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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No. 332 of 2015

Date of decision: 06.09.2018

**M/s Admac Formulations, H.No. 272, Sector-17, Panchkula, through
its Authorized Representative Shri. Ajay Batra.**

.....Appellant

Vs.

Commissioner of Income Tax, Panchkula

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Ms. Radhika Suri, Sr. Advocate with Mr. Manpreet Singh Kanda, Advocate for the appellant- assessee in ITA No. 332 of 2015, 214 of 2016, 342, 343, 344, 351 of 2017 and 113 of 2018.

Mr. Divya Suri, Advocate and Mr. Sachin Bhardwaj, Advocate for the appellant-assessee in ITA No. 443 of 2015, 112 of 2016 and 253 of 2017.

Mr. B.M Monga, Advocate and Mr. Rohit Kaura, Advocate for the appellant-assessee in ITA No. 189, 302, 304 of 2017 and 135 of 2018.

Mr. Vishal Gupta, Advocate for the appellant-assessee in ITA N o. 420 of 2016

Mr. Munish Kapila, Advocate and Mr. Aman Parti, Advocate for the appellant-assessee in ITA No. 137 of 2018

None for the appellant-assessee in ITA Nos. 158, 303 and 330 of 2017

Mr. Yogesh Putney, Sr. Standing Counsel for the respondent-revenue in ITA No. 332 and 443 of 2015, 112, 214 of 2016, 158, 253, 304, 330 of 2017.

Ms. Urvashi Dhugga, Sr. Standing Counsel for the respondent-revenue in ITA No. 189, 302, 303, 342, 343, 344, 351 of 2017, 137 of 2018 and 420 of 2016.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos. 332, 443 of 2015, 112, 214, 420 of 2016, 158, 189, 253, 302, 303, 304, 330, 342, 343, 344, 351 of 2017, 113, 135 and 137 of 2018 as according to the learned counsel for the parties, the issue involved in all these appeals is identical. However, the facts are being extracted from ITA No.332 of 2015.

2. ITA No.332 of 2015 has been filed by the appellant-assessee under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 27.5.2015, Annexure A.3 passed by the Income Tax Appellate Tribunal, Chandigarh Bench (in short, “the Tribunal”) in ITA No.1007/Chd/2014, for the assessment year 2011-12, claiming following substantial questions of law:-

- i) “Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that benefit of deduction under section 80IC @ 100% of profit was not available to units set up after 7.1.2003, on undertaking substantial expansion from the year of completion of substantial expansion?
- ii) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that units set up after 7.1.2003 would not be entitled to enlarged deduction under section 80IC of the Act @ 100% of profit, even on undertaking substantial expansion within the specified period?
- iii) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in disallowing the benefit of substantial expansion under Section 80IC to the units that came into existence after 7.1.2003 by stating that initial assessment year can’t be re-fixed for such units?

- iv) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in not following the decision of the coordinate benches of the Tribunal, without referring the matter to the larger bench?
- v) Whether the learned Income Tax Appellate Tribunal is right in law and facts in holding that definition of initial assessment year does not allow the undertaking to claim deduction under Section 80IC of 100% upon their substantial expansion?
- vi) Whether the orders of the learned Income Tax Appellate Tribunal is perverse as the same is based on incorrect application of the provisions of law?"

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No. 332 of 2015 may be noticed. The appellant-assessee filed return of income on 23.9.2011 for the assessment year 2011-12 declaring an income of ₹ 92,883/- after claiming deduction under Section 80IC of the Act. The assessee was asked to explain the computation of the deduction under Section 80IC of the Act at the rate of 100% for the financial year 2010-11 relevant to the assessment year 2011-12. The assessee produced bills showing the purchase of plant and machinery amounting to ₹ 1,63,63,460/- which was more than 50% of the total book value of plant and machinery contending that the unit was eligible for 100% deduction under Section 80IC of the Act as it had undertaken substantial expansion in the financial year 2010-11. It was reiterated by the assessee that as per the provisions of Section 80IC(2)(b) of the Act, it was eligible for benefit of 100% deduction on the substantial expansion undertaken from 7.1.2003 to 1.4.2012 since the expansion was undertaken in the financial year 2010-11 within the time period prescribed under Section 80IC(2)(b) of the Act. The Assessing Officer disallowed the claim under Section 80IC of the Act vide order dated 29.01.2014,

