

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]**

**BEFORE MS. DIVA SINGH JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No. 7163/DEL/2018 [A.Y 2015-16]

**Shri Tilak Raj Arora
E-1/2, Jhandewalan Extension
New Delhi**

Vs.

**The A.C.I.T
Circle 63(1)
New Delhi**

PAN: AAAPA 2227 M

(Applicant)

(Respondent)

**Assessee By : Shri KVSR Krishna, Adv
Department By : Shri Umesh Takyar, Sr. DR**

**Date of Hearing : 30.11.2021
Date of Pronouncement : 03.12.2021**

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 20, New Delhi dated 30.08.2018 pertaining to Assessment Year 2015-16.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in confirming the order of the AO who allowed the claim of deduction u/s 80IC of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] at 25% instead of 100%.

3. Briefly stated the facts of the case are that the appellant is a proprietorship firm, having its manufacturing unit with facility to manufacturing of diesel, petrol and gas gensets at village Billanwali, Baddi District, Solan. The assessee had undertaken substantial expansion in the existing manufacturing unit at Baddi in F.Y. 2011-12 relevant to Assessment Year 2012-13 and claimed 100% deduction u/s 80C of the Act.

4. During the of scrutiny assessment proceedings, the AO noticed that the assessee was eligible for deduction u/s 80IC of the Act from A.Y 2009-10 @ 100% and the assessee has exhausted its claim of 100% deduction in Assessment Year 2015-16, which is the year under consideration. The Assessing Officer, accordingly, restricted the claim of deduction to 25%.

5. The assessee carried the matter before the ld. CIT(A) but without any success.

6. Before us, the ld counsel for the assessee vehemently stated that it has carried out substantial expansion in the existing manufacturing unit at Baddi in Assessment Year 2012-13 and, therefore, the assessee is eligible for claim of deduction @ 100%. It is the say of the ld. counsel for the assessee that since A.Y 2012-13, the assessee has been allowed 100% deduction u/s 80IC of the Act and it is only for the year under consideration that the AO has restricted the deduction at 25%.

7. Strong reliance was placed on the decision of the Hon'ble Supreme Court in the case of Arham Softronics 412 ITR 0623.

8. Per contra the ld. DR strongly supported the findings of the Assessing Officer.

9. We have carefully considered the orders of the authorities below. In our considered opinion, the impugned quarrel has now been settled by the Hon'ble Supreme Court in the case of Arham Softronics [supra]. The relevant findings of the Hon'ble Supreme Court read as under:

“24. The aforesaid discussion leads us to the following conclusions:

(a) Judgment dated 20th August, 2018 in *Classic Binding Industries* case 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. Therefore, we are of the opinion that the foresaid judgment does not lay down the correct law.

(b) 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.

(c) 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.

(d) 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.

25. In view of the aforesaid, we affirm the judgment of the High Court on this issue and dismiss all these appeals of the Revenue. Likewise, appeals filed by the assesseees are hereby allowed."

10. Respectfully following the decision of the Hon'ble Supreme Court [supra] we direct the Assessing Officer to allow claim of deduction @ 100%.

11. In the result, the appeal of the assessee in ITA No. 7163/DEL/2018 is allowed.

The order is pronounced in the open court on 03.12.2021.

Sd/-

**[DIVA SINGH]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 03rd December, 2021

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

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