IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.42 of 2002
Date of decision: 14.08.2015

The Commissioner of Income Tax, Patiala.

……Appellant

M/s Punjab Tractors Limited, Mohali

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Ms. Savita Saxena, Advocate for the appellant.

Mr. Divya Suri, advocate with Mr. Madhur Sharma, Advocate for the respondent.

Ramendra Jain,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 27.7.2000, Annexure-A2 passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh in ITA No.838 and 850/Chandi/94 for the assessment year 1987-88, claiming following substantial questions of law:-

"i) Whether on the facts and circumstances of the case, the ITAT was right in holding that the expenditure incurred for employees is business expenditure and is an allowable deduction and not covered under the head entertainment expenses?

ii) Whether on the facts and circumstances of the case, the ITAT was right in holding that the report of the auditor can be furnished before completion of assessment and accordingly deduction under section 80HHC is allowable in this case particularly when the ratio of the decision of the jurisdictional High Court in the case of ***CIT vs. Jaideep Industries*** reported in (1989) 180 ITR 81 supports the Assessing Officer's action?"

2. While admitting this appeal, this court vide order dated 23.2.2004 had observed that since the order of the Tribunal was in conformity with the law laid down by the Full Bench of this Court in ***CIT vs. Punjab Financial Corporation,*** (2002) 254 ITR 6, question No.(ii) did not require any further consideration. Consequently, the appeal was admitted qua question No.(i) only.

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee filed its return of income on 19.10.1987 declaring total income at ₹ 22,32,330/- which was assessed under Section 143(1) of the Act on 30.1.1989. It was noticed that the brought forward losses amounting to ₹ 52,67,100/- had been allowed which were not allowable as such. Consequently, the case was reopened under Section 143(2)(b) of the Act. Notice under Section 143(2) of the Act was issued to the assessee. The Assessing Officer made an addition of ₹ 3,51,199/- vide order dated 5.2.1990, Annexure A.1, on account of disallowance of entertainment expenses as against an amount of

₹ 2,86,199/-. The assessee's claim for deduction under Section 80HHC of the Act was also disallowed on the ground that the assessee had failed to furnish the report of accountant in the prescribed form alongwith the return of income as required under sub section 4 of Section 80HHC of the Act. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 13.5.1994, Annexure A.2, the CIT(A) partly allowed the appeal of the assessee. On the issue of disallowance of ₹ 3,51,199/- under section 37(2A) of the Act, the relief was declined but the CIT(A) allowed the deduction under Section 80HHC of the Act by placing reliance on judgment of the Gujarat High Court in ***CIT vs. Gujarat Oil and allied Industries,*** (1993) 201 ITR 325. Still not satisfied, the assessee and the revenue both filed appeals before the Tribunal. Vide order dated 27.7.2000, Annexure A.3, the Tribunal partly allowed both the appeals. It allowed deduction of ₹ 65,000/- as expenditure incurred for employees relying on its own order in the case of the assessee for the earlier years. Similarly relying on the decision of this Court in ***CIT vs. Shahzedanand Charity Trust,*** (1997) 228 ITR 292, the Tribunal confirmed the order of the CIT(A) regarding deduction under Section 80HHC of the Act. Hence the instant appeal by the revenue.

4. We have heard learned counsel for the parties.

5. The following two issues arise for consideration in this appeal:-

i) the amount of ₹ 65,000/- allowed by the Tribunal on account of expenditure on food or beverages provided by the assessee to its employees in office, factory or other place of their work as business expenditure;

ii) the deduction under Section 80HHC of the Act could be denied for late filing of audit report;

Learned counsel for the appellant-revenue submitted that the view taken by the Tribunal is unsustainable in view of the decision of this Court in ***CIT vs. Jaideep Industries***, (1989) 180 ITR 81.

6. On the other hand, learned counsel for the respondent-assessee supported the impugned order.

7. With regard to question No.(ii), as already observed, the issue stands concluded against the revenue by the decision of this Court in ***Punjab Financial Corporation's*** case (supra) holding that the requirement of filing the duly audited report alongwith the return cannot be treated as mandatory and the assessee cannot be deprived of the benefit of deduction if the same is filed before the finalization of the assessment. It was further observed that sub section (5) of Section 32AB of the Act is not mandatory and the Assessing Officer has discretion to entertain the audit report even though it has not been filed with the return and give benefit of the deduction to the assessee in terms of section 32AB(1) of the Act. In view of the above, the Tribunal was justified in deciding the said issue in favour of the assessee.

8. As regards question No.(i), the assessee had claimed deduction of ₹ 65,000/- which included ₹ 60,000/- incurred on the employees and ₹ 5000/- as basic deduction. A perusal of the order passed by the Tribunal shows that in the earlier years, it had allowed deduction to the extent of 50% only in respect of such expenses as the assessee had not maintained separate details of the expenditure. Herein the assessee had maintained separate details of such expenses and thus total deduction of the same had been rightly allowed in respect of such expenditure. We do not find any

error in the approach of the Tribunal warranting interference. Consequently, this question is also answered against the revenue.

9. In view of the above, both the questions are answered against the revenue and consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

(Ramendra Jain)
Judge

14.8.2015
Ashwani/gs