Annexure A.1, holding that the claim for 100% deduction was not permissible under Section 80IC of the Act and the same was to be restricted only to the extent of 25%. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 22.09.2014, Annexure A.2, the CIT(A) held that the deduction at 100% of profits is available for only five assessment years including the initial assessment year and, thereafter, the assessee was eligible for deduction to the extent of 25% as the definition of initial assessment year provided under section 80IC(8)(v) of the Act would be restricted to only one initial assessment year. Relying upon the notification of the Central Excise Department, the CIT(A) held that the assessee was eligible for deduction under Section 80IC of the Act only to the extent of 25% for the assessment year in question. Still not satisfied, the assessee filed an appeal before the Tribunal. Vide order dated 27.05.2015, Annexure A.3, the Tribunal held that the benefit of substantial expansion @ 100% deduction would not be granted to the existing units where the assessee had already availed the period of full deduction @ 100% in the earlier five years and in such a situation, the benefit @ 25% deduction would be available for the remaining period where the substantial expansion had taken place after 07.1.2003 and before 01.04.2012. Hence the instant appeals.

4. We have heard learned counsel for the parties.

5. Before adjudicating the issue involved in these appeals, it would be advantageous to reproduce the relevant statutory provision i.e. Section 80IC of the Act which reads thus:-

“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 sub-section (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

(ii) 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

(iii) 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—

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

(ii) 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

(iii) 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,—

(i) "Industrial Area" means such areas, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(ii) "Industrial Estate" means such estates, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(iii) "Industrial Growth Centre" means such centres, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(iv) "Industrial Park" means such parks, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(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;

(vi) "Integrated Infrastructure Development Centre" means such centres, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

- (vii) "North-Eastern States" means the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura;
- (viii) "Software Technology Park" means any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Industry;
- (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;
- (x) "Theme Park" means such parks, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government."

Section 80-IC was inserted by Finance Act, 2003 w.e.f. April 1, 2004. It makes special provisions in respect of certain undertakings or enterprises in certain special category States. According to this provision, certain undertakings or enterprises in certain special category States are allowed deduction from such profits and gains, as specified in sub-section (3) of Section 80-IC of the Act. The provisions of this Section provided deduction to manufacturing units situated in the States of Sikkim, Himachal Pradesh and Uttaranchal and North-Eastern States. The deduction was provided to new units established in the aforesaid States, and also to existing units in those States if substantial expansion was carried out. The deduction was available @ 100% for ten Assessment Years for the units located in North-Eastern and in the State of Sikkim,

and for the units located in Himachal Pradesh, the deduction was available @ 100% for five years and @ 25% for next five years.

6. The Tribunal in view of the opinion expressed by it in its decision in the case of *M/s. Hycron Electronics, Baddi, Solan* in ITA No. 798/Chd/2012 dated 27.05.2015 for the assessment year 2009-10 adjudicated the issue against the assessee. Learned counsel for the assessee had placed strong reliance on the decision of the Himachal Pradesh High Court in *Stovkraft India vs. Commissioner of Income Tax*, alongwith other appeals reported as (2018) 400 ITR 225, to contend that in the batch of appeals including the case of *Hycron Electronics* (supra), the order of the Tribunal was set aside and the issue was decided in favour of the assessee.

7. The issue before the Himachal Pradesh High Court in *Stovkraft India's* case (supra) was as to whether “undertaking or an enterprise” established after 7th January 2003 carrying out “substantial expansion” within the window period between 07.01.2003 to 01.04.2012 would be entitled to deduction on profits at the rate of 100% under Section 80IC of the Act and if so then for what period. The answer was given in the affirmative. It was held as under:

“(a) Such of those undertakings or enterprises which were established, became operational and functional prior to 07.01.2003 and have undertaken substantial expansion between 07.01.2003 upto 01.04.2012, should be entitled to benefit of Section 80-IC of the Act, for the period for which they were not entitled to the benefit of deduction under Section 80-IB.

- (b) Such of those units which have commenced production after 07.01.2003 and carried out substantial expansion prior to 01.04.2012, would also be entitled to benefit of deduction at different rates of percentage stipulated under Section 80-IC.
- (c) Substantial expansion cannot be confined to one expansion. As long as requirement of Section 80-IC(8)(ix) is met, there can be number of multiple substantial expansions.
- (d) Correspondingly, there can be more than one initial Assessment Years.
- (e) Within the window period of 07.01.2003 to 01.04.2012, an undertaking or an enterprise can be entitled to deduction @ 100% for a period of more than five years.
- (f) All this, of course, is subject to a cap of ten years. [Section 80-IC(6)]
- (g) Units claiming deduction under Section 80-IC shall not be entitled to deduction under any other Section, contained in Chapter VI-A or Section 10A or 10B of the Act [Section 80-IB(5)].”

8. The view of the Himachal Pradesh High Court in *Stovkraft India's* case (supra) and other appeals was not approved by the Supreme Court. The Apex Court in *Commissioner of Income Tax vs. M/s Classic Binding Industries*, Civil Appeal No(s) 7208 of 2018 decided on 20.8.2018, dealing with the issue whether the assessee who had availed deductions at the rate of 100% for first five years on the ground that they had set up a manufacturing unit as prescribed under sub section (2) of Section 80IC of the Act can start claiming deduction at the rate of 100% again for the next five years as they had undertaken substantial expansion during the period mentioned in sub section (2) thereof. The answer was

given in the negative. The matter is no longer *res integra*. It was held by the Apex Court as under:-

- “17. In this backdrop, the question is as to whether these assesseees, who had availed deductions @ 100% for first five years on the ground that they had set up a manufacturing unit as prescribed under sub-section (2) of Section 80IC of the Act, can start claiming deductions @ 100% again for next five years as they had undertaken “substantial expansion” during the period mentioned in sub-section (2) thereof? The answer has to be in the negative for the following reasons:
18. We are dealing with the deductions in respect of profits and gains under Section 80-IC of the Act. No other provision is involved. This section makes special provisions in respect of certain undertakings or enterprises in certain special category States. Section 80-IC was inserted by the Finance Act, 2003 w.e.f. April 1, 2004. As per this provision, certain undertakings or enterprises in certain special category States are allowed deduction from such profits and gains, as specified in sub-section (3) of Section 80-IC. The provisions of Section 80-IC provided deduction to manufacturing units situated in the State of Sikkim, Himachal Pradesh and Uttaranchal and North-Eastern States. The deduction was provided to new units established in the aforesaid States, and also to existing units in those States if substantial expansion was carried out. The deduction was available @ 100% for ten Assessment Years for the units located in North-Eastern and in the State of Sikkim and for the units located in Himachal Pradesh, the deduction was available @ 100% for five years and @ 25% for next five years.
19. In the instant case, we are concerned with the assesseees who had established their undertakings in the State of Himachal Pradesh. Sub-section (3), as noted above, mentions the period of 10 years commencing with the initial Assessment Year. Sub-section (6) puts a cap of 10 years, which is the maximum period for which the deduction can be allowed to any undertaking or enterprise

under this section, starting from the initial Assessment Year. Another significant feature under sub-section (3) is that the deduction allowable is 100% of such profits and gains from an undertaking or an enterprise for five Assessment Years commencing with the initial Assessment Year and thereafter the deduction is allowable at 25% (or 30% where the assessee is a company) of the profits and gains. Cumulative reading of these provisions brings out the following aspects:

(a) Those undertakings or enterprises fulfilling the conditions mentioned in sub-section (2) of Section 80-IC become entitled to deduction under this provision.

