

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

**ITA No. 447 of 2017
Date of decision: 06.09.2018**

The Pr. Commissioner of Income Tax, Rohtak

.....Appellant

Vs.

M/s Micro Turners, Hisar Road, Rohtak

.....Respondent

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

Present: Mr. Urvashi Dhugga Senior Standing Counsel for the appellant.
Mr. Divya Suri, Advocate and Mr. Sachin Bhardwaj, Advocate
for the respondent.

Ajay Kumar Mittal,J.

1. The appellant-revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 20.12.2016, Annexure A.IV, passed by the Income Tax Appellate Tribunal, Delhi Bench 'E' New, Dehli (in short, "the Tribunal") in ITA No. 2028(Del)/2016, claiming following substantial question of law for the assessment year 2011-12:-

"Whether on the facts and circumstances of the case Hon'ble ITAT is rightly in allowing the claim of deduction at the rate of 100% under Section 80IC of the Income Tax Act, 1961 when the assessee has refixed its "initial assessment year" after substantial expansion in the year 2008-2009 whereas its "initial assessment year" was assessment year 2003-2004 and there is no provision of refixing initial assessment year?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. Return of income for the assessment year 2011-12 was filed declaring total income of ₹14,54,21,467/- which was processed under Section 143(1) of the Act. The case was selected for scrutiny under “CASS”. During the course of assessment proceedings, the Assessing Officer by invoking the provisions of Section 80IC(7) read with Section 80IA(10) of the Act recomputed the deduction admissible under Section 80IC of the Act and an addition of ₹ 7,44,41,112/- was made to the income of the assessee. Hence the income was assessed under Section 143(3) of the Act at ₹ 8,81,13,290/- vide order dated 30.01.2014, Annexure A.1. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax, (Appeals), [CIT(A)]. Vide order dated 30.12.2014, the CIT(A) deleted the whole addition. Thereafter, it was noticed that the assessee had owned seven units out of which four units were located in certain special category states specified under Section 80IC of the Act. Out of these four units, one unit is located at Barotiwala (HP) which commenced operation with effect from 01.04.2002 and initial assessment year was 2003-04. Assessment year under consideration is 9th year but the assessee has claimed deduction at the rate of 100% instead of claiming at the rate of 25%. After availing deduction at the rate of 100% for five years, the assessee has re-fixed its initial assessment year on account of substantial expansion. Thus, the assessee has availed excess deduction of ₹ 8,43,78,146/- . Similar deduction was also disallowed in respect of Barotiwala Unit during the assessment year 2012-13. Accordingly, show cause notice under Section 263 of the Act was issued on 28.02.2016 by the CIT. After considering the reply filed by the assessee, order under Section 263 of the Act was passed by the CIT on 16.03.2016. Aggrieved by the order, the assessee filed an appeal

before the Tribunal. Vide order dated 20.12.2016, Annexure A.IV, the Tribunal quashed the order passed by the CIT under Section 263 of the Act. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the appellant-revenue.

4. The issue has already been decided against the assessee in a judgment passed on 06.09.2018 in ITA No. 332 of 2015 (*M/s Admac Formulations Vs. Commissioner of Income Tax, Panchkula*), wherein after considering the relevant statutory provision and the case law on the point, it was recorded as under:-

“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 assessees 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 assessees 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 assessees 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 assessees 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 assessees 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 assessees 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.”

5. In view of the above, the present appeal filed by the revenue is allowed and the substantial question claimed by revenue is answered against the assessee and in favour of the revenue.

(Ajay Kumar Mittal)
Judge

September 06, 2018
‘gs’

(Avnesh Jhingan)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes