

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

**ITA 236 of 2018 (O&M)
Date of decision : 09.07.2019**

Pr. Commissioner of Income Tax-2, Chandigarh
..... Appellant

versus

M/s Health Biotech Ltd.
..... Respondent

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE HARNARESH SINGH GILL

Present : Mr. Vivek Sethi, Senior Panel Counsel
for the appellant.

AJAY TEWARI, J. (Oral)

1. This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order of the Income Tax Appellate Tribunal, Chandigarh in ITA No.378/Chd/2017 dated 12.02.2018 for the assessment year 2012-2013.

2. Counsel for the Revenue has very fairly accepted that the issue in this case is squarely covered against it in the judgment of the Apex Court in ***Commissioner of Income Tax Vs. Aarham Softronics, Civil Appeal No.1784 of 2019 decided on 20.02.2019***. The Apex Court while dismissing the appeals of the revenue, had in para 24, held as under :-

“24. The aforesaid discussion leads us to the following conclusions:

(a) Judgment dated 20th August, 2018 in Classic Binding

Industries case omitted to take note of the definition 'initial assessment year' contained in Section 80-IC itself and instead based its conclusion on the definition contained in Section 80-IB, which does apply in these cases. The definitions of 'initial assessment year' in the two sections, viz. Sections 80-IB and 80-IC are materially different. The definition of 'initial assessment year' under Section 80-IC has made all the difference. Therefore, we are of the opinion that the aforesaid judgment does not lay down the correct law.

(b) An undertaking or an enterprise which had set up a new unit between 7th January, 2003 and 1st April, 2012 in State of Himachal Pradesh of the nature mentioned in clause (ii) of sub-section (2) of Section 80-IC, would be entitled to deduction at the rate of 100% of the profits and gains for five assessment years commencing with the 'initial assessment year'. For the next five years, the admissible deduction would be 25% (or 30% where the assessee is a company) of the profits and gains.

(c) However, in case substantial expansion is carried out as defined in clause (ix) of sub-section (8) of Section 80-IC by such an undertaking or enterprise, within the aforesaid period of 10 years, the said previous year in which the substantial expansion is undertaken would become 'initial assessment year', and from that assessment year the assessee shall be entitled to 100% deductions of the profits and gains.

(d) Such deduction, however, would be for a total period of 10 years, as provided in sub-section (6). For example, if the expansion is carried out immediately, on the completion of first five years, the assessee would be entitled to 100% deduction again for the next five years. On the other hand, if substantial expansion is undertaken, say, in 8th year by an assessee such an assessee would be entitled to 100%

deduction for the first five years, deduction @ 25% of the profits and gains for the next two years and @ 100% again from 8th year as this year becomes 'initial assessment year' once again. However, this 100% deduction would be for remaining three years, i.e., 8th, 9th and 10th assessment years."

In view of the above, the appeal stands dismissed.

Since the main case has been dismissed, the pending C.M. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

July 09, 2019
pooja sharma-I

Whether speaking/reasoned Yes/No

Whether Reportable : Yes/No