

IT : Where an assessee who sets up a new industry of a kind mentioned in sub-section (2) of section 80-IC and starts availing exemption of 100 per cent tax under sub-section (3) of section 80-IC (which is admissible for five years), after availing deduction for a period of 5 years at rate of 100 per cent of such profits and gains from 'units', assessee would be entitled to deduction for remaining 5 assessment years at rate of 25 per cent (or 30 per cent where assessee is a company), as case may be, and not at rate of 100 per cent



[2018] 96 taxmann.com 405 (SC)

SUPREME COURT OF INDIA

Commissioner of Income-tax

v.

Classic Binding Industries

A.K. SIKRI AND ASHOK BHUSHAN, JJ.

CIVIL APPEAL NOS. 7208, 7223, 7220, 7215, 7230 OF 2018 & OTHS.

AUGUST 20, 2018

JUDGMENT

A.K.Sikri, J. - A neat question of law which arises in these appeals revolve around Section 80-IC of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). The High Court by its impugned judgment dated 28th November, 2017 has discussed various aspects and nuances of the aforesaid provisions which had arisen because of varied kinds of issues raised in a batch of appeals filed by the assesseees before the High Court. We are not concerned with all those issues. The only question which needs to be answered in these appeals is as follows:

"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?"

2. To understand the aforesaid question of law in clear terms, it may be mentioned at this stage itself that sub-section (2) of Section 80-IC applies to an undertaking or enterprise which has, inter alia, begun or begins to manufacture or produce any article or thing by setting up a new factory in the area specified therein which includes State of Himachal Pradesh as well. Sub-section (3) of Section 80-IC is in two parts: in certain cases, exemption from income is provided at the rate of 100% of such profits and gains earned from the aforesaid undertaking or enterprise for 10 assessment years commencing with the initial assessment year. The present appeals do not fall in that category. Other clause relates to another category of undertakings or enterprises (these cases belong to that category) where the exemption is at the rate of 100% of profits and gains for five assessment years commencing with the initial assessment year and, thereafter, 25% of profits and gains. Total exemption, thus, is for a period of 10 years, namely, @100% for 1st five years and @ 25% for remaining five years. In these cases, all the assesseees started claiming exemption @ 100% on profits and gains and availed it for a period of five years. During this period these assesseees carried out "substantial expansion" and they claimed that, on that basis, they should be allowed exemption from profits and gains for another five years @ 100% instead of 25% from 6th to 10th year as well. Interestingly, they admit that the total period during

which they are entitled to exemption would not exceed 10 years, as per the mandate of sub-section (6). In this backdrop, the question is as to whether the assessee can again start claiming 100% exemption for the next five years from profits and gains after availing the same for first five years on the ground that they have now carried out substantial expansion. The High Court has answered the question in affirmative and for this reason, it is the department which has come up to this Court challenging the said decision by filing these appeals.

3. Though, the aforesaid question of law is identical in all the aforesaid cases and arises in the same fact situation mentioned above, for the sake of convenience, we may record the facts of Civil Appeal No. 16851 of 2018 (@ SLP(C) 16851 of 2018).

4. Section 80-IA was inserted by the Finance (No. 2) Act, 1991, with effect from 1st April, 1991. By virtue of said Section, the gross total income (profits and gains) of an assessee derived from any business of an industrial undertaking, so specified therein, was entitled to certain deductions for a period commencing from 1st April, 1993. With effect from 1st April, 2000, the said provision was bifurcated with the insertion of another Section, i.e., 80-IB, dealing with "certain industrial undertakings other than infrastructure development undertakings." Thereafter, the Legislator, in its wisdom, enacted a special provision, in respect of "units" established in certain special category States. Thus, Section 80-IC came to be inserted by virtue of Finance Act, 2003, applicable with effect from 1st April, 2004. At this point., It may only be noticed that correspondingly certain provisions of Section 80-IB were also amended/repealed. Deductions under the said Section were discontinued for the Assessment Years commencing from 1st April, 2004 (Sub-section (4) of Section 80-IB).

5. The assessee firm derives income from manufacturing of printed embossed book binding cover material of cotton in sheet form and security fiber of dual coloured combination. The assessee firm comprised of nine partners during the relevant assessment year. The assessee started its business activity/operation on 11th July, 2005 and initial Assessment Year for claim of deduction under Section 80-IC of the Act was Assessment Year 2006-07. The assessee had already claimed deduction under Section 80-IC to the extent of the 100% eligible profit for five Assessment Years 2006-07 to Assessment Year 2010-11. However, it was noticed that the assessee firm had again claimed 100% deduction against eligible profits in the relevant Assessment Year 2012-13 which is seventh year of production for the firm by claiming substantial expansion in Financial Year 2010-11.

