IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES 'A' & 'B' CHANDIGARH

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER AND
SHRI T.R. SOOD, ACCOUNTANT MEMBER

ITA No. 798/Chd/2012 ('B' Bench)
Assessment Year: 2009-10

Hycron Electronics, Baddi, Solan	Vs.	The ITO Ward 2 Baddi
PAN No. AADFH1249K		
(Appellant)		(Respondent)

ITA No. 374/Chd/2014 ('A' Bench)
Assessment Year: 2010-11

Hycron Electronics, Baddi, Solan	Vs.	The ITO Baddi
PAN No. AADFH1246K		
(Appellant)		(Respondent)

Appellant By : Sh. Pavan Ved
Respondent By : Smt. Jyoti Kumari

ITA No. 866/Chd/2014 ('A' Bench)
Assessment Year: 2010-11

M/s Stove Kraft India, Vill- Buranwala Solan, HP	Vs.	The DCIT Circle Parwanoo, HP
PAN No. AAZFS6497G		
(Appellant)		(Respondent)

Appellant By : Sh. Rakesh Gupta
Respondent By : Smt.Jyoti Kumari

ITA No. 867/Chd/2014 ('A' Bench)
Assessment Year: 2011-12

M/s Stove Kraft India, Vill- Buranwala Solan, HP	Vs.	The JCIT Solan,HP
PAN No. AAZFS6497G		
(Appellant)		(Respondent)

Appellant By : Sh. Rakesh Gupta
Respondent By : Smt.Jyoti Kumari

ITA No. 868 & 869/Chd/2014 ('A' Bench)
Assessment Year: 2010-11& 2011-12

M/s Vanser Metallics, Baddi Solan, HP	Vs.	The ITO Baddi
PAN No. AAEF7622H		
(Appellant)		(Respondent)

Appellant By : Sh. Rakesh Gupta
Respondent By : Smt.Jyoti Kumari

ITA No. 895/Chd/2014 ('A' Bench)
Assessment Year: 2007-08

M/s Sansui Electronics, Parwanoo	Vs.	The DCIT Circle Parwanoo
PAN No. AACFS7773F		
(Appellant)		(Respondent)

Appellant By : Sh. Rakesh Gupta
Respondent By : Smt.Jyoti Kumari

ITA No. 896/Chd/2014 ('A' Bench)
Assessment Year: 2010-11

M/s Sansui Electronics, Parwanoo	Vs.	The ITO Parwanoo
PAN No. AACFS7773F		
(Appellant)		(Respondent)

Appellant By : Sh. Rakesh Gupta
Respondent By : Smt.Jyoti Kumari

ITA No. 897/Chd/2014 ('A' Bench)
Assessment Year: 2011-12

M/s Sansui Electronics, Parwanoo	Vs.	The ITO Parwanoo
PAN No. AACFS7773F		
(Appellant)		(Respondent)

Appellant By : Sh. Rakesh Gupta

Respondent By : Smt.Jyoti Kumari

ITA No. 782/Chd/2014 ('A' Bench)
Assessment Year: 2010-11

Lyon DC, Parwanoo	Vs.	The ITO Parwanoo

PAN No. AABFL8891P

(Appellant) (Respondent)

Appellant By : Sh. Surinder Babbar
Respondent By : Sh. Manjit Singh

ITA No. 783/Chd/2014 ('A' Bench)
Assessment Year: 2011-12

Lyon DC, Parwanoo	Vs.	The DCIT Circle Parwanoo

PAN No. AABFL8891P

(Appellant) (Respondent)

Appellant By : Sh. Surinder Babbar
Respondent By : Sh. Manjit Singh

Appellant By : Sh. Pavan Ved
Respondent By : Dr. Amarveer Singh

ITA No. 175 & 176/Chd/2014 ('B' Bench)
Assessment Year: 2010-11& 2011-12

Cutting Edge Technologies, Baddi, Solan HP	Vs.	The ACIT Solan Range Solan (HP) Shimla

PAN No. AADFC9018P

(Appellant) (Respondent)

Appellant By : Sh. Pavan Ved
Respondent By : Dr. Amarveer Singh

ITA No. 185/Chd/2014 ('B' Bench)
Assessment Year: 2010-11

M/s UPS Invertor. Com, Parwanoo Solan	Vs.	The ITO Parwanoo

PAN No. AABFU7064R

(Appellant) (Respondent)

Appellant By : Sh. Rakesh Gupta
Respondent By : Dr. Amarveer Singh

ITA No. 195/Chd/2014 ('B' Bench)
Assessment Year: 2010-11

Sh. Rakesh Verma, Parwanoo Solan Vs. The ITO Parwanoo

PAN No. AADPV5591N

(Appellant) (Respondent)

Appellant By : Sh. Rakesh Gupta
Respondent By : Dr. Amarveer Singh

ITA No. 776 & 777/Chd/2014 ('B' Bench)
Assessment Year: 2010-11& 2011-12

Usaka Electricals, Parwanoo Vs. The ITO Parwanoo

PAN No. AABFU7064R

(Appellant) (Respondent)

Appellant By : Sh. Surinder Babbar
Respondent By : Sh. Manjit Singh

ITA No. 780/Chd/2014 ('B' Bench)
Assessment Year: 2011-12

M/s Digital Systems Inc., Baddi, Solan Vs. The ITO Baddi

PAN No. AAEFD8241L

(Appellant) (Respondent)

Appellant By : Sh. Vishal Mohan
Respondent By : Dr. Amarveer Singh

ITA No. 1007/Chd/2014 ('B' Bench)
Assessment Year: 2011-12

Admac Formulations, Panchkula Vs. The ITO Ward 1

Panchkula

PAN No. AAAAA5219Q

(Appellant) (Respondent)

Appellant By : Sh. Tej Mohan Singh
Respondent By : Dr. Amarveer Singh

ITA No. 1051/Chd/2014 ('B' Bench)
Assessment Year: 2010-11

Sh. Vipan Gupta, Baddi, Solan Vs. The ITO Baddi

PAN No. ABXPG0206E

(Appellant) (Respondent)

Appellant By : Sh. Rakesh Gupta
Respondent By : Sh. Manjit Singh

Date of hearing : 06/04/2015
Date of Pronouncement : 27/05/2015

ORDER

PER BENCH

This is group of 20 appeals all filed by the different assessees against the separate orders of CIT(A).

2. Since identical issues have been raised in all the appeals and these were heard together, the same are being disposed of by this common and consolidated order.

ITA No. 798/Chd/2012

3. First we shall take the appeal of the assessee in **ITA No. 798/Chd/2012** in the case of Hycron Electronics Vs. ITO.

4. In this appeal the assessee has raised the following grounds of appeal:-

1. Under the facts and circumstances of the case and in law, the order dated 11.06.2012 passed by the Ld. CIT(Appeals), Shimla u/s 250(6) of the Income Tax Act, 1961 is bad in law, illegal, without jurisdiction and void.

2. *Under the facts and circumstances of the case and in law, Ld. CIT(Appeals), Shimla has erred in:*

I. *Affirming the order of Ld. ITO, Ward-2, Solan in restricting the claim of appellant of deduction u/s 80-IC of the Income Tax Act, 1961 at 25%i instead of 100% claimed by the appellant in the sixth year of operation of new industrial undertaking of the appellant wherein substantial expansion was carried out in such new industrial undertaking by the Appellant.*

II. *Misinterpreting the provisions of section 80-IC of the Act which provides for substantial expansion to be undertaken during the period beginning on 7th January 2003 and ending before 1st April 2012 and erroneously upholding that the benefit of 100% deduction u/s 80-IC of the Act for first five years in case of substantial expansion is available only to the units that existed and were operational as on 07.01.2003 and such benefit is not at all meant for the units that came into being on or after the introduction of the scheme of such deduction.*

III. *Upholding that once an 'initial assessment year' is determined in case of an undertaking claiming benefit u/s 80-IC of the Act it cannot be changed even if such undertaking completes substantial expansion and again qualifies for deduction under the said section on the basis of 'qualifying expansion'.*

IV. *Making a narrow interpretation of the provision of section 80-IC of the Income Tax Act, 1961 which was introduced as a welfare legislation for providing stimulus to the economy of industrially backward states such as Himachal Pradesh.*

5. The brief facts of the case are that assessee firm was engaged in the business of manufacturing assembly and sub-assembly of electronic energy meters and allied products. The unit started commercial production from 17.1.2004. The assessee had claimed deduction u/s 80IC on the products of this unit @ 100% from assessment years 2004-05 to 2008-09. Subsequently, during financial year 2008-09, the assessee firm undertook substantial expansion by way of addition to plant and machinery by more than the prescribed limit, therefore, assessee again started claiming deduction u/s 80IC from assessment year 2009-10 (i.e; the year before us) @ 100%.

6. The Assessing Officer after examining the facts observed that assessee has fulfilled all the conditions for claiming deduction. However, he noted that since assessee has already claimed 100% deduction for first five years upto assessment year 2008-09 from the date of setting up of the unit, therefore, assessee was entitled only to 25% deduction from the eligible business profits from assessment years 2009-10 to 2013-14. Therefore, assessee was requested to justify the claim of 100% deduction even from assessment year 2009-10.

7. In response the detailed written reply was furnished which has been extracted by Assessing Officer and reads as under:-

> *" Reference my appearance in the above said case wherein a query was raised regarding claim of assessee u/s 80IC. It was pointed out that substantial expansion is applicable to units which were in existence at the time of announcement of scheme i.e. in the assessment year 2004-05 and assesses who installed the new units during this period and are now going for substantial expansion are not eligible to claim deduction u/s 80IC.*
>
> *In this regard it is submitted that the assessee unit i.e. M/s Hycron Electronics, Baddi first came into existence in the financial year 2003-04 i.e. relevant to the assessment year 2004-05. Thus it first claimed 100% deduction u/s 80IA/80IB of the I.T. Act in the assessment year 2004-05. The necessary deduction was also claimed in the subsequent assessment yeas i.e. 2005-06, 2006-07, 2007-08 and 2008-09. The assessment for these years were decided under scrutiny and orders were passed u/s 143(3) of the Income Tax Act 1961.*
>
> *In the financial year 2008-09, the assessee unit came for substantial expansion as per the provision of section 80IC of the I.T. Act. In this regard, it may be submitted that the section 80IC was inserted by the Finance Act 2003 w.e.f. 01.04.2004 i.e. relevant to the assessment year 2005-06 and onwards This section applies to any undertaking or enterprise which has begun or beings to manufacture or produce any article or thing not being any article or thing, not being any article or thing specified in the 13th Schedule and UNDERTAKES SUBSTANTIAL EXPANSION DURING THE PERIOD BEGINNING 7th day of January 2003 and ending before the 1st day of April 2012 in the State of Himachal Pradesh. The deduction shall be 100% of such profits and gains for five assessment years connecting WITH THE INITIAL ASSESSMENT YEAR and thereafter 25% (or 30% where the assessee is a company) of the profits and gains.*
>
> *As per sub-section (6) of Section 80IC, no deduction shall be allowed to any Undertaking or Enterprise UNDER THIS SECTION I.E. 80-IC, where the total period of deduction INCLUSIVE OF THE PERIOD OF DEDUCTION UNDER THIS SECTION of under the second proviso to sub-section (4) of*

section 80-IB or under section 10-C, as the case may be EXCEEDS 10 ASSESSMENT YEARS.

Further 'initial assessment year' has been defined in the Act as INITIAL ASSESMENT YEAR means the assessment year relevant to the previous year in which the Undertaking or Enterprise begins to manufacture or produce articles or things or commences operation OR COMPLETES SUBSTANTIAL EXPANSION.

As already stated, the assessee unit after claiming 100% deduction u/s 80IA/80IB of the I.T. Act for 5 assessment years came for substantial expansion in the assessment year 2009-10 which is the year under assessment. Thus this the first year of claiming 100% deduction for substantial expansion as per provisions of section 80 IC. The undertaking is thus entitled to claim 100% deduction u/s 80IC of the I.T. Act for the next 5 assessment years provided that the overall period of claim of deduction does not exceed 10 assessment years. As per provisions of section 80IC, 100% deduction is available for 5 assessment years commencing with THE INITIAL ASSESSMENT YEAR and thereafter 25% in the next 5 assessment years .The initial assessment year has been defined in the Act:-

i) Means the assessment year relevant to the previous year in which the undertaking or enterprise begins to manufacture or produce articles or things.
Or
ii) Means the assessment year relevant to the previous year in which the undertaking or enterprise completes substantial expansion.

