

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-8530-2018 (O&M)

Date of Decision: 29.4.2019

The Principal Commissioner of Income Tax-2, Ludhiana

....Appellant.

Versus

M/s Raj Industries, Pawa, Ludhiana

...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.

Mr. Amrinder Singh, Advocate for the respondent.

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 2.7.2018 (Annexure A-III) passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 1617/Chd/2017, for the assessment year 2014-15, claiming the following substantial questions of law:-

- (i) Whether an assessee who sets up a new industry of a kind mentioned in sub-section (2) of Section 80IC of the Income Tax Act, 1961 and starts availing exemption of 100 per cent tax under sub-section (3) of Section 80IC of the Act (which is admissible for five years) can start claiming the

exemption at the same rate of 100% beyond the period of five years on the grounds that the assessee has now carried out substantial expansion in its manufacture unit?

- (ii) Whether there can be more than one 'initial assessment year' for availing the deduction u/s 80IC of the Income Tax Act?
- (iii) Whether the order of the Income Tax Appellate Tribunal, which is in favour of the assessee, is liable to be set aside, in view of the judgment of Hon'ble Supreme Court, dated 20.8.2018, in **Civil Appeal No. 7208 of 2018 in the case of Commissioner of Income Tax Vs. M/s Classic Binding Industries**, wherein the issue has been decided against the assessee in favour of the Revenue?
- (iv) Whether the order of the Income Tax Appellate Tribunal, which is in favour of the assessee, is liable to be set aside, as this Hon'ble Court in the case of the same assessee, in ITA No. 217 of 2017 for the assessment year 2013-14, in the decision dated 6.9.2018, has adjudicated the identical issue against the assessee and in favour of the revenue?

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return of income for the assessment year 2014-15 on 27.11.2014 at an income of ₹ 56,76,670/-.

The case was selected for scrutiny and notice dated 28.8.2015 under Section 143(2) of the Act was issued to the assessee. The Assessing Officer vide order dated 12.5.2016 (Annexure A-I) framed the assessment at an income of ₹ 19,12,69,129/- against the returned income of ₹ 56,76,670/- by making addition on account of disallowance under Section 80IC of the Act. Feeling aggrieved by the order, Annexure A-I, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity “the CIT(A)”]. The CIT(A) vide order dated 24.10.2017 (Annexure A-II) 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 2.7.2018 (Annexure A-III) 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 parties.

4. It was not disputed by the learned counsel for the parties 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:

(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."

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

(AJAY KUMAR MITTAL)
JUDGE

April 29, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No