



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

**ITA No. 48 of 2013(O&M)
Date of Decision: 03.05.2025.**

M/s Vishwa Electricals Private Limited

.....Appellant

Versus

Commissioner of Income Tax (Appeals) Chandigarh and another

..... Respondents

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. Rajesh Garg, Sr. Advocate
with Mr. Sahil Matharoo, Advocate
for appellant.

Mr. Vaibhav Gupta, Advocate
Junior Standing Counsel for respondents.

LISA GILL, J.

1. Prayer in this appeal is for setting aside order dated 29.08.2012 passed by learned Income Tax Appellate Tribunal, Chandigarh Bench 'A' Chandigarh (for short 'tribunal') in ITA No. 821/CHD/2011, whereby order dated 17.06.2011 passed by Commissioner of Income Tax (Appeals), Chandigarh has been upheld.

2. Brief facts necessary for adjudication of this matter are that appellant/ assessee engaged in the business of manufacturing Polymer/ Compounds, power cable joint kits and accessories, heat shrinkable components claimed deduction under Section 80 IC of the Income Tax Act, 1961 (for short '80 IC IT Act'). Benefit under Section 80 IC of the IT Act

was declined by Assessing Officer vide order dated 15.10.2009. It was claimed by the appellant/assessee that its unit had come into commercial production on 25.05.2006. Application for provisional registration was applied for and obtained before 07.03.2007. Assessing Officer, concluded that as per Rule 18 BBB (4), Form of Audit Report for claiming deduction under Section 80 IC has to be accompanied by a copy of agreement/ approval/ permission signed or issued by the Central Government or State Government for carrying on eligible business and that this document was not attached with the audit report. In this view of the matter, he disallowed the entire deduction claim under Section 80 IC of the IT Act.

3. Appeal filed by the appellant/assessee was partially allowed by Commissioner of Income Tax (Appeals) vide order dated 17.06.2011, wherein it was held that appellant would be entitled to benefit under Section 80 IC only for part of initial assessment year i.e., 07.03.2007 to 31.03.2007 on the ground that 07.03.2007, was the date certified by the Deputy Director of Industries to be the date of commencement of commercial production. Proportionate turnover was calculated accordingly. Still aggrieved, appellant approached the learned tribunal impugning the said orders. Learned tribunal vide order dated 29.08.2012, dismissed the appeal.

4. Present appeal has been filed impugning the said order.

5. Learned senior counsel for the appellant vehemently argued that commercial production, was in-fact, started from 25.05.2006 which is apparent from the documents on record. It is submitted that once production started in the particular financial year, there is no provision for providing the benefit under Section 80 IC only for a proportionate part of the said year and that deduction should be permitted for the entire year. It is the entire initial

assessment year which is eligible for deduction and that learned Appellate Authority has grossly erred in evolving its own method of granting proportionate deduction. Learned counsel for appellant vehemently argued that nothing as such can be read into Section 80 IC, inasmuch as production without permission may make the appellant liable under any other provisions of law but assessee cannot be denied the benefit provided under Section 80 IC. Learned senior counsel for appellant had also submitted that assessee had purchased a built-up running unit from M/s Comtech Private Limited on 02.02.2006. Their application for transfer of industrial unit in their favour was allowed on 08.02.2006. Sales tax, registration numbers were applied for and obtained on 19.03.2006, application for provisional registration as Small Scale Industries was applied for and issued on 16.02.2006 and production had commenced w.e.f. 25.05.2006 which is indicated from the electricity bills which were duly placed on record. Learned tribunal has also not applied its mind to the controversy at hand and has erroneously upheld order of the learned Appellate Authority, therefore present appeal should be allowed with impugned orders being set aside and relief as claimed for, be afforded to the appellant.

6. Learned counsel for respondents has however refuted the arguments raised on behalf of appellant while submitting that impugned order dated 29.08.2012 has been correctly passed by learned tribunal after due consideration of material on record as well as entire facts and circumstances. Dismissal of appeal is sought.

7. We heard learned counsel for the parties at length and have carefully perused the file.

8. This appeal was admitted on 23.08.2013 for consideration of

the following substantial question of law:-

“Whether the Income Tax Appellate Tribunal as well as the authorities under the Act are right in law in limiting the deduction under Section 80IC for initial assessment year only from 07.03.2007 to 31.03.2007 by calculating proportionate profit for the aforesaid period even though there was no dispute with date of commercial production claimed by the assessee and that certified by the Deputy Director of Industries as both falls within the same financial year?”

9. It is a matter of record that benefit of deduction under Section 80 IC claimed by present appellant for the assessment year 2007-08/Financial year 2006-07 in its entirety was not accepted by the Assessing Officer vide order dated 15.10.2009. Appellate Authority however afforded partial relief to the assessee which has been upheld by learned tribunal. At the outset, it is useful to refer to relevant portion of Section 80 IC:-

“Special provisions in respect of certain undertakings or enterprises in certain special category States.

80-IC. (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-

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(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 11 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:|”

10. Section 80 IA (7) reads as under:

“(7) The deduction under sub-section (1) from profits and gains derived from an undertaking shall not be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the Explanation below sub-section (20) of section 288, and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form's' duly signed and verified by such accountant.

The foot note to this subsection reads as under:-

"5. See rule 18BBB and form No. 10CCB."

Rule 18BBB (4) clearly state that form of audit report for

claiming deduction under section 80-IC, shall be accompanied by a copy of the agreement, approval or permission, as the case may be, to carry on the activity signed or issued by the Central Government or the State Government or the local authority for carrying on the eligible business.”

11. It is a matter of record that date of commencement of commercial production of the unit is certified to be 07.03.2007 by Deputy Director Industries, Baddi as per certificate dated 25.06.2009. Argument raised by learned senior counsel for the appellant is that deduction under Section 80 IC should be available from 25.05.2006, when actual production is stated to have commenced rather than from 07.03.2007 i.e., the date as specified in certificate dated 25.06.2009. In our considered opinion, this argument devoid of any merit. This is so because once benefit of deduction afforded under Section 80 IC can be afforded only once the condition in Rule 18 BBB is satisfied, it cannot be concluded that benefit should enure for the entire financial year in question. Once commercial production is certified to start from a particular date i.e., 07.03.2007, by no stretch of imagination can this benefit be claimed or afforded for a period prior thereto. By accepting such an interpretation, it would lead to negation of the requirement of certification for ascertaining the date of commencement. Reference by learned counsel for appellant to permission for transfer of the industrial unit on 08.02.2006 or the provisional registration as Small Scale Industry under the Micro, Small and Medium Enterprises Development Act, dated 16.02.2006 or the sale tax registration numbers dated 19.03.2006 are of no avail in the given circumstances. Similarly, electricity bills which are duly detailed in order dated 15.10.2009 do not come to aid of the appellant in the given factual matrix.

12. Learned counsel for the appellant/assessee is unable to point out any illegality or infirmity in impugned order dated 29.08.2012, passed by learned tribunal, which calls for any interference by this Court.

13. No other argument has been raised.

14. Keeping in view the facts and circumstances as has narrated above, the substantial question of law as reproduced in para 8 is answered against the appellant/assessee and in favour of the respondent/Department.

15. Appeal is accordingly dismissed. Pending application (s), if any, stand(s) disposed of accordingly.

**(LISA GILL)
JUDGE**

**(ALOK JAIN)
JUDGE**

May 03, 2025.

s.khan

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No