Thus it makes it clear that 100% deduction is available to an undertaking or enterprise in the case of its starting manufacturing between the period 07.01.2003 and ending before 01.04.2012 and in this case the initial assessment year would be the year when it starts its production. Similarly in the case of substantial expansion, the initial assessment year would start from the year when substantial expansion is completed. In such cases, the assesee would not be entitled for the claim of any deduction beyond a period of 10 assessment years as it had already availed 100% deduction for 10 assessment years as per the provisions of section 80-IC(6) of the Act.

In the present case, the assessee made investment in plant and machinery as under:

8. The Assessing Officer examined this reply and then referred to provisions of section 80IC. According to him, the most important question was who could carry out the substantial expansion. For this he referred to Circular No. 7 of 2003 issued by Central Board of Direct Taxes (for short CBDT) as well as Circular No 49 of 2003 issued by Central Excise Authorities. He concluded that on the basis of these two Circulars it is very clear that substantial expansion could be carried only

by the existing units. He also referred to the provisions of clause (v) of sub section (8) of section 80IC which defines initial assessment year. According to him, this section makes it clear that there could be only one initial assessment year for claiming of benefit u/s 80IC. He also referred to sub-section (6) of section 80IC which prescribed the overall limit for deduction which was 10 years. On the basis of the above analysis the Assessing Officer concluded in para 3.5 as under:-

> *"3.5 From the above discussion, it can be safely concluded that the benefit of substantial expansion is available only to the existing units i.e. the units that existed and were operational as on 07.01.2003 in order to make them eligible for 100% deduction under section 80IC for first five years and is not at all meant for the units that came into being on or after the introduction of the scheme i.e. 07.01.200. Keeping the above discussion in mind, the assessee's claim of substantial expansion and on that basis, reckoning the Asst. Year 2009-10 to be the initial Asst. Year is denied. In view of this Asst. Year 2004-05, relating to the previous year in which the assessee firm had commenced its business operation / activity on the basis of setting up of its new industrial undertaking is held to be the initial Asst. Year and that of Asst. Year 2009-10 to be the sixth Asst. Year for claim of deduction u/s 80-IC of the Act at the rate of 25% of its business profits. The assessee firm shall not be allowed the benefit of 100% deduction on its profits for sixth year in succession i.e. for the Asst. Year 2009-2010."*

In the above background, for the present assessment year i.e. assessment year 2009-10, deduction u/s 80IC was allowed @ 25%.

9. On appeal before Ld. CIT(A) it was mainly submitted that combined reading of section (3)(ii) and definition of initial assessment year, it becomes amply clear that assessee was eligible for 100% deduction from assessment year 2009-10. In any case there was no provision restricting the deduction of 100% only to 5 years except sub-section (6) of section 80IC which only provides that total period of deduction should not exceed 10 years. It was further contended that benefit of deduction u/s 80IC was available not only to pre-existing unit on the day of introduction of this section which undertook substantial expansion but the same was available to any unit which was engaged in manufacturing activity and undertook substantial expansion during the pieord beginning of 7th day of January

2003 and ending before Ist April 2012. The section nowhere provides that benefit of 100% deduction in the case of substantial expansion shall be available to the units which were already in existence at the time of this section. Even the Circular No. 7 of 2003 issued on 5.9.2003 clarifies that benefit of deduction shall be available to all enterprises which undertake substantial expansion.

10. It was further pointed out that clause (25)(ii)(d) of Form No. 10CCB which states "If the existing business had undertaken substantial expansion, please specify……" clearly shows that Form prescribed by the Legislature requires information on whether the existing undertaking has undertaken substantial expansion. In any case when the provision was very clear the process of interpretation could not be adopted to deny deduction and in this regard various case laws was cited.

11. It was also contended that if view of the Assessing Officer was taken as correct that there can be only be one initial assessment year, then sub-section (6) of section 80IC would become redundant because then deduction would always be 100% for first five years and 25% for the next 5 years. Therefore, the provision of section 80IC should be constructed harmoniously. In any case if there was some ambiguity the provision should be liberally construed so as to advance the exemption provision. In this regard reliance was placed on the decision of Hon'ble Supreme Court in the case of Bajaj Tempo Ltd 196 ITR 188 (SC), CIT v Kullu Valley Transport Co. P. Ltd. 77 ITR 518 (SC) and Mysore Minerals Ltd v CIT 239 ITR 775 (SC).

12. It was also contended that reference could not be made to the Circular issued by Central Excise Authorities because the language used in the Central Excise Act was different from the language used in Section 80IC.

13. The Ld. CIT(A) considered these submissions and observed that Section 80IC was enacted by the Finance Act, 2003 to give effect to a new and revamped Industrial policy notified by the Union Cabinet for the State of Sikkim, Himachal Pradesh, Uttaranchal and North-Eastern states. This incentive scheme provide for benefits under Income Tax Act and Central Excise, Capital Investment Subsidy and Transport subsidy etc. The benefit under Income Tax were provided in section 80IC to new units commencing manufacturing on or after 7 January of 2003 or to the existing units involving substantial expansion after that date eligible for such incentive. The Ld. CIT(A) thereafter referred to para No. 49 of Circular No. 7/2003 issued by the Board on 5.9.2003. According to her the plain reading of section 80IC along with circular made it abundantly clear that Special provision of Section 80IC were applicable to two kinds of undertaking or enterprises which are as under:-

> *i) Any undertaking or enterprise which has begun or begins to manufacture of produce any article or thing, specified in the thirteenth Schedule /or has begun or begins to manufacture any article or thing specified in the Fourteenth Schedule, which means a new undertaking or enterprise which has begun or begins to manufacture or produce any specified articles or thing on the 7th day of Jay., 2003 and ending before the 1st day of April, 2012 in the State of Himachal Pradesh.*
>
> *ii) Any undertaking or enterprise which manufactures or produces any article or thing, not being any article or thing specified in the thirteenth Schedule or which manufactures or produces any article or thing specified in the Fourteenth Schedule, which means an already existing (prior to 7th day of Jan., 2003) undertaking or enterprise which was manufacturing or producing any articles or thing prior to the 7th day of Jay., 2003 and which undertakes substantial expansion during the period beginning on the 7day of Jan., 2003 and ending before the 1st day of April, 2012 in the State of Himachal Pradesh.*

14. On the basis of above, she made the following conclusion in paras 4.3 and 4.4., which are as under:-

> *"4.3 Thus it is clear from above that deduction u/s 80IC is available to the pre-existing undertaking or enterprises (which existed prior to the enactment*

of section 80IC) on the condition that they undertake substantial expansion during the period beginning on the 7th day of Jan., 2003 and ending before the 1srt day of April, 2012 in the State of Himachal Pradesh as per the conditions stipulated in section 80IC. However, deduction u/s 80IC is also available to the new undertakings or enterprises which undertake the manufacture or production of the specified articles or thing during the period beginning on the 7th day of Jan., 2003 and ending before the 1st day of April, 2012 in the State of Himachal Pradesh. Thus the law has been enacted in such a fashion that the pre-existing undertaking or enterprises do not suffer from any handicap merely on account of the fact that they were existing prior to the introduction of section 80IC. But to meet the obvious goal of encouraging investment in the State of Himachal Pradesh, the condition of substantial expansion has been made a pre-requisite for allowing deduction u/s 80IC in the case of old undertakings or enterprises. It is, however, clear that there is no overlapping of the two kinds of undertakings or enterprises made eligible for deduction u/s 80IC. These are two distinct categories with distinct conditions of eligibility laid down for deduction under u/s 80IC. Since the pre-existing units cannot possibly crossover into the zone of new undertakings or enterprises, the new undertakings also obviously cannot be allowed to cross over into the zone meant for the old, pre-existing undertakings. The rules of the game have to be the same for all the participants or stakeholders. The use of the word ***"OR"*** *in* ***clause (a) and clause (b) of sub-section (2) to section 80IC*** *also leaves no doubt about the fact that the provisions of section 80IC apply to two distinct types of undertakings or enterprises and they cannot replace each other.*

4.4 The appellant's interpretation that deduction u/s 80IC shall be available @ 100% to the new undertaking or enterprises for the initial five years and then shall again be available @ 100% for another five years if the said undertakings or enterprises carry out substantial expansion has the effect of creating a great anomaly, because this interpretation will result in a disadvantageous situation for the pre-existing undertakings. While the newly established undertakings shall be in a position to avail to 100% deduction for a continuous period of 10 years if they carry out substantial expansion after five years of the commencement of manufacture or production; the pre-existing undertakings shall be able to avail of 100% deduction only for a period of five years after carrying out the substantial expansion, and after five years they shall be entitled to only 25% / 30% deduction. This certainly cannot be the intention of the legislature to dole out uneven benefits to the

two types of industries meant to be equally poised in the given legal frame work enacted by section 80IC. "

15. She also referred to the contents of Circular No. 49/2003 of Central Excise and observed that there was no force in the assessee's contention that Excise and Income tax are two different streams of taxation with their own independent laws, and therefore, Circular No. 49 of 2003 issued by the Excise Authorities could not be relied. In this regard she observed that explanation to Finance Act 2003 makes it absolutely clear that these provisions were being inserted on the basis of a package announced by Union Cabinet which consisted of fiscal and non-fiscal coverage for special category of states of Sikkam, Himachal Pradesh, Uttranchal and North-Eastern states in order to boost economy of these states. Since new project includes Central Excise benefits also as well as benefits in income tax which were of the same nature and emanating from the same package, it was natural to refer to Circular issued by Excise Authorities.

16. She also referred to provisions of sub section (6) of section 80IC and pointed out that sub section nowhere laid down that 100% deduction could be allowed to any undertaking for a continues period of 10 years.

17. She also referred to clause 25 (ii)(d) of Form No. 10CCB and pointed out that even the Form does not help the assessee's case. She observed that in fact clause 25 of Form 10CCB helps the Revenue's point of view that provisions of section 80IC were separately applicable to two types of businesses i.e. new business and existing business which has undergone substantial expansion. Finally, it was concluded vide para 4.11 as under:-

"4.11 In view of discussion above it is evident that the provisions of section 80IC are amply clear as there exists no ambiguity of any kind as regards the import of the provisions or as regards the intention of the legislature. The language of the provisions does not give rise to more meaning than one and the legislative intent is clearly reflected from the bare reading of the section. The given expression of the statute is so clear that there is no need to add any

word thereto so as to make out the object of the legislature. Therefore all the pleas taken by the appellant regarding the rule of liberal interpretation or regarding the harmonious construction of provisions are intended to give rise to unnecessary controversy."

18. On the basis of above analysis, the action of the Assessing Officer was upheld.

19. Before us Ld. Counsel for the assessee Shri Pavan Ved led the arguments because many other counsels were also present who were representing other group cases. Shri Rakesh Gupta who was representing many appeals particularly in ITA No. 866 to 869/Chd/2014, 895 to 897/Chd/2014, 185/Chd/2014 etc. also made some submissions. All other counsels present in the Court representing various cases adopted the arguments raised by Shri Pavan Ved and Shri Rakesh Gupta. Shri Pavan Ved had also filed written synopsis. Various contentions raised on behalf of the assessee can be summarized as under:-

(a) The Assessing Officer has clearly admitted in para 2.1 of the assessment order that all the conditions and genuineness of deduction claimed under the section have been fulfilled.

(b) There is no restriction or limitation u/s 80IC that only Industrial unit which had come into being before the commencement of this section would be eligible for the benefit of substantial expansion. Therefore, the Assessing Officer should have adopted a Rule of Interpretation which was beneficial to the assessee while interpreting these incentive provisions. According to him assessee could make any number of expansions and claim deduction for more than 10 years. However, it was pointed out that assessee (Hycron Electronics) has claimed deduction only for 10 years.

(c) The reference made to Circular No. 7 of 2003 by Assessing Officer and CIT(A) is not proper because Circular itself provides for benefit

to existing undertakings and their substantial expansion and the word 'existing' has not been qualified with reference to any particular date. It simply qualifies 'undertaking'.

