IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-453-2018 (O&M)

Date of Decision: 2.4.2019

Principal Commissioner of Income Tax, Panchkula
....Appellant.

Versus

M/s Virgo Industries, Panchkula
...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Yogesh Putney, Senior Standing Counsel for the appellant.

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AJAY KUMAR MITTAL, J.

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 dated 4.4.2018 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 1356/CHD/2017, for the assessment year 2014-15, claiming the following substantial questions of law:-

a) Whether on the facts and in the circumstances of the case the Ld. ITAT is right in law in holding that the Assessee is eligible for deduction under Section 80IC of the Income Tax Act, 1961 @ 100% against the eligible profits for the Assessment Year 2014-15 being 9th Year of production on account of undertaking substantial expansion during the Financial Year 2010-11 relevant to the Assessment Year 2011-12 by treading the Assessment Year 2011-12 as initial Assessment Year?

b) Whether on the facts and in the circumstances of the case, the Ld. ITAT is right in law in allowing the Appeal of the Assessee by following the order dated 28.11.2017 passed by the Hon'ble Himachal Pradesh High Court in the matter of **M/s Stoverkraft India Vs. Commissioner of Income Tax reported as (2018) 400 ITR 225 (HP)** by holding the order in the matter of Stoverkraft India (supra) to be passed by the jurisdictional High Court ignoring the doctrine that orders of the High Courts are binding on the subordinate Courts and authorities or Tribunals under its superintendence throughout the territory in relation to which it exercises jurisdiction which does not extend beyond its territorial jurisdiction?

c) Whether on the facts and in the circumstances of the case, the order passed by the Ld. ITAT is legally sustainable in view of the judgment dated 20.08.2018 delivered by the Hon'ble Apex Court in the matter of **Commissioner of Income Tax Vs. M/s Classic Binding Industries (supra)** answering the question in favour of the Revenue?

2. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein are that the assessee is engaged in the business of

manufacturing of Laminates and Pre-Laminated Boards at Kala Amb, District Sirmour, Himachal Pradesh. It filed its return of income on 27.11.2017 declaring the income at ₹ 16,800/-. The case of the assessee was selected for scrutiny under CASS and a notice dated 28.8.2015 under Section 143(2) of the Act was issued. The assessee had claimed deduction under Section 80IC of the Act @ 100% for the year under consideration, i.e. 9th year on account of substantial expansion. The said deduction was based on substantial expansion carried out by the assessee during the financial year 2010-11 relevant to the assessment year 2011-12. The Assessing Officer vide order dated 5.5.2016 (Annexure A-1) framed the assessment under Section 143(3) of the Act disallowing the claim of the assessee under Section 80IC of the Act by restricting the same to 25% against the claim made at the rate of 100%. Feeling aggrieved by the order, Annexure A-1, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 4.7.2017 (Annexure A-2) dismissed the appeal of the assessee and upheld the disallowance made by the Assessing Officer. Still dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 4.4.2018 (Annexure A-3) allowed the appeal of the assessee in view of the order dated 28.11.2017 passed by the Himachal Pradesh High Court in **M/s. Stoverkraft India v. Commissioner of Income Tax (2018) 400 ITR 225 (HP)**. Hence, the present appeal.

3. We have heard learned counsel for the revenue.

4. It was not disputed by the learned counsel for the revenue that the issue involved herein is covered by the decision of the Apex Court in **Commissioner of Income Tax v. Aarham Softronics, Civil Appeal No.**

1784 of 2019 decided on 20.02.2019. The Apex Court while dismissing all the appeals of the revenue, had in para 24, held as under:-

> "24. The aforesaid discussion leads us to the following conclusions:
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> (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.
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> (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.
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> (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."

5. In view of the above, the present appeal is also dismissed.

(AJAY KUMAR MITTAL)
JUDGE

April 2, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned	**Yes**
Whether Reportable	**Yes**