

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'a'**

**BEFORE SHRI N.V VASUDEVAN, VICE-PRESIDENT
AND SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.935/Bang/2019
Assessment Year : 2015-16

M/s. Quantum Power Systems, No.BII, 3 rd Cross, ITI Industrial estate, Mahadevapura, Bengaluru – 560 048. PAN : AAFAQ 0307 Q	Vs.	Assistant Commissioner of Income-tax, Circle – 4(2)(1), Bengaluru.

Assessee by	:	Smt. Nikitha Jain, CA
Revenue by	:	Shri. Tshering Ongda, JCIT (DR) (ITAT), Bengaluru.

Date of hearing	:	21.1.2021
Date of Pronouncement	:	22.1.2021

ORDER

PER SHRI N.V VASUDEVAN, VICE-PRESIDENT :

This is an appeal by the Assessee dated 20.2.2019 of CIT(A)-4 Bengaluru, relating to AY 2015-16.

2. The only issue that arises for consideration in this appeal by the Revenue is as to whether an assessee who sets up a new industry of a kind mentioned in sub-section (2) of Section 80-IC of the Act and starts availing exemption of 100 per cent tax under sub-section (3) of Section 80-IC (which is admissible for five years) can start claiming the exemption at the same rate of 100% beyond the period of five years on the ground that the assessee has now carried out substantial expansion in its manufacturing unit?

3. The assessee is engaged in the production of power electronic products and handheld computer devices. The assessee had set-up two manufacturing unit, one is located in Bangalore and other unit is in Parwanoo, Himachal Pradesh. The assessee started the business activities at Parwanoo, Himachal Pradesh on 1st April, 2007 and set-up unit in the Parwanoo, Himachal Pradesh on the aforesaid date. It started claiming the 100% deduction in respect of profit derived from the aforesaid undertaking under section 80-IC from AY 08-09 onwards for the period of 5 years.

4. The assessee carried out and completed the substantial expansion on 28th March, 2012 (i.e. pertaining to assessment year 2012-13), wherein, it had installed plant and machinery of Rs.5,76,054/-, which is 269% of book value of plant and machinery on the first day of the previous year in which substantial expansion took place (i.e. book value of existing plant and machinery on 1.4.2011 was Rs.2,13,974/-). The aforesaid facts are duly disclosed in the form 10CCB filed for AY 2013-13 with the Income-tax authority. The subsequent installation or addition to plant and machinery was verified and confirmed by the Secretary of Single Window Clearance Agency, Parwanoo, which is authorised to issue the certificate. The assessee while filing its return of income for the assessment year 2015-16 claimed 100% deduction under section 80-IC in respect of profit derived from the Parwanoo undertaking as it had carried out the substantial expansion in the AY 2012-13 and assessment year 2015-16 was the 4th year of claiming 100% deduction (i.e. starting from AY 12-13). However, total year for which deduction claimed by the assessee till the captioned assessment year is 8 year and condition of 10 years specified in the sub-section (6) of section 80-IC is not exceeded.

5. The Assessing Officer has rejected claim of the assessee of claiming 100% deduction under section 80-IC and allowed deduction only to the extent of 25% as per clause (ii) of sub-section 3 of section 80-IC of the Act. The reason mentioned by him for rejecting the claim of the appellant are as under:

- i) Deduction u/s 80-IC is available only to the undertaking which existed prior to introduction of aforesaid section if they undertake substantial expansion and new undertaking which undertake the manufacturing and production of specified article beginning from 7.1.2003 to 1.4.2012. These are two distinct categories with distinct conditions and therefore, one cannot jump into another and claim the deduction for substantial expansion.
- ii) Benefit of substantial expansion is not available to entity incorporated after 7.1.2003.
- iii) If 100% deduction u/s 80-IC is made available for the period of 10 years then it will create disadvantageous situation for the pre-existing undertakings compared to the units which have started the operations after 7.1.2003.

6. Before CIT(A), the assessee brought to notice of CIT(A) the relevant clauses of section 80-IC as under:

'80-IC. Special provisions in respect of certain undertakings or enterprises in certain special category States.—(1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (2), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains, as specified in subsection (3).

(2) This section applies to any undertaking or enterprise,—

(a) which has begun or begins to manufacture or produce any article or thing, not being any article or thing specified in the Thirteenth Schedule, or which manufactures or produces any article or thing, not being any article or thing specified in the Thirteenth Schedule and undertakes substantial expansion during the period beginning—

(i) on the 23rd day of December, 2002 and ending before the 1st day of April, 2012, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme

Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in the State of Sikkim; or

*(i) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in **this regard, in the State of Himachal Pradesh** or the State of Uttaranchal; or*

(ii) on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Techno-logy Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in any of the North-Eastern States;

*(b) which has begun or begins to manufacture or produce any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule, or which manufactures or produces any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule **and undertakes substantial expansion** during the period beginning—*

(ii) on the 23rd day of December, 2002 and ending before the 1st day of April, 2012, in the State of Sikkim; or

*(iii) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, **in the State of Himachal Pradesh** or the State of Uttaranchal; or*

(iv) on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any of the North-Eastern States.

