IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision : 16.08.2019

(1) RA-CR-28-2019 in ITA-240-2016 (O&M)

Shri Arun Trehan since deceased through his LRs ...... Applicant

Versus

Principal Commissioner of Income Tax-II, Chandigarh

...... Respondent

(2) RA-CR-27-2019 in ITA-449-2015 (O&M)

M/s Pivot Fabrique H.P.

...... Applicant

Versus

Commissioner of Income Tax-1, Chandigarh

...... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE AVNEESH JHINGAN

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Present : Ms. Radhika Suri, Senior Advocate with Mr. Manpreet Singh Kanda, Advocate for the applicant-appellant.

Mr. Yogesh Putney, Advocate and Mr. Ajiteshwar Singh, Advocate for the Revenue.

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AJAY TEWARI, J. (Oral)

This order shall dispose of above mentioned two review applications. Since common questions of law and facts are involved therein, they are being decided by this common order. For the sake of convenience the facts are being taken from RA-CR-28-2019 in ITA-240-2016.

To Recapitulate, vide order dated 06.09.2018 the questions of law No.(iii) & (iv) relating to admissibility of deduction under Section 80IC of the Income Tax Act, 1961 (for short, "IT Act") were decided against the Assessee and in favour of the Revenue in view of the decision of the Apex Court in ***Commissioner of Income Tax Vs. M/s Classic Binding Industries*****, 2018 (407) ITR 429:2018(9) SCC 753.** The questions No.(iii) & (iv) read as under:-

> *"iii) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in disallowing the benefit of substantial expansion under Section 80IC to the units that came into existence after 7.1.2003 by stating that initial assessment year can't be re-fixed?*
>
> *iv) Whether the ld. Income Tax Appellate Tribunal is right in law and facts in holding that definition of initial assessment year does not allow the undertaking to claim deduction under Section 80IC at the rate of 100% upon their substantial expansion?"*

The present application has been filed by the Assessee under Order 47 Rule 1 and 2 of the Code of Civil Procedure (for short 'CPC') for review of the order dated 06.09.2018 passed by this Court. The ground taken is that the judgment on the basis of which these appeals were disposed of was subsequently reviewed by the Supreme Court in ***Pr. Commissioner of Income Tax, Shimla Vs. M/s AARHAM Softronics*** **2019 (412) ITR 623.**

Counsel for the Revenue has argued that the explanation to Order 47 CPC clearly bars a review on the ground that a decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case and relied upon a judgment passed by the Supreme Court in ***Shanti Devi Vs. State of Haryana and others (1999) 5 SCC 703.***

There is no quarrel with this proposition of law in the abstract but in the present case what has emerged is that the original judgment of this Court (decided on 06.09.2018) was based on the decision of the Supreme Court in ***M/s Classic Binding Industries (supra)***. However, in the subsequent decision in ***M/s AARHAM Softronics (supra)*** the Supreme Court specifically noticed that in ***M/s Classic Binding Industries (supra),*** it omitted to take note of the definition of 'initial assessment year' contained in Section 80IC and instead based its conclusion on the definition contained in Section 80IB and specifically held that the decision in ***M/s Classic Binding Industries (supra)*** does not lay down the correct law.

In this view of the matter, though the argument raised by the counsel for the revenue can not be said to be technically wrong but in case this plea is accepted it would only lead to multiplicity of litigation and in the circumstances of the case, and in our considered opinion, it would be in the interest of justice to allow the review application.

Resultantly, the review applications are allowed in terms of ***M/s Aarham Softronics (supra)*** and it is held that as regards questions No.(iii) and (iv) regarding claim of 100% deduction under Section 80IC of the IT Act for the assessment year 2011-2012 (in RA-CR-28-2019 in ITA-240-2016 (O&M)) and assessment year 2010-2011 (in RA-CR-27-2019 in ITA-449-2015 (O&M)) are answered in favour of the Assessee and against the Revenue.

The remaining part of the judgment is maintained.

Since the review applications have been decided, the pending CM Applications, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

(AVNEESH JHINGAN)
JUDGE

16.08.2019
pooja sharma-I

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No