(d) The reference to Circular No. 49 of 2003 issued under Central Excise Act by the Excise Authorities is also not proper because this Circular is not issued u/s 119 of the Income Tax Act. Further this circular refers to the expansion of capacity by 25% whereas under the Income tax Act what is required is 50% increase in investment under the head 'plant and machinery'

(e) In any case, Circulars are not binding on the Courts and Circular and same should not be considered in interpretation of provisions. In this regard reliance was placed on the decision of Hon'ble Karnataka High Court in case of Dinakar Ullal Vs. CIT 323 ITR 452 (Karnataka), Commissioner of Central Excise Vs. M/s Rattan Melting & Wire (2008) (13 (SC) 1).

(f) Ld. counsel vehemently objected to the reliance placed by the Department on the notification issued by the Ministry of Commerce, Department of Industrial Policy and Promotion Govt. of India vide notification dated 8.1.2003. It was submitted that firstly the notification did not have any bearing on the present case on interpretation of the provisions of the Act. Secondly, there was certain inconsistency in the notification because while defining the existing industrial unit, it was stated that same would mean as unit existing on 7.1.2003 but when the word 'substantial expansion' was defined, the words used was of an 'industrial unit' and not an 'existing industrial unit'. Thirdly, notification cannot override the section which provides the legislature intent. Fourthly, the notification was not issued u/s 119 of the Income Tax Act and, therefore, has not binding force. Fifthly, as per this notification the

substantial expansion was related to increase in capacity by 25% which was contrary to the criteria laid down in section 80IC i.e. 50% increase in investment.

(g) Form No. 10CCB clause (25)(ii)(c) is meant for new business and clause (d) is for existing business. There is no word in between clause (c) and (d) like 'or/and' which means even according to CBDT, both situations may exist in a particular case.

(h) A reference was made to clause (v) of sub-section (8) of section 80IC which defines 'initial assessment' year and it was pointed out that initial assessment year was with reference to both manufacturer and substantial expansion because the word 'or' has been used between the two expression which clearly shows that it is a disjointed sentence and refers to both situations.

(i) Reliance was also placed on the decision of Delhi Bench of the Tribunal in the case of Triputi LPG Industries Limited Vs. DCIT in ITA No.991/Dec/2013 (copy of order filed). It was submitted that in this case in similar situation 100% deduction was held to be available after substantial expansion of the new unit. However, on the query by the Bench, it was clearly admitted by all the counsels present in the Court that this decision does not deal with any aspects of the provisions of section 80IC. Further reliance was also placed on decision of Ahmedabad Bench of the Tribunal in the case of Sintex Industries Ltd in ITA No. 310/Ahd/2014.

(j) A reference was also made to sub section (6) to section 80-IC which prescribes over all limits of deduction for 10 years. It was contended that this limit was with reference to the time period and not to the rate of deduction.

(k) Reliance was also placed on the decision of Chandigarh Bench of the Tribunal in the case of DCIT Chandigarh Vs. S.K. Paryavaran Engineers (P) Ltd., in ITA No. 340/Chd/2010. It was contended that in this case it was held that assessee was entitled to deduction u/s 80IC on substantial expansion. Further reliance was also placed on the decision of Authority for Advance Rulings in case of Abhishek Bhargav AAR No. 1097 of 2011 (During the hearing, Ld. counsel of the assessee was requested to either give citation of the decision or file certified copy of the order. This has not been done. However, we have considered this decision also.)

(l) Lastly, it was contended that incentive provision should be construed liberally in view of the decision of Hon'ble Supreme Court in the case of Bajaj Tempo Ltd v CIT 196 ITR 188 (SC).

20. On the other hand Ld. CIT–DR, Dr. Amarveer Singh made detailed submissions and has also filed written submissions. The contentions of the Revenue can be summarized as under:-

i) The new incentives scheme for various hilly states was cleared by the Union Cabinet and comprised of various incentives in the form of Income tax concessions, Excise concessions, subsidies in the form of capital investment subsidy, transport subsidy etc. In view of this scheme, in the Income tax Act, section 80IC was introduced w.e.f. 1.4.2004 and this provision was later on clarified by Circular No. 7 of 2003 by the Central Board of Direct Taxes issued on 5.9.2003. Since the source of this section and other benefits available to the hilly states of Himachal Pradesh, Uttranchal, North-eastern states and State of Sikkim was the scheme cleared by the Union Cabinet, therefore, it is important to consider all the material emanating from this scheme i.e. circulars issued by CBDT, circulars issued by the Central Excise Authorities as well as the subsidy scheme issued by Ministry of

Commerce and Industry, Department of Industrial Policy and Promotion, Govt. of India. The word 'existing unit' is not mentioned in section 80IC but this can be ascertained easily if the section is properly construed. In any case, the Circular No. 49/2003 issued by Central Excise Department as well as notification issued by Ministry of Commerce very clearly mention that existing unit would mean 'an industrial unit existing before 7.1.2003'. By considering the various materials, the notification of the Government becomes absolutely clear.

ii) Subsection (2) of section 80IC which is an enabling provision for grant of deduction very clearly provides that deduction is available to the undertaking which either begun or begins to manufacture or produce an article or thing or undertake substantial expansion with reference to the State of Himachal Pradesh between 7th day of January 2003 and ending on 31st day of March, 2012. This itself shows that substantial expansion could have been carried out only on or after 7.1.2003 by an industrial undertaking or enterprise which existed prior to 7.1.2003.

iii) It was submitted that deduction provided u/s 80IC in fact was extension of the provision already existing u/s 80IB(4). It was pointed out that deduction u/s 80IB(4) is available to an industrial undertaking which was located in the industrial backward state specified in the 8th schedule which basically consisted of the same areas as mentioned in section 80IC . Under section 80IB(4) also, the deduction was to be allowed to the industrial undertaking @ 100% of profits and gains for the five assessment years beginning with the initial assessment year and thereafter 25% (or 30% where the assessee is a company) and all the profits and gains derived from such industrial undertaking. It was pointed out that in the case of

deduction u/s 80IB(4), there was a second proviso in the section by which it is clarified that the 100% deduction was available for 10 assessment years in case such undertakings which were located in North-Eastern region. Similar provision is made u/s 80IC(3)(ii). Thus, it is clear that provisions of section 80IC(3) is only an extension of section 80IB(4) and through section 80IC, only difference is that this was extended to industrial undertaking which were already existing on the commencement of the window period i.e. 7.1.2003 to the Ist day of April 2012.

iv) It was empathetically argued that expression 'and undertakes substantial expansion' has been used in both sections 80IC(2(a) and 80IC(2)(b). However, it is to be noted that section 80IC(2)(a)(ii) is applicable to the state of Himachal Pradesh or Uttaranchal and similarly section 80IC(2)(b)(ii) is applicable to the state of Himachal Pradesh and state of Uttaranchal whereas section 80IC(a)(iii) and (b)(iii) are applicable to the North-Eastern states and when this is compared with the rate of deduction provided under sub section (3) of section 80IC, it would be noted that under sub section 3(ii) the rate has been given @ 100% for five years for the States of Himachal Pradesh and Uttaranchal and thereafter 25% for next 5 years whereas under sub section 3(i) the rate has been given at 100% in the North Eastern states and state of Sikkim for whole of ten years. If the interpretation adopted by the assessee is correct then the meaning of substantial expansion would become redundant for the North-Eastern states and state of Sikkim because in those cases deduction had been straight away provided @ 100% for all the 10 years. It was submitted that any interpretation of a provision which would render some part of the section otiose is not permissible under any rule of interpretation.

Even the expression used in section 80IC(3)(ii) thereafter would become redundant in the case of State of Himachal Pradesh.

v) A reference was made to the definition of the 'initial assessment year' u/s 80IC(8)(v). It was pointed out that as per this section there could be only one initial assessment year for the purpose of section 80IC. This become very clear because the Legislature has used exclusionary word "OR' before the words 'complete substantial expansion' therefore, initial assessment year would be the year in separate situation as under:-

(a) the undertaking or enterprise begins to manufacture or produce articles of things [relevant for purpose of section 80IC(2)(a) or :

(b) the undertaking or enterprise commences operation [relevant for the purpose of section 80IC(2)(b)] or

(c) The undertaking or enterprise which completes substantial expansion"

Thus there can be only one initial assessment year and once an initial assessment year had been determined for a claim of deduction then there cannot be second initial assessment year for claim under the same section by the same undertaking. It was contended that if the decision by the Delhi Bench of the Tribunal in the case of Triputi LPG Industries Limited Vs. DCIT (supra) is accepted; the fact that there was no bar on carrying out the number of substantial expansions and every year of substantial expansion would become initial assessment year. If, this theory is accepted and going by the same analogy every assessment year would become initial assessment year since the undertaking commences production on the first day of each accounting year. Such an interpretation would not only result into absurdity but absolutely an improbable and unworkable situation.

vi) If the benefit of deduction of substantial expansion was to be allowed to the new undertaking which commenced production on or after 7.1.2003, then such undertaking would automatically be disqualified for the deduction because of the restriction provided in sub section (4) of section 80IC because such substantial expansion would amount to reconstruction of the business.

vii) If the interpretation adopted by the assessee was to be followed, the same would result in discrimination between the new units and the existing units. The new units would become eligible for 100% deduction for the first five years then again for 100% deduction for another set of five years on carrying out the substantial expansion whereas the existing unit would get benefit only of 100% deduction for initial five years and later on the deduction would be restricted to 25% in such case. Such a discriminatory intention cannot be attributed to the parliament.

viii) It was also contended that Form No. 10CCB under clause 25(c) and (d) makes it absolutely clear that deduction u/s 80IC is permitted to two distinct kind of undertaking i.e new eligible business which commences production during the window period i.e. 7.1.2003 to 31.3.2012 which is new undertaking and secondly in the case of an existing business which undertakes substantial expansion.

ix) It was contended that assessee has raised the contention that condition on carrying out substantial expansion was during the widow period. However if this interpretation is accepted then the consequences would be that in the guise of expansion by investing a very small sum, the assessee would claim deduction of 100% for whole of the profits of such expanded undertaking which would mean

that profit of older unit also gets benefit of 100% deduction which cannot be the intention of the legislature.

x) While concluding his argument it has been submitted that there is no ambiguity in the provisions and the decision of Delhi Bench of the Tribunal in the case of Triputi LPG Industries Limited Vs. DCIT (supra) was per inquerim because it has not considered all the provisions of the Act and has merely relied on the decision of Hon'ble Supreme Court in the case of Bajaj Tempo Ltd (supra). It was pointed out that Supreme Court in another case of M/s Novapan India Ltd v Collector of Central Excise and Customs, Appeal (Civil) 3356 of 1984 has clearly held that it is not possible to agree with the submissions that if there was conflict of decision, then benefit of such ambiguity should go to the assessee. It was also vehemently contended that all the decisions of various High Courts and Supreme Court are unanimous in holding that Board has power to issue of Circular u/s 119 of the Income Tax Act and such circulars are binding on the authorities. The only question is whether such circulars can be considered for interpretation of a provision or not. It was pointed out that Hon'ble Supreme Court in the case of K.P. Varghese vs Income Tax officer 131 ITR 597 (SC) has clearly observed that if a particular provision is required to be interpreted then not only Circular but anything 'which is logically relevant' should be considered. A similar view was taken by the Karnataka High Court in the case of CIT Vs. M.S. Vaidya 224 ITR 186 (Karnataka).

xi) A reference was also made to the decision relied on behalf of the assessee of the Chandigarh bench of the Tribunal in the case of DCIT Chandigarh Vs. S.K. Paryavaran Engineers (P) Ltd. (supra). It was pointed out that decision is totally distinguishable because in that case assessee claimed deduction u/s 80IB in 1999-2000 for the first

time. Later on, after five years the assessee claimed benefit @ 30%. The assessee also undertook substantial expansion in financial years 2004-05 and 2005-06 and again claimed deduction of 100% of profits on the strength of substantial expansion but wrongly mentioned the section as 80IB instead of section 80IC. Therefore, it is clear that this is a clear case of expansion of existing unit which existed before 7.1.2003 and therefore, it is clearly distinguishable from the facts of the case of the assessee. It was further pointed out that decisions relied on behalf of the assessee are totally distinguishable on their own facts.