(3) The deduction referred to in sub-section (1) shall be—

(i) in the case of any undertaking or enterprise referred to in sub-clauses (i) and (iii) of clause (a) or sub-clauses (i) and (iii) of clause (b), of sub-section (2), one hundred per cent of such profits and gains for ten assessment years commencing with the initial assessment year;

*(ii) **in the case of any undertaking or enterprise referred to in sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b), of sub-section (2), one hundred per cent of such profits and gains for five assessment years***

commencing with the initial assessment year and thereafter, twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains.

(4) *This section applies to any undertaking or enterprise which fulfils all the following conditions, namely:—*

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence .

Provided *that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;*

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation.—The provisions of Explanations 1 and 2 to sub-section (3) of section 80-IA shall apply for the purposes of clause (ii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

(5) *Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee, no deduction shall be allowed under any other section contained in Chapter VIA or in section 10A or section 10B, in relation to the profits and gains of the undertaking or enterprise.*

(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.*

(7) *The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible undertaking or enterprise under this section.*

(8) *For the purposes of this section,—*

.....

(v) *"Initial assessment year" means the assessment year relevant to the previous year in which the undertaking or the enterprise begins to manufacture or produce articles or things, or commences operation or completes substantial expansion;*

(vii) *"North-Eastern States" means the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura;*

(ix) *"substantial expansion" means increase in the investment in the plant and machinery by at least fifty per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken;*

7. The assessee contended that the Act does not create distinction between the old units i.e. units established prior to 7.1.2003 and new units established thereafter, which is being specifically highlighted by the Assessing Officer. If substantial expansion has been carried out by the undertaking established after 7.1.2003 at any time till 31.03.2012 then also it is eligible for 100% deduction. Also, substantial expansion can be carried out by the undertaking on more than one occasion. The intent of legislature was to promote and enhance activities envisaged under the fourteenth schedule and to give incentives to "units" for setting up in special category states and therefore, they do not want to restrict the deduction. If the intent of legislature was to restrict the deduction u/s 80-IC to 100% of profit for the period of 5 years then they would have simply said, 'for the first initial five years a unit would be entitled to deduction. However, total deduction for the undertaking should not exceed ten assessment years, which is specified in the sub-section (6) of section 80-IC. Therefore, it specifies that there is no cap other than cap with regard to total period for which unit is entitled for deduction. Substantial expansion has been completed by the assessee on 28.3.2012 i.e. in the AY 2012-13 and therefore, it is eligible to claim the 100% deduction u/s 80-IC from AY 2012-13 for the period of 5 years. The assessee relied on the decision of M/s Stovekraft India vs. CIT

(ITA no. 2024/2015) (HP HC), wherein, same issue has been decided in favour of the assessee.

8. The CIT(A) did not agree with the submission of the Assessee and directed the AO to allow deduction at 100% as against 25% allowed by the AO. Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal. The learned DR relied on the order of the AO. The learned counsel for the Assessee while relying on a decision of the Hon'ble Supreme Court in the case of Aarham Softronics (infra) also brought to our notice that relief allowed by the CIT(A) on similar issue in AY 2013-14 & 2014-15 has not been challenged by the revenue and has been accepted by the revenue.

9. We have carefully considered the rival submissions. In Prl.CIT Vs. Aarham Softronics Civil Appeal No. 1784/2019 judgment dated 20.2.2019, the Hon'ble Supreme Court overruled its earlier decision in the case of *Classic Binding Industries Civil Appeal No. 7208 of 2018 judgment dated 20.8.2018* by observing that it 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. The Court therefore held that judgement in the case of *Classic Binding Industries (supra)* does not lay down the correct law.

10. An undertaking or an enterprise which had set up a new unit between 7th January, 2003 and 1st April, 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% 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% (or 30% where the assessee is a company) of the profits and gains. However, in case substantial expansion is carried out as defined in clause (ix) of sub-section (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% deductions of the profits and gains. Such deduction, however, would be for a total period of 10 years, as provided in sub-section (6). For example, if the expansion is carried out immediately, on the completion of first five years, the assessee would be entitled to 100% 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% deduction for the first five years, deduction @ 25% of the profits and gains for the next two years and @ 100% again from 8th year as this year becomes 'initial assessment year' once again. However, this 100% deduction would be for remaining three years, i.e., 8th, 9th and 10th assessment years.

11. In the light of the decision of the Hon'ble Supreme Court referred to above, we are of the view that there is merit in this appeal by the assessee and the same is allowed.

12. In the result, appeal by the assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(N.V VASUDEVAN)
VICE-PRESIDENT

Bangalore,
Dated : 22.1.2021
/NS/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar
ITAT, Bangalore.