IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-334-2018 (O&M)

Date of Decision: 19.3.2019

Principal Commissioner of Income Tax-I, Chandigarh

....Appellant.

Versus

M/s Pacific India, Chandigarh

...Respondent.

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

PRESENT: Ms. Urvashi Dhugga, Sr. Standing Counsel for the appellant.

***

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing ITA Nos.334 and 347 of 2018 as according to learned counsel similar and identical issues are involved therein. For brevity, the facts are being extracted from ITA-334-2018.

2. ITA-334-2018 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 29.1.2018 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 1123/Chd/2017, for the assessment year 2012-13, claiming the following substantial questions of law:-

i) Whether on the facts and in the circumstances of

the case, the Hon'ble ITAT has erred in deleting the addition of ₹ 1,98,11,235/- (made on account of restricting the claim of deduction u/s 80IC of the Income Tax Act, 1961 @ 25%) without discussing the merits of the issue involved and by relying on the decision of Hon'ble Himachal Pradesh High Court in the case of M/s Stoverkraft India, when this judgment has not been accepted by the department on merits?

ii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT (by relying on the judgments discussed above) has erred in holding that those undertakings or enterprises which commenced production after 07/01/2003 can carry out multiple 'substantial expansion' prior to 01/04/2012 and there will be initial year for each 'substantial expansion' as long as provision of section 80IC of the Income Tax Act and as explained in CBDT Circular No. 7/2003, such enterprise or undertaking cannot carry out any 'substantial expansion'?

iii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT (by relying on the judgments discussed above) has erred in holding that those undertakings or enterprises which commenced production after 07/01/2003 can carry

out multiple 'substantial expansion' prior to 01/04/2012 and there will be initial year for each 'substantial expansion' as long as provision of section 80IC(8)(ix) are met without appreciating that as per provision of Section 80IC of the Income Tax Act and as explained in CBDT Circular No. 7/2003, such enterprise or undertaking cannot carry out any 'substantial expansion' only once?

iv) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT has erred in allowing 80IC deduction on disallowance of ₹ 1,50,00,000/- u/s 37 of the Act, by relying on the Board's circular No. 37/2016, even when the Ld. CIT(A) has held the expenditure claimed as not genuine?

v) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT has erred in allowing 80IC deduction on addition of ₹ 13,01,872/- and ₹ 38,800/- made u/s 36(1)(iii) even when the AO and CIT(A) in their orders have categorically stated that the amount so advanced served no business purpose, nor it was incurred on account of any commercial expediency and in view of the fact that the Board's Circular No. 37/2016 specifically allows the deduction only to disallowance 'related to the business activity against which the chapter VI-A deduction has been claimed'?

vi) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT has erred in holding that the additional grounds raised by the assessee are legal grounds, requiring no further investigation of facts and arose from the order of the Ld. CIT(A)?

3. A few essential facts in ITA-334-2018 as narrated therein may be noticed. The assessee filed its return of income on 30.9.2012 for the assessment year 2012-13 at a total income of ₹ 22,10,510/-. Its case was selected for scrutiny through CASS. The assessee was engaged in the business of manufacturing and trading of pharma products. As per Form 10CCB, the operation/ activity of the firm commenced from 5.8.2006. The assessee claimed deduction @ 100% under Section 80IC of the Act from the assessment years 2007-08 to 2011-12. In the assessment year 2011-12, the assessee carried out substantial expansion and claimed deduction @ 100% under Section 80IC of the Act for the assessment year 2012-13. The Assessing Officer allowed only 25% of deduction claimed under Section 80IC of the Act being the sixth year as a firm and disallowed 75% of the deduction claimed under Section 80IC of the Act. The assessment was completed under Section 143(3) of the Act by the Assessing Officer vide order dated 30.9.2014 (Annexure A-1) at ₹ 1,98,11,235/-. The penalty proceedings under Section 271(1)(c) of the Act were also initiated separately against the assessee. Feeling aggrieved by the order, Annexure A-1, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A) vide order dated 22.5.2017 (Annexure A-2) confirmed the disallowance of 75% of deduction claimed under Section

80IC of the Act. The disallowance of bad debt under Section 37 of the Act on 'loss of shares forfeited' was also upheld. However, the deduction claimed under Section 36(1)(iii) of the Act, the Assessing Officer was directed to recompute the disallowance thereunder on the day to day basis at the average cost of debt of whole funds and not the cost of borrowed funds only. Still dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 29.1.2018 (Annexure A-3) allowed the appeal and directed the Assessing Officer to grant deduction of 100% of its eligible profits to the assessee. Further, the assessee was also held entitled to deduction under Section 80IC of the Act for the increased profit due to disallowance made under Sections 36(1)(iii) and 37 of the Act. Hence, the present appeals by the revenue.

4. We have heard learned counsel for the revenue.

5. The primary issue herein concerns whether an assessee is entitled to deduction @ 100% of its profits or @ 25% only, where the substantial expansion is carried out by it after initial period of five years from the date of setting up of the industrial unit.

6. The matter is no longer *res integra.* The Apex Court has finally in **Commissioner of Income Tax v. Aarham Softronics, Civil Appeal No. 1784 of 2019** decided on 20.2.2019 adjudicated the aforesaid issue in favour of the assessee. It has been concluded in para 24 thereof 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 not 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."

7. Accordingly, the said issue is adjudicated in favour of the assessee and against the revenue.

8. Regarding the disallowances made under Section 37 of the Act amounting to ₹ 1,50,00,000/-; and ₹ 13,01,872/- and ₹ 38,800/- under Section 36(1)(iii) of the Act in ITA-334-2018 and that of ₹ 5,60,000/-under Section 36(1)(iii) of the Act in ITA-347-2018, the Tribunal had held that the disallowances challenged in the additional grounds pertaining to interest and bad debts resulted in increasing the business profits of the assessee. Since the assessee was held entitled to claim deduction of its profits at the rate of 100%, therefore, the additions so made were entitled to deduction under Section 80IC of the Act as accepted by the Department also vide the Circular dated 2.11.2016 resulting in no addition to the taxable income of the assessee. The Tribunal had recorded as under:-

> "9. We find merit in the contention of the Ld. Counsel for the assessee. Undoubtedly the disallowances challenged in the additional grounds, pertaining to interest and bad debts, result in increasing the business profits of the assessee. Moreover, we have held in the earlier part of our order that the assessee is entitled to claim deduction of its profits @ 100% in the impugned order. Consequently, the additions so made are entitled to deduction u/s 80IC of the Act, as accepted by the Department also vide the CBDT Circular reproduced above, resulting in no addition to the taxable income of the assessee."

9. No illegality or perversity could be pointed out by the learned counsel for the revenue in the aforesaid findings recorded by the Tribunal in the appeals which may warrant interference by this Court. No question of law, muchless a substantial question of law arises in these appeals. Consequently, finding no merit in the appeals, the same are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

March 19, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**