21. In the rejoinder, the submissions made by Ld. Shri Pavan Ved can be summarized as under:-

a) It was submitted that the expression 'initial assessment year' has been defined in section 80IC(8)(v) which clearly provides that initial assessment year for a unit going for the substantial expansion is the year in which such expansion is completed and, therefore, in the case of the assessee, assessment year 2009-10 would be the initial assessment year.

b) On proper interpretation of section 80IC(6), the assessee would be entitled for a fresh de novo commencing period of 10 years from the initial assessment year. Though it was clarified that assessee had not claimed deduction after period of 10 years. If substantial expansion was carried out for the first time then assessee was entitled to benefit of 100% deduction excluding profits of existing units, therefore, the only inference should be that in case of subsequent expansion also 100% profit would be eligible. There cannot be a theory of segregation of profits into profits relatable to existing units and profits related of expanded units. Further, since substantial

expansion has no relationship with capacity and it is related to investment, therefore, it was not practically possible to work out separately profits related to substantial expansion because though investment may be 50% but the same may lead to increase of capacity to say 10% or other percentage.

c) Though there is no doubt that an existing unit claiming benefit us 80IB(4) would necessarily switch over the section 80IC w.e.f. 1.4.2004 by operation of law but the same would still be eligible for substantial expansion in the 5th year on the ground of being existing unit as on 1.4.2004.

d) Even if there is no separate provision u/s 80IC to give deduction of substantial expansion still the eligible unit is eligible for deduction u/s 80IC if the assessee makes investment in the same units and therefore, section 80IC should be interpreted to give benefit to the assessee on the basis of substantial expansion.

e) The decision in the case of M/s Novapan India Ltd v Collector of Central Excise and Customs (supra) was related to an exemption and therefore, cannot be used while interpreting an incentive provision. In case of incentive provision, it is basically a promise by the Legislature that you make this investment we well give you this benefit" and therefore, can be in the form of a contract between the State and the assessee. Further the decision in the case of M/s Novapan India Ltd vs Collector of Central Excise and Customs (supra) related to indirect tax and, therefore, cannot be relied upon while interpreting the provisions under direct tax.

f) In respect of the 100% deduction u/s 80IC (2)(i) to the state of Sikkim and North-eastern states as contended by the Revenue, it was

pointed out that Legislature can choose to give more benefit to any particular area.

22. We have considered the rival submissions including written submissions in the light of material on record, as well as judgments cited by the parties. Before we consider the relevant provisions which are required to be interpreted, it will be useful to deal with the various principles of interpretation as enunciated by various Courts.

23. It is settled that if the language of a particular Statute is clear then only literal meaning has to be given to such language as long the same does not result in absurdity or unintended consequences. Therefore, if the language of a particular Statute is clear then the same cannot be changed by applying different principles of interpretations. This is clear from the observations made by 'Hon'ble Apex Court' in the case of Orissa State Warehousing Corporation Vs. CIT 237 ITR 607 wherein it has been observed at page 604 & 605 of the report as under:-

"Let us, however, at this juncture, consider some of the oft cited decisions pertaining to the interpretation of the fiscal statutes being the focal point of consideration in these appeals. Lord Halsbury as early as 1901, in Cooke v. Charles A. Vogeler Company [1901] AC 102 (HL) stated the law in the manner following:

> *"a court of law, has nothing to do with the reasonableness or unreasonableness of a provision of a statute except so far as it may h old it in interpreting what the Legislature has said.* ***If the language of a statute be plain, admitting of only one meaning, the Legislature must be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced though it should not lead to absurd or mischievous results.*** *If the language of this sub-section be not controlled by some of the other provisions of the statute. It must, since, its language is plain and unambiguous, be enforced and your Lordships' House sitting judicially is not concerned with the question whether the policy it embodies is wise or unwise, or whether it leads to consequences just or unjust, beneficial or mischievous."*

The oft-quoted observations of Rowlattt J. in the case of Cape Brandy Syndicate v. IRC [1921] 1 KB 64 ought also to be noticed at this juncture. The learned judge observed (page 71):

> *". . . in a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no*

presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

The observations of Rowlatt J. as above stand accepted and approved by the House of Lords in a later decision, in the case of Canadian Eagle Oil also in a manner similar in IRC v. Ros and Coulter (Bladnoch Distillery Co. Ltd. v. The King [1946] Hon'ble Apex Court 119; [1945] 2 All ER 499. Lord Thankerton also in a manner similar in IRC v. Ross and Coulter (Bladnoch Distillery Co. Ltd. [1984] 1 All ER 616 at page 625 observe:

"If the meaning of the provision is reasonably clear, the courts have no jurisdiction to mitigate such harshness."

The decision of this court in Keshavji Ravji and Co. v. CIT[1990] 183 ITR 1 also lends concurrence to the views expressed above. This court observed (page 9):

"As long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible. The supposed intention of the Legislature cannot then be appealed to to whittle down the statutory language which is otherwise unambiguous. If the intendment is not in the words used. It is nowhere else. The need for interpretation arises when the words used in the statute are, on their own terms, ambivalent and do not manifest the intention of the Legislature…

Artificial and unduly latidudinarian rules of construction, which with their general tendency to 'give the taxpayer the breaks', are out of place where the legislation has a fiscal mission."

Be it noted that individual cases of hardship and injustice do not and cannot have any bearing for rejecting the natural construction by attributing normal meaning to the words used since "hard cases do not make bad laws".

However, if some ambiguity is there in the language of a particular statute because of various reasons, the same is required to be construed so as to find out the real intention of the Legislature and then every possible material should be considered to find out the real intention of the Legislature. In this regard, the observation of the Hon'ble Supreme Court in the celebrated judgement of K.P. Vergese 131 ITR 598 (supra) are relevant. We extract the Head note which reads as under:-

"A statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. Where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even do some violence to it, so as to achieve the obvious intention of the legislature and produce a rational construction.

LUKE V. IRC [1963] HON'BLE APEX COURT 557; [1964] 54 ITR 692 (HL) followed.

Speeches made by the members of the legislature on the floor of the House when the Bill is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the mover of the Bill explaining the reason for its introduction can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. ***This is an accord with the recent trend in juristic thought not only in western countries but also in India, that the interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible.***

The marginal note to a section cannot be referred to for the purpose of construing the section but it can certainly be relied upon as indicating the drift of the section or to show what the section is dealing with. It cannot control the interpretation of the words of a section, particularly when the language of the section is clear and unambiguous but, being part of the statute, it prima facie furnishes some clue as to the meaning and purpose of the section."

The highlighted portion clearly shows that every material which is logically relevant should be taken into account for ascertaining the true meaning of a particular provision. The same view was taken by Hon'ble Karnataka High Court in the case of CIT v N.K. Vaidya 224 ITR 186 (supra) and observations contained in the head note reads asunder:-

"The legislative history of a fiscal statute could be traced and considered to understand its scope. The courts are permitted to travel beyond the words used in a statute, to find out the purpose for which a particular provision is enacted; for this purpose, even the speech of the Finance Minister, while introducing the particular fiscal legislation could be looked into. The Circulars issued by the Central Board of Direct Taxes are not only binding on the Income-tax Department but are also in the nature of contemporanea exposition furnishing legitimate aid in the construction of a provision."

24. The Ld. counsel of the assessee had referred to the decision of Hon'ble Karnataka High Court in the case of Dinakar Ullal Vs. CIT (supra) and decision of Hon'ble Supreme court in the case of Commissioner of Central Excise Vs. M/s Rattan Melting & Wire (supra) for the proposition that since circulars are not binding on the Courts, therefore, the same should not be considered for

interpretation of a particular provision. As far as the decision in the case of Commissioner of Central Excise Vs. M/s Rattan Melting & Wire (supra) is concerned, this does not support the proposition made by the Ld. Counsel for the assessee. In that case the question was whether a circular issued by the Department which is generally binding on the authorities would take precedence over the interpretation made by the Supreme Court or High Court in respect of particular provision. The Para 6 of this judgment make this point absolutely clear and reads as under:-

> *"6. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at form another angel, a circular which is contrary to the statutory provisions has really no existence in law."*

The above shows that circulars are not binding on the Court but the Court has right to look at the Circular and ultimately meaning of a provision as interpreted by the Court would prevail in comparison to the interpretation given in the circular. Therefore, if Circular is contrary to a provision as interpreted by the Court then the opinion of the Court would prevail. This decision nowhere lays down that circulars cannot be considered for interpretation of a particular provision.

25. In the case of Dinakar Ullal vs CIT 323 ITR 452(Karnataka), the assessee was a Civil contractor and had filed belated return declaring income of Rs. 50,240/- and was claiming refund of Rs. 2,14,505/- on account of tax deducted at

source. The last date of filing the return was 31.3.1997 but the return was filed late on 8th September 1997. The assessee sought condonation of delay by an application filed on 21st Sept, 1998 by invoking section 119(2)(b) of the Act which was initially rejected. However, on a writ petition the order for rejection was quashed by a single judge and remitted the matter back for fresh consideration. On remand, the Commissioner who was vested with the jurisdiction under Instruction No.13 of 2006 in respect of claim upto Rs. 10 lakhs accepted the cause shown for delay in filing the return but denied interest on refund amount in view of the condition set out in Circular No. 670 dated 26th Oct 1993. Therefore, question before the Court was whether these instructions were contrary to the provision of section 244A of the Act which provided for payment of interest on refunds. This becomes absolutely clear from the question framed by Hon'ble Court which is contained at placitum 6 and reads as under:-

> *"(i) Whether the condition to deny interest on refund amount due to an assessee under the Act, while admitting an application to condone the delay in making a claim for belated refund under section 237 of the Act, as contained in Instruction No. 12 of 2003 dated October 30,2003 and 13 of 2006 dated January 22,2006, of the Board, is inconsistent with sub-section (2) of section 244A of the Act?*
>
> *(ii) Whether in the facts and circumstances, the respondent was justified in denying interest on belated refund claimed for the assessment year 1995-96, by the order impugned."*

26. The Hon'ble Court discussed the matter and ultimately held that assessee was entitled to interest u/s 244A and Circular No. 670 was contrary to the provisions of section 244A. The court also observed that circular could be issued to clarify the provisions for removing the difficulties. Therefore, it is clear that question whether a circular can be considered in interpretation of a particular provision was never before the Court and therefore, in our opinion, this judgement does not support the proposition that circular cannot be considered for the purpose of interpreting the particular provision.

27. It will be useful to state another very well settled principle of interpretation i.e. whenever the particular provision is required to be interpreted, it should be

interpreted after reading the whole provision and not the parts of a particular section. However, a provision has to be read in context of the overall scheme of the Act. It is also well settled that no provision can be interpreted in such a way which would render parts of the section otiose or meaningless.

28. Having considered the principles of interpretation above, let us consider the provision of section 80IC in the light of the above principles laid down by the Hon'ble Supreme Court. Section 80IC reads as under:-

Section 80IC

"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.

(i) on the 23rd day of December, 2002 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 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 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 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 operations 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, [2007], 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 profit 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 there-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 the 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, be 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 manufactures 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.

29. Sub section (1) of the above provision is a general provision and does not require any interpretation. Sub Section [2] is the enabling provision which provides for the types of undertakings and circumstances where deduction under section 80IC would be allowed. It allows deduction to various undertakings which have either begun or begins manufacturing of any article or things not being any article or thing specified in Schedule xiii and also undertakes substantial expansion. These deductions were available in different states during different window periods which have been referred to in clause (i), (ii) & (iii) of this sub section. The contention on behalf of the assessee is that since deduction is

available to the undertaking which undertakes substantial expansion and since there is no restriction in this sub section itself, therefore, the deduction was available on substantial expansion by old undertakings as well as new undertakings during the window period. However, there is no force in this interpretation. Sub section (2) begins with the expression "this section applies to any undertaking or enterprise which has begun or begins" this itself shows that provision made even the existing undertakings entitled for the deduction because the expression 'begun' would refer to the undertaking which were already existing and began the manufacture before the window period mentioned in the sub section. The last line of the sub section reads "and undertakes substantial expansion during the period beginning……..". This would naturally refer to the undertaking which were already existing. If it is read the way the Ld. counsel of the assessee would like us to read then the provision would become unworkable because if there is an undertaking which is established during the window period then the same cannot possibly undertakes substantial expansion also simultaneously. The expression 'and" would refer to the cumulative condition that is both parts of the conditions need to be complied. The expression 'and' can be joined only with the expression 'begun'. This is because 'begun' refers to something which has already started in the past whereas 'begins' connotes something which would commence in the present. Therefore, the expression 'and' can be correlated only with existing unit because as we have already seen a new unit which has been set up and begins production cannot simultaneously undergo substantial expansion also so as to become eligible for deduction under this section.

