, Ward-36(5), Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAXFS9150Q		

Assessee by : NONE **

Revenue by : Sh. K.A. Manu, Sr. DR

Date of Hearing: 11.05.2022

Date of Pronouncement: 27.06.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

** The assessee filed letter of adjournment which has been rejected owing to the grounds involved.

These appeals by the assessee are against the separate orders passed by the Id. CIT(A)-12, New Delhi, dated 28.12.2018, relating to Assessment Years 2013-14 and 2014-15 respectively.

2. We have gone through the 16 pages order of the Assessing Officer and 44 pages order of the Ld. CIT(A).

3. The assessee during the year has claimed deduction of Rs.2,22,05,954/- @ 100% of Profits and gains of the undertaking u/s 80IC of the Income Tax Act, 1961. The firm is located at Plot No. 172-174, Village-Katha, District, Baddi, Tehsil Nalagarh, Himachal Pradesh, in the area notified for the purpose of 80IC deduction. The initial assessment year in which the deduction claimed was AY 2008-09 and the assessee has commenced operational activity from 01.10.2007. This is the sixth assessment year from 2008-09, for which assessee is claiming deduction u/s 80IC of the Act. Assessee has made substantial expansion of its plant and machinery from 30.03.2012 on which value of plant and machinery is increased by Rs. 1,00,92,626 and percentage wise is 74.74%. During the year assessee has claimed 100% deduction u/s 80IC of the Act. The assessee was show caused by the revenue to explain why assessee's income should not be assessed such that 25% deduction is allowed u/s 80IC as it is the 6th year of claiming of 100% deduction, whereas as per Income Tax Act, 1961, 100% deduction will be given for the first 5 years and thereafter 25% deduction is allowed. Assessee has submitted as under:-

"As regard to the query raised by your goodself regarding the issue as to why the assessee's income should not be assessed by giving 25% deduction in place 100% deduction claimed by the assessee u/s 80IC of the Act, as the relevant year under consideration is the 6th year of operation for the assessee, whereas section 80IC of the Act state that 100% deduction is available only for first initial 5 assessment year & thereafter only 25% deduction is allowed. In this regard, it is hereby submitted as under:

I. The assessee is the partnership firm carrying business of manufacturing of printing machine, and its parts, printing plates, blades and injection moulded parts, mould, at District Baddi (Himachal Pradesh)

which is Special economic Zone(SEZ). Hence the entire income earned by the assessee firm is allowable as deduction under section 80ICofthe LT. Act.

II. The manufacturing unit of the firm is located at Village-Katha, District Baddi, Himachal Pradesh. The unit commence the operation in previous year 2007-08 relevant to A. Y 2008-09 hence treated as initial year here in the instant case of the assessee. By virtue of commence the operation and fulfilling the other conditions mentioned in the section, the assessee firm become eligible for claiming the deduction under section 80ICfor the first five years (ie. 2007-08 to 2011-12) @100% accordingly claimed deduction u/s 80ICfrom the A.Y. 2008-09 by declaring it to be its initial A. Y. for claimed of deduction.

III. The assessee firm has claimed the deduction of Rs.22,266,360.14/- u/s 801C of the I.T. Act. Further to clarify the profits so taken up and derived is exclusively from a unit set up at the SEZ. In that profit neither any amount of profit from elsewhere nor from other activities is included, which are not entitled for deduction.

IV. Further to add here sir, the substantial expansion of the unit completed in the previous year 2011-12 resulting in increase of installed capacity of the unit. Since the substantial expansion is completed again, therefore, the initial A.Y. is being refixed at A.Y. 2013-14. Consequently form the P.Y. 2012-13 the rate of deduction increased to 100%.

V. The term substantial expansion analyze in the instant case as under:

<i>Previous year Begins on</i>	<i>Gross Book Value (Before depreciation)</i>	<i>Investment in Plant and Machinery</i>	<i>Percentage(%)</i>
		<i>during previous year</i>	
<i>01.04.2011</i>	<i>13502298.04</i>	<i>10092626.00</i>	<i>74.74%</i>

4. The above table depict the assessee firm made the substantial expansion as define by the provision of the section

80IC and hence, the assessee claimed eligibility for deduction u/s 80IC of the act. The assessee relied upon the verdict of Income Tax Appellate Tribunal Delhi bench in case of Triputi LPG Industries Limited wherein it was held that an assessee owns a manufacturing unit in Himachal Pradesh, completes substantial expansion in the previous year 2003-04 consequently adjudicated to be entitled for 100% deduction for first five years i.e. (2003-04 to 2007-08) and 30% deduction for next five years i.e. (2008-09 to 2012-13). It was held that if the assessee completes second substantial expansion during the year 2010-11 consequently from previous year 2010-11 the rate of deduction would be increased to 100%

5. The issue of allowability of 100% deduction u/s 80IC after substantial expansion has been a matter of adjudication by the Co-ordinate Bench of the ITAT, Chandigarh, High Court of Himachal Pradesh, jurisdictional High Court of Delhi, Hon'ble Apex Court and by the Hon'ble Apex Court in the review petition.

6. The Himachal Pradesh High court reversed the verdict of the Hycron Electronics vs. ITO [2016] 69 taxmann.com 69(Chandigarh ITAT) and accordingly allowed the re-fixation of the initial assessment year after the substantial expansion from the immediately preceding assessment year in which the expansion has taken place.

7. The Revenue dismissed the appeal of the assessee based on the judgment of the Hon'ble Apex Court in the case of CIT vs. Classic Binding Industries, [2018] 96 taxmann.com 405 (SC), has reversed decision of the Honorable Himachal Pradesh

High court in the matter of Stovekraft India v. CIT [2017] 88 taxmann.com 225/ [2018] 400ITR 225 (Himachal Pradesh).

8. Hon'ble Apex court in the matter of PCIT vs. Aarham Softronics [2019] 102 taxmann.com 343 (SC), pronounced on 20-02-2019. Wherein, it was held an assessee availing exemption of 100% tax on setting up of a new industry, which is admissible for 5 years, and either on the expiry of 5 years or thereafter (but within 10 years) from the date when these assessees started availing exemption, they carried out substantial expansion of its industry, from that year the assessees become entitled to claim exemption @ 100% again (Classic Binding Industries 407 ITR 429 held not good law and reversed)

9. Hence, keeping in view, the latest judgment of the Hon'ble Supreme Court allowing 100% deduction u/s 80IC on substantial expansion of the unit, the appeals of the assessee are hereby allowed.

10. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 27/06/2022.

Sd/-

(A.D. Jain)
Vice President

Dated: 27/06/2022

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member