

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.****ITA No.2 of 2025****Decided on: 4<sup>th</sup> June, 2025**

M/s J.C. International

.....Appellant

versus

Deputy Commissioner of Income Tax.

...Respondent

*Coram****The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.******The Hon'ble Mr. Justice Sushil Kukreja, Judge.******Whether approved for reporting?<sup>1</sup> No.*****For the appellant:****Mr. Vishal Mohan, Senior Advocate with Mr.Ashwani K. Lal, Mr.Aditya Sood and Mr.Praveen, Sharma, Advocates.****For the respondent:****Mr. Neeraj Sharma and Mr.Ishan Kashyap, Advocates.****Tarlok Singh Chauhan, Judge (Oral)**

Aggrieved by the order dated 16.01.2019, passed by the Income Tax Appellate Tribunal (for short the 'ITAT') whereby, deduction under Section 80-IC at the rate of 100% has been denied, the appellant has filed the instant appeal.

2. The appellant is engaged in the business of manufacturing of fans and geysers and commenced its activities w.e.f. 28.01.2004. Having been established in the A.Y 2005-06, post announcement of fiscal incentives by the Union Cabinet for the State of Himachal Pradesh started w.e.f. 07.01.2003, and

<sup>1</sup> Whether the reporters of Local Papers may be allowed to see the judgment? Yes.

eligible for various fiscal and non-fiscal benefits/incentives/exemptions offered by the Central and State Governments under different enactments, including benefit of deduction of profit under Section 80-IC of the Income Tax Act, 1961 (for short 'the Act') and, therefore, return of income was filed declaring Nil income after claiming deduction under Section 80-IC of the Act of Rs.1,56,17,200/- being 100% of the profit derived by appellant.

3. The appellant for the year A.Y. 2005-06 (being the first year of establishment of the unit) to A.Y. 2009-10 (fifth year) claimed deduction under Section 80-IC of the Act at the rate of 100% of the profit derived by the said unit. However, during the assessment year 2010-11 (i.e. sixth year), the appellant undertook substantial expansion at the unit by making additional investment in plant and machinery for an amount more than 50% of the opening book value of plant and machinery at such unit and claimed deduction under Section 80-IC @ 100% of the profit derived by the newly expanded unit during the said year. The appellant accordingly filed its return by declaring Nil income after claiming deduction of Rs.1,56,17,200/- as aforesaid.

4. The Assessing Officer vide order dated 29.01.2016, held that the condition of substantial expansion under Section

80-IC was applicable only for those units that existed and were operational as on 07.01.2003 (being the first date of window period specified in Section 80-IC as also the first date of incentives granted under other schemes/statutes), but not for the units that came into existence after the said date. Accordingly, the Assessing Officer denied deduction under Section 80-IC of the Act @ 100% of profit derived from the newly expanded unit, but allowed the same @ 25% of profit, by taking the relevant Assessment year (i.e. A.Y. 2013-14) as the “9<sup>th</sup> Assessment year” instead of “4<sup>th</sup> Assessment year” for the existing unit set-up in the previous year relevant to A.Y. 2005-06, thereby the Assessing Officer made disallowance of deduction under Section 80-IC for an amount of Rs.01,17,12,900/-.

5. Being aggrieved by the assessment order, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals), who vide its order dated 28.11.2017 had allowed the appeal and held the appellant to be eligible to claim deduction of 100% of its profit under Section 80-IC of the Act. However, this order of the Commissioner of Income Tax (Appeals) was assailed by the revenue before the ITAT, Chandigarh. According to the appellant, it was never served with the notice of the appeal and an *ex-parte* order dated

16.01.2019 came to be passed against the appellant, upholding the order of the assessing authority and thereby holding the appellant to be entitled to only 25% of the deduction during the year in question because the appellant had already availed the period of full deduction of 100% in the earlier five years.

6. It is vehemently argued by Mr. Vishal Mohan, Senior Advocate assisted by Mr. Ashwani K. Lal, Advocate and rightly so that the order passed by the ITAT is not sustainable in the eyes of law, as it is solely based upon the judgment rendered by two Judge Bench of the Hon'ble Supreme Court in ***CIT vs. M/s Classic Binding Industries (2018) 407 ITR 429***, which judgment, admittedly, has been over-ruled by a Hon'ble Bench of five Judges of the Hon'ble Supreme Court in ***Principal Commissioner of Income Tax, Shimla vs. Aarham Softronics (2019) 412 ITR 623***, wherein the Hon'ble Supreme Court has clearly held that an assessee who sets up a new industry of a kind mentioned in Section 80-IC(2) and starts availing exemption of 100% tax under Section 80-IC(3) (which is admissible for five years) can start claiming exemption at same rate of 100% beyond the period of five years on the ground that the assessee now carried out substantial expansion in terms of Section 80-IC(8)(ix) within aforesaid period of ten years in its manufacturing unit.

7. Learned counsel for the respondent has also not been able to dispute the legal position.

8. Obviously, in such circumstances, the judgment of the Constitution Bench of the Hon'ble Supreme Court is binding and, therefore, in terms thereof, the appellant is held entitled to the benefit under Section 80-IC @ 100% of its profit and findings to the contrary cannot be sustained and are accordingly set aside.

9. Accordingly, the appeal is allowed in the aforesaid terms. Pending applications, if any, also stand disposed of.

( **Tarlok Singh Chauhan** )  
**Judge**

June 04, 2025  
(naveen)

( **Sushil Kukreja** )  
**Judge**