30. At this stage, it can be said that section has some confusion and some effort is required to understand the correct intention of the Legislature by keeping various principles of interpretation. Therefore, various principles of interpretation needs to be looked into. This provision was brought into the statute indisputably in the light of the "incentive package" announced by the Union Cabinet. Through this incentive package not only income tax concession but excise concessions and some

subsidies like transport subsidy and capital subsidy were also provided to various industries in the hilly stated comprising states of Himachal Pradesh, Uttaranchal, Sikkim and North-Eastern states to boost the economies of these hilly states. Circular No.7 was issued by the CBDT on 5.9.2003 in this respect and the Circular reads as under:-

"Circular No. 7/2003 dated 05.09.2003

49. New provisions allowing a ten years tax holiday in respect of certain undertakings in the States of Himachal Pradesh, Sikkim, Uttaranchal and North-Eastern States.

49.1 The Union Cabinet has announced a package of Fiscal and non-fiscal concessions for the special category States of Himachal Pradesh, Uttaranchal, Sikkim and North-Eastern States, in order to give boost to the economy in these States. ***With a view to give effect to these new packages a new section 80-IC has been inserted to allow a deduction for ten years from the profits of new undertaking or enterprise or existing undertakings or enterprises on their substantial expansion, in the States of Himachal Pradesh, Uttaranchal, Sikkim and North-Eastern States****. For this purpose, substantial expansion is defined as increase in the investment in the plant and machinery by at least 50% of the book value of the 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.*

49.2 The section provides that the deduction shall be available to such undertakings or enterprises which manufacture or produce any article or thing, not being any article or thing specified in the Thirteenth Schedule and which commence operation 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 rules prescribed in this regard. Similar deduction shall be available to thrust sector industries, as specified in the Fourteenth Schedule.

49.3 The amount of deduction in case of undertakings or enterprises in the States of Sikkim, and the North-Eastern States shall be one hundred per cent of the profits of the undertaking for ten assessment years. The amount of deduction in case of undertakings or enterprises in the States of Uttaranchal, Himachal Pradesh shall be one hundred per cent of the profits of the undertaking for five assessment years, and thereafter twenty-five per cent (thirty per cent for companies) for the next five assessment years.

49.4 The section also provides that 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 section 80-IB or under section 10C, as the case may be, exceeds ten assessment years. Further, 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 10B, in relation to the profits and gains of the undertaking or enterprise.

49.5 A new Thirteenth Schedule has been inserted in the Income-tax Act to specify the list of articles and things, which are ineligible for the purpose of deduction under section 80-IC. Further, a new Fourteenth Schedule has also been inserted, which specifies the list of articles and things, being thrust sector industries, which are eligible for the purposes of availing deduction under this section. Consequent to theses amendments, the provisions of section 10C and sub-section(4) of section 80-IB have been made inoperative in respect of the undertakings or enterprises in the State of Himachal Pradesh or in North-Eastern region including Sikkim, with effect from the 1st day of April, 2004.

49.6 These amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years.

31. The circular makes it clear that section 80IC was inserted to give effect to the new package announced by the Union Cabinet. The Circular further clarifies that this section provides for deduction for a period of 10 years from the profits of new undertaking or enterprise or existing undertaking or enterprise on their substantial expansion (see highlighted portion of the circular). The contention of the Ld. Counsel of the assessee was that word 'existing' qualifies only the undertaking or enterprises and does not mention any particular date for carrying out substantial expansion. We find no merit in this contention. The word 'existing is defined in the dictionaries are as under:-

32. Black Law Dictionary – 6th Edition:-

Exist : *To live,*

To have life or animation

To be in present force*,*

Activity, or effect at a given time, as in speaking of "existing" contracts, creditors debts, laws, rights or liens.

For us relevant meaning would be '***To be in present force***'

As per Oxford Dictionary 'exist' is defined as under

Exist :

> *1 (not used in the progressive tenses) to be real;* ***to be present in a place or situation****: Does life exist on other planets? The problem only exists in your head, Jane. Few of these monkeys still exist in the wild. On his retirement the post will cease to exist. The charity exists to support victims of crime. 2- (on sth) to live, especially in a difficult situation or with very little money: We existed on a diet of rice. They can't exist on the money he's earning*

The above definition clearly shows that 'exist' would refer to something which is in force presently. 'Exist' would generally and in common sense refers to something which is already there. With reference to this provision, this would refer to an undertaking which was already present on the date when this provision was introduced. In any case the notification issued by the Govt. of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion which is published in the Gazette of India removed all the doubts. This notification is relevant because this was issued with reference to same package announced by the Union Cabinet of India for the development of the hilly states. Section 5, reads as under;-

"Definitions:

(a) .....

(b) .....

(c) Existing Industrial Unit' means an industrial unit existing as on 7th January 2003.

(d) .....

(e) .....

(f) ..."

Thus the definition given above makes it clear that existing Industrial Unit would mean an unit which existed on 7.1.2003.

33. Even if the above controversy is ignored regarding existing unit, the intention of the Legislature become absolutely clear when sub section (2) is read alongwith sub-section (3) of section 80IC. As noted earlier, sub section (2) is enabling provision which provides for deduction in certain kind of undertakings, i.e. new unit set up or the existing units which carries out substantial expansion

during the particular window period which are given in clauses (i), (ii) & (iii) of sub section (2). The sub section (3) provides for rates of deduction. It is useful to note that clause (i) of sub section (3) provides for 100% deduction for a period of 10 assessment years in cases covered by sub clause (i) & (iii) of clause (a) and sub clause (i) & (iii) of clause (b). Now sub clause (i) and (iii) of clause (a) of sub section (2) refers to the window period in case of State of Sikkim, North-Eastern States whereas sub clause (ii) refers to the window period in case of State of Himachal Pradesh and State of Uttaranchal. Similarly, sub clause (i) & (iii) of clause (b) refers to window period in case of State of Sikkim and North-Easter States whereas sub clause (ii) refers to the window period in case of State of Himachal Pradesh and Uttaranchal. Now clause (ii) of sub section (3) provides for 100% deduction on such profits for five assessment years commencing with initial assessment year and thereafter 25% (or 30% where the assessee is a company) of the profits and gains. Therefore, it is absolutely clear that in case of state of Sikkim and North-Eastern states, Legislature was very clear that in case of new undertaking or in case of substantial expanded undertaking deduction is to be allowed @ 100% for whole of the ten years whereas in case of State of Himachal Pradesh and Uttaranchal the deduction was to be allowed @ 100% only for first five years and thereafter it was only 25%. If the Legislature wanted to extend the benefit in the case of substantial expansion separately then the rate of deduction in the clause (i) & (ii) of sub section (3) would not have been different i.e. 100% for whole of the 10 years in case of State of Sikkim & North-Eastern states under sub clause (i) and for the state of Himachal Pradesh & Uttaranchal under sub clause (ii) 100% for first five years and thereafter 25% for next five years. The concept of substantial expansion remains same under sub section (2) for both types of states i.e state of Sikkim and North-Eastern states and State of Himachal Pradesh and Uttranchal. If the extended benefit of substantial expansion was to be separately allowed in case of State of Himachal Pradesh and State of Uttaranchal, then meaning of substantial expansion as given under sub section (2) which is same for the state of Sikkim and North-Eastern states become redundant. As noted

earlier, the provision cannot be interpreted in such a way that part of the section becomes redundant or otiose. Therefore, whatever doubts may be there in sub section (2) when it is read with sub section (3), those doubts are totally removed and it become absolutely clear that rate of deduction has to be 100% for first 5 years and 25% thereafter.

34. There is a force in the contention of Ld. CIT/DR that if the interpretation contended on behalf of the assessee was to be adopted then Sub Section (4) of Section 80IC would also become redundant. Sub Section (4) clearly provides that the deduction is available to any undertaking or enterprise which is not formed by splitting or reconstruction of the business already in existence or it is not formed by transfer to new business of machinery or plant previously used for any purpose. Further the explanation to this Sub Section makes it clear that Explanation 1 & 2 of Sub Section (3) of Section 80IA are applicable in this respect. Explanation 2 of Sub Section (3) of Section 80 IA reads as under:

> *"Explanation 2- Where in the case of an [undertaking], any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with."*

From the above it becomes clear that if 20% of the Machinery from the old unit was used in the new unit then such unit would not be eligible for deduction under this Section that is section 80IC. Now for carrying out substantial expansion the investment in Plant & Machinery is required to be made by atleast 50%. So if 50% fresh machinery is added to the new unit then it will violate Sub Section (4) of Section 80IC, therefore, interpretation canvassed on behalf of the assessee is not possible because Section 80IC(4) would become redundant and such an interpretation is not possible.

35. Further, sub section (6) provides that in no case the total period of deduction could exceed the period of 10 years including deduction availed under sub section

(4) of section 80IB and section 10A and 10B. It was contended before us that since there is no restriction in carrying out of substantial expansion in the new units and as such substantial expansion can be carried out any number of times. If this interpretation is accepted then sub section (6) would be rendered otiose or meaningless because if a unit was set up on the commencement of this section and the same claims deduction @ 100% and later on every five years a substantial expansion is carried out then according to the interpretation canvassed on behalf of the assessee, such unit would again become entitled to 100% deduction for another five years and further block of five years every time substantial expansion is carried out. If this interpretation is adopted then deduction would become almost perceptual as long as the assessee has carried out substantial expansion but in that case sub section (6) would loose its meaning. Such an unlimited period of deduction would not be in consonance of law. At the cost of repetition, we would like to emphasize that no principle of interpretation can be adopted which leads to a situation where a particular part of the section becomes totally redundant. In fact though it was contended that in the present case (i.e. in case of Hycron Electronics) deduction has been claimed only of 10 years but on the date of hearing some other appeals were also listed wherein the deduction was claimed for more than 10 years adopting the same contention which has been made before us. In case of M/s Mahavir Industries (ITA No. 127/Chd/2011 and ITA No. 791/Chd/2012) though those cases were adjourned because some other issues were also there but in those two cases assessee had commenced the operation on 8.5.1997 and claimed deduction u/s 80IB from assessment years 1998-99 to 2005-06. Later on, substantial expansion was carried out in assessment year 2005-06 and on the basis of the contention that assessee is allowed to carry out any number of expansions, deduction was claimed for the 12th year for assessment year 2009-10 (We may clarify that reference to these cases is made because of particular contention and we are not expressing any opinion on the merits of these appeals here). Therefore, the contention of the assessee that any number of expansions are allowed is not possible in view of the restriction given in section 80IC(6).

36. The above situation as pointed by the Revenue also becomes clear if the provision of section 80IC is compared to the provision of section 80IB(4). Relevant provision of Section 80IB (4) reads as under:-

> *"(4) The amount of deduction in the case of an industrial undertaking in an industrially backward State specified in the Eighth Schedule shall be hundred per cent of the profits and gains derived from such industrial undertaking for five assessment years beginning 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 derived from such industrial undertaking:*
>
> *Provided that the total period of deduction does not exceed ten consecutive assessment years (or twelve consecutive assessment years where the assesee is a company-operative society) subject to fulfillment of the condition that it begins to manufacture or produce articles or things or to operate its cold storage plant or plants during the period beginning on the Ist day of April, 1993 and ending on the 31st day of March, [2004]:*
>
> *Provided further that in the case of such industries in the North-Eastern Region, as may be notified by the Central Government, the amount of deduction shall be hundred per cent of profits and gains for a period of ten assessment years, and the total period of deduction shall in such a case not exceed ten assessment years:*
>
> *Provided also that no deduction under this sub-section shall be allowed for the assessment year beginning on the 1st day of April, 2004 or any subsequent year to any undertaking or enterprise referred to in sub-section (2) of section 80-IC."*

37. The careful perusal of the above provision would show that before the introduction of section 80IC which is before us for consideration, the deduction to the backward states was available in terms of section 80IB(4). The third proviso makes it clear that after 31.3.2004, this deduction will be available only u/s 80IC. The sub section further makes it clear that deduction would be @ 100% for the first five years and thereafter @ 25%. Further, the first proviso makes it clear that deduction will not exceed 10 consecutive assessment years. The second proviso further makes it clear that in the case of states of North-Eastern regions, the deduction would be @ 100% for all the 10 years. Thus, even in the earlier provision only in case of North-Easter states, the deduction of 100% was allowable

for 10 years whereas in the case of states of Himachal Pradesh, the deduction was allowable @ 100% for first five years and 25% for next five years.