6. Return declaring income of Rs. 27,93,410/- after claiming deduction under Section 80-IC of Rs. 12,62,77,168/- was e-filed by the assessee firm on 28th September, 2012. The case was selected from scrutiny through CAS and accordingly, statutory notices under Section 143(2)/142(1) were issued by Income Tax Office (ITO) Ward-I, Solan.

7. The assessee was asked to furnish the reasons and justification for the said claim of 100% as against the eligible norm of 25%. the assessee vide letter dated 12th January, 2015 submitted its reasons for claim stating that the assessee fulfills all the conditions for the claim of 100% deduction.

8. The Assessing Officer found that in view of the provisions of Section 80-IC of the Act assessee firm had already claimed deduction under Section 80-IC of the Act at the rate of 100% for five years from Assessment Year 2006-07 to Assessment Year 2010-11, i.e., from the date of setting up of the industrial undertaking and in view of the same, it would be eligible for claim of deduction @ 25% of its eligible business profits for the remaining five years, i.e., from Assessment Year 2011-2012 to Assessment Year 2015-2016. The Assessing Officer denied the claim of the enhanced deduction in view of the substantial expansion was claimed by the assessee and, accordingly, restricted the deduction to 25% of eligible profits for the assessment year under Consideration.

9. Aggrieved by the order of the Assessing Officer dated 27th February, 2015, the assessee preferred an appeal on 6th April, 2015.

10. CIT(A) following the decision of the jurisdictional tribunal in the case of *M/s. Hycron Electronics v . ITO* and other related cases, upheld the order of the Assessing Officer and dismissed the appeal of the assessee for 100% deduction. Feeling aggrieved, the assessee filed further appeal before the ITAT.

11. While observing that both the parties agreed that the issue involved in appeals, was squarely covered against the assessee in view of the decision of the coordinate bench of ITAT in the case of *Hycron Electronics*, dismissed the appeals by a composite order dated 11th August, 2016 for Assessment Year 2011-12 and Assessment Year 2012-13 by holding that assessee is eligible for deduction under Section 80 of the Act @ 25% of the profit derived from industrial undertaking for these years and not @ 100% of deduction claimed by the assessee.

12. Dissatisfied with the aforesaid order dated 11th August, 2016, assessee filed appeal under Section 260A of the Act, 1961 before the High Court of Himachal Pradesh, Shimla raising therein substantial questions of law. The result of other assesseees was also on almost same pattern, who filed their respective appeals as well. The High Court has decided the issue in a composite judgment, in favour of all these assesseees. The High Court held that there is no restriction that undertaking or enterprise established after 7th January, 2003 cannot carried out 'Substantial Expansion' cannot be carried out more than once as long as period of eligibility for claiming deduction under Section 80-IC of the Act. The High Court further held that since the language of Section is very clear, reliance cannot be placed on Circular No. 7 of 2003 issued by CBDT on this issue substantial questions of law were answered in favour of assessee and appeals were allowed with direction that with respect to each of the assesseees the Assessing Officer shall carry out fresh assessment and pass appropriate orders.

13. With the aforesaid factual background, we now proceed to answer the question of law formulated above.

14. A gist of the legislative history and purpose behind the insertion of Section 80-IA, 80-IB and 80-IC has already been mentioned above. We have to keep in mind that these cases are confined to Section 80-IC alone. As mentioned above, sub-section (2) of Section 80-IC provides for tax benefit to those undertakings or enterprises which had set up their manufacturing units in certain specified areas including State of Himachal Pradesh to which this case is belonged.

15. It also gives benefit to these undertakings and enterprises which have undertaken substantial expansion during the periods mentioned therein. As there is no dispute that all these assesseees are covered by the provisions of sub-section (2), that aspect need not be stated in detail. We, thus, reproduce those portions of the provision which are relevant for our discussion:

"S.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).

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(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) or clause (b), of sub-section (2), one hundred per cent, of such profits and gains for ten assessment years commencing with the initial assessment years;

(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.

(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....."

16. The essence of Section 3 as well as Section 6 have already been reproduced above. Whereas the exemption is provided @ 100% of such profits and gains for five assessment years commencing with the

initial assessment years and, thereafter, 25% (or 30% where the assessee is a company) of the profits and gains for next five years. The deduction is limited to a period of 10 years.

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 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)? 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 Uttarakhand 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 assessee is able to secure deduction @ 100% for the entire 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.

21. We are conscious of our recent judgment rendered by this very Bench in *Mahabir Industries v. 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 assesseees 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 assesseees 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 @ 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.

22. In view of the aforesaid discussion, we hold that after availing deduction for a period of 5 years @ 100% of such profits and gains from the 'units', the assesseees would be entitled to deduction for remaining 5 Assessment Years @ 25% (or 30% where the assessee is a company), as the case may be, and not @ 100%. The question of law is, thus, answered in favour of the Revenue thereby allowing all these appeals. No order as to costs.

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