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

Date of Decision : 16.08.2019

(1) RA-CR-26-2019 in ITA-214-2016 (O&M)

M/s Admac Formulations
...... Applicant

Versus

Commissioner of Income Tax, Panchkula ...... Respondent

(2) RA-CR-29-2019 in ITA-342-2017 (O&M)

M/s Pivot Fabrique H.P. ...... Applicant

Versus

The ITO, Ward 1 (4), Sector 17, Chandigarh ...... Respondent

(3) RA-CR-30-2019 in ITA-351-2017 (O&M)

M/s Pivot Fabrique H.P. ...... Applicant

Versus

The ITO, Ward 1 (4), Sector 17, Chandigarh ...... Respondent

(4) RA-CR-31-2019 in ITA-343-2017 (O&M)

M/s Pivot Fabrique H.P. ...... Applicant

Versus

The ITO, Ward 1(4), Sector 17, Chandigarh ...... Respondent

(5) RA-CR-32-2019 in ITA-344-2017 (O&M)

M/s Pivot Fabrique H.P. ...... Applicant

Versus

The ITO, Ward 1 (4), Sector 17, Chandigarh ...... Respondent

(6) RA-CR-33-2019 in ITA-332-2015 (O&M)

M/s Admac Formulations ...... Applicant

Versus

Commissioner of Income Tax, Panchkula ...... Respondent

(7) RA-CR-35-2019 in ITA-217-2017 (O&M)

M/s Raj Industries ...... Applicant

Versus

Pr. Commissioner of Income Tax-2, Ludhiana ...... Respondent

(8) RA-CR-43-2019 in ITA-113-2018 (O&M)

Subhash Chand ...... Applicant

Versus

The ACIT, Circle 5 (1), Aayakar Bhawan, 6th Floor
Room No.614, Sector 17 E, 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
Mr. Amrinder Singh, 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 eight 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-26-2019 in ITA-214-2016 (O&M).

To Recapitulate, vide order dated 06.09.2018 the substantial questions of law as claimed 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 substantial questions of law involved are read as under :-

> "i) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that benefit of deduction under section 80IC @ 100% of profit was not available to units set up after 7.1.2003, on undertaking substantial expansion from the year of completion of substantial expansion?
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> ii) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that units set up after 7.1.2003 would not be entitled to enlarged deduction under section 80IC of the Act @ 100% of profit, even on undertaking substantial expansion within the specified period?
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> 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 for such units?
>
> iv) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in not following the decision of the coordinate benches of the Tribunal, without referring the matter to the larger bench?
>
> v) Whether the learned 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 of 100% upon their substantial expansion?
>
> vi) Whether the orders of the learned Income Tax Appellate

Tribunal is perverse as the same is based on incorrect application of the provisions of law?"

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 is 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 of law claimed regarding claim of 100% deduction under Section 80IC of the IT Act for the relevant assessment years are answered in favour of the Assessee and against the Revenue.

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