38. Further, it should be noted that sub section (6) starts with non obstante clause and therefore, in no case the deduction could be for period exceeding 10 years and in this regard we may note that even the Ld. authors in their Commentary of Income Tax Laws By Chaturvedi & Pithisaria's - Sixth Edition has expressed the same opinion. The relevant extract at pages 6351 of the commentary reads as under;-

> *"No deduction possible for more than 10 assessment years.- Section 80-IC(6) also opens with a non obstante clause " Notwithstanding anything contained in",and provides that no deduction shall be allowed to any undertaking or enterprise under section 80-IC, - where the total period of deduction inclusive of the period of deduction –*
>
> *- under section 80-IC, or*
> *- under the second proviso to section 80-IB(4) or*
> *- under section 10C*
>
> *as the case may be, exceeds 10 assessment years."*

39. Lastly, it was contended that initial assessment year as defined in clause (v) of sub section (8) of section 80IC uses the expression 'or' therefore, it can be construed that it relates to both situations separately i.e. for new unit and substantial expanded unit. We find no force in this contention. The initial assessment year has been defined and the expression 'or' has been used in respect of new units by stating 'commences operation' or 'complete substantial expansion'. Here the expression 'or' is to be read as a mutually exclusive expression which refers to a particular situation by excluding the other situation. Therefore, initial assessment year would clearly commence either on commencement of operation or at completion of substantial expansion of existing unit. In any case the word 'initial' cannot be used twice by referring to series of events. This can be understood with a very simple example. Let us say a person 'A' passes out his examination of LLB and get employed as Legal Officer in an

organization. Later on, he quits the job and starts the practice in legal profession and ultimately he is elevated as a Judge. Then in such a situation it cannot be said that initially 'A' was working in a organization and then initially he was in the profession and then elevated as a Judge. Initially can be used only once as a matter of usage of English language. Therefore, reading of the above provision clearly shows that intention of the legislature was very clear to allow 100% for first five years in case of units situated in the State of Himachal Pradesh (since all the cases before us are situated in the State of Himachal Pradesh) and thereafter 25% deduction for another five years on the new units or the existing units where substantial expansion was carried out.

40. It has also been contended that incentive provision should be construed liberally. Further, it was contended with reference to the decision of M/s Novapan India Ltd vs Collector of Central Excise and Customs (supra) by the Revenue is not correct because that provision was rendered under Indirect Tax Act. We find no force in these submissions. Every decision of the Hon'ble Supreme Court or for that matter of any High Court has to be seen for the ratio laid down in a particular decision and it does not matter under which particular Act such principles has been decided. No doubt the incentive provisions are required to be interpreted liberally but in case of M/s Novapan India Ltd v Collector of Central Excise and Customs (supra), it was observed as under:-

> *" The learned counsel for the appellant then contended that since there is an ambiguity about the meaning and purport of item-6 of the table appended to the Exemption Notification, the benefit of such ambiguity should go to the assessee manufacturer and the entry must be construed as taking in the MFPBs as well.* ***It is not possible to agree with this submission.***
>
> *In Mangalore Chemicals& Fertilizers Ltd.. v. Deputy Commissioner of Commercial Taxes & Ors., [1992) Suppl. 1 S.C.C, 21, a Bench of this Court comprising M.N. Venkatachaliah, J. (as the learned Chief Justice then was) and S.C Agrawal, J. stated the relevant principle in the following words:*
>
> *"Shri Narasimhamurty again relied on certain observations in CCE v. Parle Exports (P)Ltd. [1989] 1 SCC 345, in support of strict construction of a provision concerning exemptions. There is support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on*

the other un-exempted class of tax payers and should be construed against the subject in case of ambiguity. ***It is an equally well known principle that a person who claims an exemption has to establish his case.*** *Indeed, in the very case of Parle Exports (P) Ltd. relied upon by Shri Narasimhamurthy, it was observed.*

"While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."

The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. It the words are plain and clear and directly convey the meaning, there is not need for any interpretation."

"We are, however, of the opinion that, on principle, the decision of the Court in Mangalore Chemicals – and in Union of India v. Wood Papers, referred to therein – represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee – assuming that the said principle is good and sound- does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of its must go to the State".

The Hon'ble Supreme Court in Orissa State Warehousing Corporation's case (supra) has laid down that "While it is true that in the event of there being any doubt in the matter of interpretation of a fiscal statute, the same goes in favour of the assessee, but the fact remains and the law is well-settled on this score that in the matter of interpretation of the taxing statutes the law courts would not be justified in introducing some other expressions which the legislature thought fit to omit. In the present context, there is no doubt as to the meaning of the words used in the section by reason of the language used, neither there is any difficulty in ascertaining the statutory intent. Incidentally, it cannot but be said that an exemption is an exception to the general rule and since the same is opposed to the natural tenor of the statute, the entitlement for exemption, therefore, ought not to be read with any latitude to the tax-payer or even with a wider connotation."

41. Therefore, it becomes clear that liberal interpretation of an incentive provision is possible if there is any doubt. As we have seen above that if various sub sections of section 80IC are read carefully it leaves no doubt that deduction was meant only for new units or in case of old units if substantial expansion was carried out in such old units and deduction was available only for a period of 10

years. Therefore, there is no question of giving any interpretation much less liberal interpretation to section 80IC when the reading of whole section makes the provision very clear. As observed in case of M/s Novapan India Ltd v Collector of Central Excise and Customs (supra) the burden was on the assessee to show under which clause he was entitled to the deduction but assessee is simply asserting before us that there is no restriction for deduction in case of substantial expansion of new units. In our opinion, that is not enough because absence of restriction does not mean that particular deduction was allowable.

42. We also find force in the submissions of Ld. CIT-DR that if interpretation given by the assessee is to be accepted, the provision would become discriminatory for two classes of undertakings i.e. new units and old units. Because the old units would be entitled to 100% deduction on expansion for first five years and 25% thereafter whereas the new units would become entitled to deduction for 100% for first five years and again @ 100% on substantial expansion. Such discriminatory intention cannot be imputed to the Legislature.

43. Before us, reliance was also placed on the decision of Delhi Bench of the Tribunal in the case of Triputi LPG Industries Limited Vs. DCIT(supra). In this decision, the Bench has simply observed that main dispute is on the definition of 'initial assessment year'. The provisions of sub section (2) and sub section (3) as discussed in detail above have been totally ignored and, therefore, this decision, in our opinion, is per inquerim and cannot be followed.

44. The Ld. counsel has also relied on the decision in the case of S.R. Paryavaran Engineers Pvt Ltd (supra) of the Chandigarh Bench. The facts in that case are that assessee has claimed deduction u/s 80IB in assessment year 1999-2000 @ 100% . The deduction was claimed @ 100% for five years and then deduction was claimed @ 30% on the profits in the next year. The assessee undertook substantial expansion in financial years 2004-05 & 2005-06 and claimed

deduction at the rate of 100% on the basis of such substantial expansion in assessment year 2006-07. However, the deduction was wrongly claimed u/s 80IB instead of section 80IC. The CIT(A) allowed the deduction by observing that deduction could not be denied simply because assessee has quoted a wrong section. On the appeal filed by Revenue, the deduction was held to be allowable because substantial expansion was carried out in a unit which was already in existence as on 7.1.2003. Therefore, in our opinion, this decision does not provide any assistance to the case of the assessee.

45. The Ld. Counsel has also relied on the decision of Abhishek Bhargav AAR No. 1097 of 2011 (supra). The facts in that case are that a partnership firm namely M/s. Himachal Power Products was formed on 23.05.2009. The firm commenced commercial production in March, 2010. Shri Abhishek Bhargav while planning to join the firm as partner by acquiring 20% share of profit and enhancing additional manufacturing facility by undertaking substantial expansion sought advance ruling on the issue whether the introduction of new partner would be treated as reconstruction of the existing business or the firm will be entitled to the benefit of substantial expansion as per the provisions of section 80IC(2)(a)(ii) if it starts commercial production before 01.04.2012. The Authority held that the assessee was entitled to the benefit of substantial expansion in terms of and to the extent provided by section 80IC of the Act if it starts commercial production in the substantially expanded unit before 01.04.2012. In this case the assesse shall be entitled to deduction of 100% of its profits upto A.Y. 2014-15 since the initial assessment year was A.Y. 2010-11 and claim of deduction cannot be denied merely on the ground of expansion of manufacturing capacity so long it is not a case of restructuring of business already in existence. However, the question whether the assessee shall be entitled to deduction of 100% of its profit even after A.Y. 2014-15 i.e. for 2 more years beyond A.Y. 2014-15 is left open and not decided by the AAR. Therefore this decision is totally distinguishable and does not help the case of the assessee.

46. The last decision relied on was in the case of Sintex Industries Ltd v CIT (supra). In this case the deduction u/s 80IC was allowed by the Assessing Officer but later on a revisionary order was passed u/s 263 of the Act. The Bench mainly dealt with the provision of section 263 and in view of the decision of Hon'ble Supreme Court in the case of Malabar Industries Co Ltd v CIT 243 ITR 83 (SC) held that since view taken by the Assessing Officer is also possible view, therefore, assessment order was not erroneous. In fact the Bench referred to the decision of Delhi Bench in the case of Triputi LPG Industries Limited Vs. DCIT (supra) without considering the provision of section 80IC in detail for reaching the conclusion that it is one of the possible view. Since we have already discussed the decision of Triputi LPG Industries Limited Vs. DCIT (supra) and found that all the provisions of the section were not discussed in that section and that is per inquerim, therefore, in our opinion, this order does not help the case of the assessee.

47. The last argument was in respect of column in Form No. 10CCB. The column 25 of Form No. 10CCB reads as under:-

"25 (i) Whether the undertaking or enterprise is located in an area notified by the Board for the purposes of section 80-IC :---Yes ---No

(ii) If yes please indicate,-

a. Name of the Export Processing Zone / Integrated Infrastructure Development Centre / Industrial Growth Centre/Industrial Park/Estate/Software Technology Park/Industrial Area/Theme Park and the District/State in which located :----------

(b) Khasra No. of the undertaking or enterprise (Also indicate the Board's Notification No.) :----------

(c) If the eligible business is new, please give the date of commencement of production or manufacture of article or thing. :----------

(d) If the existing business has undertaken substantial expansion, please specify,- :----------

(i) The date of substantial expansion

(ii) The total book value of plant and machinery (before taking depreciation in any year)as on first day of the previous year in which sub-

stantial expansion took place. *:----------*

(iii) Value of increase in the plant and machinery in the year of substantial expansion. *:----------*

(e) Does the undertaking or enterprise manufacture or produce any article or thing specified in the Thirteenth Schedule.

:---Yes ---No

(If yes, please specify the article or thing) *:----------*

(f) Does the undertaking or enterprise manufacture or Produce any article or thing specified in the Fourteenth Schedule.

:---Yes ---No

(If yes, please specify the article or thing or operation) *:----------"*

48. The careful reading of the form in a serial order would clearly show that the assessee is required to inform the location of the Industry and column (c) specifically ask the assessee to state whether business is a new business? Column (d) clearly ask the assessee whether existing business has undertaken substantial expansion, therefore, there are two categories of business and substantial expansion is possible only in case of existing business. In our opinion, the Ld. CIT(A) has correctly adjudicated this issue.

49. In view of the above detailed discussion we hold that the assessee before us i.e. M/s Hycron Electronics in ITA No. 798/Chd/2012 is entitled to only 25% of deduction during the present year because the assessee has already availed the period of full deduction @ 100% in the earlier five years i.e. from assessment years 2004-05 to 2008-09. In this background, we find nothing wrong with the order of Ld. CIT(A) and we uphold the same. Accordingly, assessee's appeal is dismissed.

50. In the result, appeal of the assessee is dismissed.

ITA 374/Chd/2014 – assessment year 2010-11

51. In this appeal the assessee has raised the following grounds:-

1. *Under the facts and circumstances of the case and in law, the order dated 27.01.2014 passed by the Ld. CIT(Appeals), Shimla u/s 250(6) of the Income Tax Act, 1961 is bad in law, illegal, without jurisdiction and void.*

2. Under the facts and circumstances of the case and in law, Ld. CIT(Appeals), Shimla has erred in:

I. Affirming the order of Ld. ITO, Baddi in restricting the claim of appellant of deduction u/s 80-IC of the Income Tax Act, 1961 at 25% instead of 100% claimed by the appellant in the sixth year of operation of new industrial undertaking of the appellant wherein substantial expansion was carried out in such new industrial undertaking by the Appellant.

II. Misinterpreting the provisions of section 80-IC of the Act which provides for Substantial expansion to be undertaken during the period beginning on 7th January 2003 and ending before 1st April 2012 and erroneously upholding that the benefit of 100% deduction u/s 80-IC of the Act for first five years in case of substantial expansion is available only to the units that existed and were operational as on 07.01.2003 and such benefit is not at all meant for the units that came into being on or after the introduction of the scheme of such deduction.

III. Upholding that once an 'initial assessment year' is determined in case of an undertaking claiming benefit u/s 80-IC of the Act, it cannot be changed even if such undertaking completes substantial expansion and again qualifies for deduction under the said section on the basis of 'qualifying expansion'.

IV. Making a narrow interpretation of the provision of section 80-IC of the Income Tax Act, 1961 which was introduced as a welfare legislation for providing stimulus to the economy of industrially backward states such as Himachal Pradesh.

3. Under the facts and circumstances of the case and in law, Ld. CIT(Appeals), Shimla has erred in affirming the order of Ld. ITO, Baddi in restricting the appellant's claim of Other Income of Rs. 19,75,825/- being eligible for deduction U/s 80IC of the IT Act, 1961.

4. Under the facts and circumstances of the case and in law, Ld. CIT (Appeals), Shimla has erred in affirming the order of Ld. ITO, Baddi in levying interest u/s 234-B of the IT Act 1961.

52. Ground No.1 is of general nature and does not require separate adjudication and hence dismissed.

53. Ground No. 2 : The issue raised in this ground is identical to the main issue which has been adjudicated by us in ITA No. 798/Chd/2012 in assessee's own case for assessment year 2009-10 in the above noted paras 22-49. Following the same, we decide the issue against the assessee.

54. Ground No.3 : After hearing both the parties we find that during assessment proceedings the Assessing Officer noticed that assessee has shown other income amounting to Rs. 19,75,825/- as per the following details:-

Particulars	*Amount(Rs.)*
Interest received on Margin Money	*2,85,876/-*
Interest received on others	*70,328/-*
Foreign Exchange Fluctuation	*15,46,066/-*
Miscellaneous Income	*73,542/-*
Sundry Credit balances written back	*13/-*
Total	*19,75,825/-*

55. On this income the assessee has claimed deduction u/s 80IC. It was observed by Assessing Officer that this income has not been derived from the Industrial Undertaking and does not have first degree nexus with the manufacturing activity. Therefore, assessee was asked to justify the claim u/s 80IC of the Act against this income. In response it was stated that income was eligible for deduction u/s 80IC of the Act. The Assessing Officer referred to the decision of Hon'ble Supreme Court in the case of Pandian Chemicals Ltd Vs. CIT 262 ITR 278 (SC) and Liberty India Ltd v CIT 317 ITR 218 and disallowed the claim of deduction against other income. The action of the Assessing Officer was confirmed by Ld. CIT(A).

56. Before us Ld. Counsel submitted that interest on margin money is directly related the business. Similarly, foreign exchange transactions are carried out during the course of business, therefore, the same is eligible for deduction u/s 80IC of the Act. It was further submitted that Chandigarh Bench of Tribunal in case of M/s Ansysco Vs. ACIT in ITA No. 895/Chd/2012 and others has held that income from Foreign Exchange Fluctuations was directly linked to the business activity therefore deduction should be allowed.

57. On the other hand the Ld. DR strongly supported the order of CIT(A).

58. After considering the rival submissions carefully we find that Hon'ble Supreme Court in the case of Pandian Chemicals Ltd Vs. CIT (supra) was concerned with the issue of deduction u/s 80HH on interest income received on electricity deposit made by the assessee. On this issue, the following observations were made:-

> *The words "derived from" in section 80HH of the Income-tax Act, 1961, must be understood as something which has a direct or immediate nexus with the assessee's industrial undertaking. Although electricity may be required for the purposes of the industrial undertaking, the deposit required for its supply is a step removed from the business of the industrial undertaking.*

59. After the above observation, it was held as under:-

> *"Held accordingly, that interest derived by the industrial undertaking of the assessee on deposits made with the Electricity Board for the supply of electricity for running the industrial undertaking could not be said to flow directly from the industrial undertaking itself and was not profits or gains derived by the undertaking for the purpose of the special deduction under section 80HH ."*

60. Same view was taken later on in the case of Liberty India Ltd v CIT (supra). It may be noted that that expression 'derived from' has been used in section 80IC also, therefore, as far as interest received on margin money and interest received on other amounting to Rs. 2,85,876/- and Rs. 70,328/- are not entitled for deduction u/s 80IC and accordingly we confirm the action of the Assessing Officer and CIT(A) in this respect.

61. As far as the amount received on foreign exchange fluctuation is concerned, though in case of M/s Ansysco Vs. ACIT(supra) it was held that gain from Foreign Exchange Fluctuations was directly related to the business activity therefore assessee was entitled to deduction. However the details are not incorporated in the assessment order or in the impugned order, therefore, we set aside the order of Ld. CIT(A) and remit the matter back to the file of Assessing Officer with a direction that if the same relates to the business transaction on Revenue account, then deduction may be allowed on this amount, otherwise the issue may be decided in

accordance with law. As far as the issue regarding misc. income and sundry credit balance written back is concerned, this issue was not seriously pressed before us, therefore, action of the Ld. CIT(A) in respect of these two items are also confirmed.

62. In the result the appeal is partly allowed for statistical purposes.

ITA No. 866/Chd/2014 (assessment year 2010-11)

63. In this appeal the assessee has raised various grounds. However, it was pointed out that only two disputes are involved namely :

Issue No. 1 - Denial of 100% deduction on account of substantially expanded unit
Issue No. 2- Denial of deduction under section 80IC on account of Foreign Exchange Fluctuation.

64. Issue No. 1 :+8 Since the issue as well as contentions remain the same as has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

65. Issue No. 2: This issue has already been decided by us in case of M/s Hycron Electronics , Baddi, Solan in ITA No. 374/Chd/2014 vide Para No. 61. Therefore following the same we set aside the order of Ld. CIT and remit the matter back to the file of AO with similar direction as contained in Para 61.

66. In the result appeal is partly allowed for statistical purposes

ITA No. 867/Chd//2014 (assessment year 2011-12)

67. In this appeal the assessee has raised various grounds. However, it was pointed out that only three disputes are involved.

Issue No.1 - Denial of 100% deduction on account of substantially expanded unit

Issue No. 2- Denial of deduction under section 80IC on account of Foreign Exchange Fluctuations

Issue No. 3- Confirmation of disallowance amounting to Rs. 87,500/- under section 14A.

.

68. Issue No. 1: Since the issue as well as contentions remain the same has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

69. Issue No. 2: This issue has already been decided by us in case of M/s Hycron Electronics , Baddi, Solan in ITA No. 374/Chd/2014 vide Para No. 61. Therefore following the same set aside the order of Ld. CIT and remit the matter back to the file of AO with similar direction as contained in Para 61.

70. Issue No. 3: After hearing both the parties we find that during assessment proceedings it was noticed that assessee has made certain investment in shares and Mutual Funds. Therefore, Assessing Officer invoked the provisions of section 14A read with rule 8D and made total disallowance of Rs. 87,500/-.

71. On appeal, the action of the Assessing Officer was confirmed.

72. Both the parties were heard.

73. After considering the rival submissions we find that admittedly the assessee has made investment in shares and mutual funds, income from which is exempt. Chandigarh Bench of the Tribunal is consistently holding that Rule 8D is applicable from assessment year 2008-09 following the decision of Godrej & Boyce Manufacturing Co. Ltd v DCIT 328 ITR 81(Bombay), Therefore we find nothing wrong in the order of Ld. CIT(A) and confirm the same

74 In the result, appeal is partly allowed for statistical purposes.

ITA No. 868/Chd/2014 (assessment year 2010-11)

75. In this appeal the assessee has raised only one issue regarding denial of deduction under section 80IC @100% for new unit which has been expanded.

76. Since this issue as well as contentions remain the same has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

77. In the result appeal is dismissed

ITA No. 869/Chd/2014 (assessment year 2011-12)

78. In this appeal the assessee has raised only one issue regarding denial of deduction under section 80IC on expanded unit.

79. Since this issue as well as contentions remain the same has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

80. In the result appeal is dismissed

ITA No. 895/Chd/2014

81. In this appeal assessee has raised only one issue regarding denial of deduction under section 80IC on account of Foreign Exchange Fluctuations.

82. This issue has already been decided by us in case of M/s Hycron Electronics , Baddi, Solan in ITA No. 374/Chd/2014 vide Para No. 61. Therefore following the same set aside the order of Ld. CIT and remit the matter back to the file of AO with similar direction as contained in Para 61. In the result appeal of the assessee is partly allowed for statistical purposes.

ITA No. 896/Chd/2014

82. In this appeal the assessee has raised various grounds. However, it was pointed out that only three disputes are involved.

> *Issue No.1 - Denial of 100% deduction on account of substantially expanded unit*
>
> *Issue No. 2- Denial of deduction under section 80IC on account of Foreign Exchange Fluctuations*
>
> *Issue No. 3- Denial of deduction under section 80IC on account of late deposit of employee contribution to ESI & PF by ignoring the fact that these statutory dues are clearly deposited before the due date of filing of return of income.*

83. Issue No. 1- Since the issue as well as contentions remain the same has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

84. Issue No. 2: This issue has already been decided by us in case of M/s Hycron Electronics , Baddi, Solan in ITA No. 374/Chd/2014 vide Para No.61. Therefore following the same set aside the order of Ld. CIT and remit the matter back to the file of AO with similar direction as contained in Para 61.

85. Issue No. 3: After hearing both the parties we find that during the assessment proceedings it was noticed that assessee has deposited Provident Fund and ESIC dues late and therefore there amounts were disallowed

86. On appeal the action of the AO was confirmed by the Ld. CIT(A)

87. Before us the Ld. Counsel for the assessee submitted that the amount were paid before the due date of filing of return and therefore this amount were allowable.

88. On the other hand Ld. DR strongly supported the order of Ld. CIT(A).

89. After considering the rival submissions carefully we find that Hon'ble Punjab & Haryana High Court in case of CIT Vs. Nuchem Ltd. in ITA No. 323 of 2009 has clearly held that if amount have been paid before the due date of filing of return then such dues are allowable. However, we further find that dates of deposits are not available on record therefore we set aside the order of Ld. CIT(A) and remit the matter back to the file of AO with a direction to verify that if amount have been paid before due date of filing of return then the same may be allowed otherwise the issue should be decided in accordance with the law. We may also like to point out that if ultimately disallowance is made on this account then the profit of the assessee would increase and assessee would be entitled to increased deduction under section 80IC as consequences.

90. In the result appeal of the assessee is partly allowed for statistical purposes.

ITA No. 897/Chd/2014

91. In this appeal various grounds have been raised but only three disputes are involved namely:

> *Issue No. 1: Denial of 100% deduction on account of substantially expanded unit*
>
> *Issue No. 2: Disallowance on account of late payment of ESI & PF dues.*
>
> *Issue No. 3; Confirmation of addition for non charging interest from partners on their withdrawals.*

92. Issue No. 1: Since the issue as well as contentions remains the same as has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

93. Issue No. 2: This issue has been decided by us in case of M/s Sansui Electronics Vs. ITO, Himachal Pradesh in ITA No. 896/Chd/2014 vide Para 89, following the same we set aside the order of Ld. CIT(A) and remit the matter back to the file of AO with a direction to verify that if amounts have been paid before due date of filing of return then the same may be allowed otherwise the issue should be decided in accordance with the law. We may also like to point out that if ultimately disallowance is made on this account then the profit of the assessee would increase and assessee would be entitled to increased deduction under section 80IC as consequences.

94. Issue No. 3: After hearing both the parties we find that during the assessment proceedings AO noticed that there was debit balance in the capital account of partner Shri. Sanjay Bafna amounting to Rs. 26,32,346/- and Shri Sunil Kumar Desadla amounting to Rs. 93,45,966/-. It was further noticed that no interest was charged from these partners. Since the assessee firm was paying interest to the banks therefore a query was raised why interest has not been charged from partners and why proportionate disallowance of interest should not be made. In response it was mainly submitted that there was credit balance in the case of other two partners i.e; Mrs. Kavita Desadla amounting to Rs. 78,99,736/- and Mrs. Sandeepa Bafna amounting to Rs. 91,97,812/-. Where as total debit balance in the two accounts was only Rs. 1,19,78,312/-. Further the profits is earned from day to day and if profit earned during the year was credited on monthly basis then there would not be any debit balance. In any case the firm has itself disallowed the sum of Rs. 12,00,000/- to cover up the possible disallowance of interest expenditure and therefore no further disallowance was called for.

95. The AO after examining these submissions did not find any force in the same. He was of the view that once interest was not charged to the debit balance of the partners then proportionate disallowance which was worked out at Rs. 14,37,397/- has to be disallowed.

96. On appeal before Ld. CIT(A) it was submitted that there was no clause in the partnership deed which required to charge interest on debit balance on the partners account. In fact there was no

credit made to the partners account on their capital balance therefore the disallowance was not justified and reliance was placed on few tribunal decisions.

97. Ld. CIT did not agree with these submissions however she gave a direction that in view of the decision of Chandigarh bench of Tribunal in case of Mega Package in ITA No. 755/Chandi/2011 that if profit is enhanced because of any disallowance then the such enhanced profit would become eligible for deduction under section 80IC.

98. Before us Ld. Counsel for the assessee reiterated the submissions made before lower authority.

99. On the other hand Ld. DR supported the order of CIT(A).

100. After considering the rival submissions carefully we find force in the submission of Ld. Counsel for the assessee. Firstly there is no provision for charging of interest in the partnership deed and therefore assessee's firm was not bound to charge interest. Secondly since no interest have been allowed to the partners therefore overall balance of all the partners should have been examined and if such examinations is made then the overall balances in the capital account would be credit balance. Thirdly in any case assessee has already disallowed the sum of Rs. 12,00,000/- on this account. Therefore in our opinion there is no justification for this disallowance and accordingly we set aside the order of Ld. CIT(A) and delete the same.

101. In the result appeal is partly allowed for statistical purposes.

ITA No. 782/Chd/2014

102. In this appeal various grounds have been raised but the only issue is regarding disallowance of denial of claim of deduction under section 80IC @ 100%.

103. Since this issue as well as contentions remain the same as has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

104. In the result appeal of the assessee is dismissed.

ITA No. 783/Chd/2014

105. In this appeal various grounds have been raised but the only issue is regarding disallowance of denial of claim of deduction under section 80IC @ 100%.

106. Since this issue as well as contentions remain the same as has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

107. In the result appeal of the assessee is dismissed.

ITA No. 175/Chd/2014

108. In this appeal assessee has raised various grounds :
Issue No. 1 - Denial of 100% deduction on account of substantially expanded unit.

Issue No. 2- Denial of deduction under section 80IC on account of Technical know how rendered by its partner and reducing the claim.

109. Issue No. 1- Since the issue as well as contentions remain the same as has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

110. Issue No. 2- After hearing both the parties we find that during the assessment proceedings AO noticed that assessee's firm was using technical know how of M/s Optima Diamond Tools Pvt. Ltd. which was a sister concern but no compensation was being paid for the same. Initially assessee tried to justify the claim however, later on assessee offered to reduce the eligible profits for deduction under section 80IC by sum of Rs. 15,00,000/- and accordingly AO made addition of Rs. 15,00,000/-.

111. On appeal the Ld. CIT(A) confirmed the addition in view of the offer made by the assessee.

112. Before us Ld. Counsel for the assessee submitted that technology was provided in the initial years and already time of five years have been lapsed from the date of production and production has stabilized and therefore there was no justification of the addition.

113. On the other hand Ld. DR refered to the assessment order and pointed out that assessee has agreed for this addition.

114. After considering the rival submissions we find that Ld. CIT(A) has adjudicated this issue vide para 6.3 which is as under:

> *6.3 After consideration of the facts of the case and appellant's submission it is noted that appellant itself has offered the reduction of Rs. 15,00,000/- from eligible profits for deduction u/s 80IC on account of technical know-how services rendered by its partner. The A.O. has also agreed and considered the sum of Rs. 15,00,000/- as not eligible for deduction u/s 80IC on account technological know-how services as agreed by the appellant subject to no penal action. The appellant also agreed for the said addition as income from other sources before the A.O. Since the offer for deduction of Rs. 15,00,000/- from eligible profits u/s 80IC was itself agreed by the appellant subject to no penal provision which the A.O. also agreed, therefore I do not find any defect in the addition made by the A.O. The appellant fails on this ground of appeal.*

Since assessee has already agreed for the addition therefore assessee cannot be said to be aggrieved about this addition and therefore same was not even appealable as the assessee cannot be said to be aggrieved by such order which is made on the basis of concession. In this regard reference may be made to the decision of Hon'ble Punjab & Haryana High court in the case of Banta Singh Kartar Singh Vs. CIT 125 ITR 239. Therefore we find nothing wrong in the order of Ld. CIT and confirm the same.

115. In the result appeal of the assessee is dismissed.

176/Chd/2014

116. In this appeal the assessee has raised various grounds. However, it was pointed out that only two disputes are involved namely :

> *Issue No. 1 - Denial of 100% deduction on account of substantially expanded unit.*
>
> *Issue No. 2- Denial of deduction under section 80IC on account of Technical know how rendered by its partner and reducing the claim*

117. Issue No. 1- Since the issue as well as contentions remain the same as has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

118. Issue No. 2- This issue has been decided by us in assessee's own case for assessment year 2010-11 in ITA No. 175/Chd/2011 vide para 114. Following the same we decide this issue against the assessee.

119. In the result appeal of the assessee is dismissed.

ITA No. 185/Chd/2014

120. In this appeal assessee has raised only one issue i.e; denial of deduction under section 80IC on account of substantial expanded unit.

121. Since this issue as well as contentions remains the same as has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

122. In the result appeal of the assessee is dismissed.

ITA No. 195/Chd/2014

123. In this appeal assessee has raised only one issue i.e; denial of deduction under section 80IC on account of substantial expanded unit.

124. Since this issue as well as contentions remains the same as has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

125. In the result appeal of the assessee is dismissed.

ITA No. 776/Chd/2014

126. In this appeal the assessee has raised various grounds. However, it was pointed out that only two disputes are involved namely :

> *Issue No.1- Ground No. 1-Denial of 100% deduction on account of substantially expanded unit.*
>
> *Issue No. 2. Confirmation of disallowance amounting to Rs. 66,826/- for non payment of interest*

127. Issue No. 1- Since this issue as well as contentions remain the same as has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

128. Issue No. 2- The brief facts are that Shri. Umesh Anand was running a sole proprietorship concern under the name and style of M/s Pranav Associates in his HUF capacity as karta. Upto the assessment year 2007-08 the assessee firm was having business transactions with M/s Pranav Associates for purchase of Raw

material and components. The last transaction of purchase was made by the assessee in January 2007. Thereafter no business was done. There was a sum of Rs. 5,56,886 receivable from M/s Pranav Associates due from 31/03/2007. The amount was received on 01/03/2011 i.e; in assessment year 2011-12. The AO was of the view that assessee shall have charged interest on the same. In response to the query it was submitted that advance was outstanding from 2007-08 and no business transaction was carried out after that date. However, no adverse inference was taken in Assessment year 2007-08, 2008-09 and 2009-10 where assessments were completed under section 143(3). Further it was a trade advance and no interest could have been charged.

129. On appeal the action of AO was confirmed by the Ld. CIT(A).

130. Before us Ld. Counsel for the assessee submitted that it was a case of trade advance and therefore no interest could have been charged in any case no disallowance was made in the earlier assessment year which were completed under section 143(3) therefore our view should not have been taken in this year.

131. On the other hand Ld. DR supported the order of Ld. CIT(A).

132. After considering the rival submissions we agree with the submissions of Ld. Counsel for the assessee firstly because it is a case of trade advance and therefore it was not necessary to charge interest. In any case keeping the smallness of amount we are of the opinion that lenient approach should have been adopted. Therefore we set aside the order of Ld. CIT(A) and delete this addition.

133. In the result appeal of the assessee is partly allowed for statistical purposes.

ITA No. 777/Chd/2014

134. In this appeal the assessee has raised various grounds. However, it was pointed out that only three disputes are involved namely :

Issue No.1- Ground No. 1-Denial of 100% deduction on account of substantially expanded unit.

Issue No. 2. Confirmation of disallowance on account of late payment of provident fund amounting to Rs. 44,588/-.

Issue No. 3. Confirmation of disallowance on account of late payment of ESI contribution amounting to Rs. 2529/-.

135. Issue No. 1- Since the issue as well as contentions remain the same as has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

136. Issue No. 2 & 3- Since the issue as well as contentions remain the same as has been decided by us in case of M/s Sansui Electronics Vs. ITO, Himachal Pradesh in ITA No. 896/Chd/2014 vide para no. 89. Therefore following this decision we set aside the order of Ld. CIT(A) and remit the matter back to the file of AO who is directed to follow the directions contained in para 89 of this order.

137. In the result appeal of the assessee is allowed for statistical purposes.

ITA No. 780/Chd/2014

138. In this appeal assessee has raised only one issue i.e; denial of deduction under section 80IC on account of substantial expanded unit..

139- Since this issue as well as contentions remains the same as has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

140- In the result appeal of the assessee is dismissed.

ITA No. 1007/Chd/2014

140. In this appeal assessee has raised only one issue i.e; denial of deduction under section 80IC on account of substantial expanded unit..

141- Since this issue as well as contentions remains the same as has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

142- In the result appeal of the assessee is dismissed.

ITA No. 1051/Chd/2014

143. In this appeal assessee has raised only one issue i.e; denial of deduction under section 80IC on account of substantial expanded unit..

144. Since this issue as well as contentions remain the same as has been decided by us in case of M/s Hycron Electronics Vs. ITO, Himachal Pradesh in ITA No. 798/Chd/2012 in vide para no. 22-49. Following the same, we decide this issue against the assessee.

145. In the result appeal of the assessee is dismissed.

146. The consolidated results of each appeal are as under:

ITA No.	**Party Name**	**Result**
ITA No. 798/Chd/2012	Hycron Electronics, Baddi, Solan	Dismissed
ITA No. 374/Chd/2014	Hycron Electronics, Baddi, Solan	Partly Allowed for Statistical Purposes
ITA No. 866/Chd/2014	M/s Stove Kraft India, Vill-Buranwala, Solan, HP	Partly Allowed for Statistical Purposes
ITA No. 867/Chd/2014	M/s Stove Kraft India, Vill-Buranwala, Solan, HP	Partly Allowed for Statistical Purposes
ITA No. 868 & 869/Chd/2014	M/s Vanser Metallics, Baddi, Solan, HP	Dismissed
ITA No. 895/Chd/2014	M/s Sansui Electronics, Parwanoo	Partly Allowed for Statistical Purposes
ITA No. 896/Chd/2014	M/s Sansui Electronics, Parwanoo	Partly Allowed for Statistical Purposes
ITA No. 897/Chd/2014	M/s Sansui Electronics, Parwanoo	Partly Allowed for Statistical Purposes
ITA No. 782/Chd/2014	Lyon DC, Parwanoo	Dismissed
ITA No. 783/Chd/2014	Lyon DC, Parwanoo	Dismissed
ITA No. 175 & 176/Chd/2014	Cutting Edge Technologies, Baddi, Solan, HP	Dismissed
ITA No. 185/Chd/2014	M/s UPS Invertor. Com, Parwanoo, Solan	Dismissed
ITA No. 195/Chd/2014	Sh. Rakesh Verma, Parwanoo, Solan	Dismissed
ITA No. 776 & 777/Chd/2014	Usaka Electricals, Parwanoo	Partly Allowed for Statistical Purposes
ITA No. 780/Chd/2014	M/s Digital Systems Income, Baddi, Solan	Dismissed
ITA No. 1007/Chd/2014	Admac Formulations, Panchkula	Dismissed
ITA No. 1051/Chd/2014	Sh. Vipan Gupta, Baddi, Solan	Dismissed

Order pronounced in the Open Court on 27/05/2015

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(T.R. SOOD)
ACCOUNTANT MEMBER

Dated : 27/05/2015
Rkk / AG

Copy to:

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