(b) This deduction is allowable from the initial Assessment Year. "Initial Assessment Year" is defined in Section 80-IB(14)(c) of the Act.

(c) The deduction is @ 100% of such profits and gains for first 5 Assessment Years and thereafter a deduction is permissible @ 25% (or 30% where the assessee is a company).

(d) Total period of deduction is 10 years, which means 100% deduction for first 5 years from the initial Assessment Year and 25% (or 30% where the assessee is a company) for the next 5 years.

20. When we keep in mind the aforesaid scheme and spirit behind this provision, such a situation cannot be countenanced where an period of 10 years. If that is allowed it will amount to doing violence to the provisions of sub-section (3) read with sub-section (6) of Section 80-IC. A pragmatic and reasonable interpretation of Section 80-IC would be to hold that once the initial Assessment Year commences and an assessee, by virtue of fulfilling the conditions laid down in sub-section (2) of Section 80-IC, starts enjoying deduction, there cannot be another "Initial Assessment Year" for the purposes of Section 80-IC within the aforesaid period of 10 years, on the basis that it had carried substantial expansion in its unit."

9. While the Apex Court adjudicated the issue in favour of the revenue, it specifically distinguished its earlier pronouncement in ***Mahabir Industries vs. Principal Commissioner of Income Tax*** (Civil Appeal Nos.4765-4766 of 2018 decided on May 18, 2018 in the following terms:-

“21. We are conscious of our recent judgment rendered by this very Bench in ***Mahabir Industries vs. Principal Commissioner of Income Tax*** (Civil Appeal Nos. 4765-4766 of 2018 decided on May 18, 2018). However, a fine distinction needs to be noted between the two sets of cases. In Mahabir Industries, the assessee had availed the initial deduction under a different provision, namely, Section 80-IA of the Act, i.e. by fulfilling the conditions mentioned in sub-section (4) of Section 80-IA. Those conditions are altogether different. Deduction in respect of profits and gains under the said provision is admissible when these profits and gains are from industrial undertakings or enterprises engaged in infrastructure development etc. Even this availment started at a time when Section 80-IC was not even on the statute book.

As mentioned above, Section 80-IC was inserted by the Finance Act, 2003 with effect from April 01, 2004. The assessee in those cases had started claiming and were allowed deductions from the Assessment Years 1998-99 and 1999-2000 under Section 80-IA and from the Assessment Year 2000-01 to Assessment Year 2005-06 under Section 80-IB of the Act. The deduction was, thus, claimed by the assessee in those appeals under the new provision i.e. Section 80-IC on fulfilling conditions contained in sub-section (2) of Section 80-IC for the first time for the Assessment Year 2006-07. Thus, insofar as those cases are concerned, the initial Assessment Year under Section 80-IC started only from the Assessment Year 2006-07.

In contrast, position here is altogether different. These assesseees have availed deduction under Section 80-IC alone. Initially, they claimed the deduction on the ground that they had set up their units in the State of Himachal Pradesh and after availing the deduction @ 100% they want continuation of this rate of 100% for the next 5 years also under the same provision on the ground that they have made substantial expansion. As pointed out above, once the assesseees had started claiming deduction under Section 80-IC and the initial Assessment Year has commenced within the aforesaid period of 10 years, there cannot be another initial Assessment Year thereby allowing 100% deduction for the next 5 years also when sub-section (3), in no uncertain terms, provides for deduction @ 25% only for the next 5 years. It may be asserted again that the assesseees accept the legal position that they cannot claim deduction of more than 10 years in all under Section 80-IC.”

10. In view of the law laid down by the Apex Court in *M/s Classic Binding Industries’s* case (supra), the substantial questions of law are answered against the assessee and in favour of the revenue. Consequently, all the appeals stand dismissed.

(Ajay Kumar Mittal)
Judge

September 06, 2018
‘gs’

(Avneesh Jhingan)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes