IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 451 of 2008

Date of Decision: 19.10.2015

Commissioner of Income Tax, Chandigarh-II
....Appellant.

Versus

M/s Punjab State Civil Supplies Corporation Ltd., Chandigarh
...Respondent.

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

PRESENT: Ms. Urvashi Dhugga, Advocate for the appellant.

Mr. J.S. Jaidka, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 29.11.2007 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 561/CHANDI/2007, for the assessment year 2004-05. The appeal was admitted by this Court vide order dated 15.12.2008 for considering the question of law proposed in para 5 of the appeal which is to the following effect:-

> Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was correct in not appreciating that Section 25AA is applicable in respect of only that rent which was unrealisable due to the circumstances of Rule 4 read with explanation

to Section 23(1) of the I.T. Act, 1961?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return of income on 25.10.2004 for the assessment year 2004-05 declaring loss of ₹ 120,53,19,245/-. The said return was processed on 2.3.2005. Thereafter, revised return was filed on 24.1.2005 at the same income in which refund claim of TDS at ₹ 31,66,027/- was made as against claim of ₹ 28,80,291/- in the original return. The return was processed on 30.3.2006 and notice under Section 143(2) of the Act was issued on 27.8.2006. Thereafter, notice under Section 142(1) along with questionnaire was issued on 3.10.2006. The assessee had not declared the income of rent of the building at Mohali amounting to ₹ 10 lacs. The assessment was framed by the Assessing Officer vide order dated 31.10.2006 (Annexure A-1) by making addition of ₹ 7,00,000/- after allowing deduction at the rate of 30% under Section 24(a) of the Act. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 12.3.2007 (Annexure A-2) dismissed the appeal of the assessee. Still dissatisfied, the assessee filed an appeal before the Tribunal who vide order dated 29.11.2007 (Annexure A-3) allowed the appeal and set aside the order of the CIT(A) and directed the Assessing Officer to delete the impugned addition of ₹ 7,00,000/- made on account of income from house property. Hence, the present appeal.

3. Learned counsel for the revenue-appellant submitted that the Tribunal was in error as the unrealized rent was to confirm to the requirements as laid down under Rule 4 of the Income Tax Rules, 1962 (for brevity "the Rules") which have been made in pursuance to

Explanation to Section 23 of the Act. In support of his contention, learned counsel has relied upon the judgments in **D.C. Anand and sons v. Commissioner of Income Tax, New Delhi (1981) 131 ITR 77 (Del)** and **D.M. Vakil v. Commissioner of Income Tax (1946) 14 ITR 298 (Bom).**

4. On the other hand, learned counsel for the assessee supported the order passed by the Tribunal.

5. After hearing learned counsel for the parties, we do not find any merit in the appeal.

6. The solitary question that arises in this appeal is whether the rent of building at Mohali amounting to ₹ 10 lacs was receivable by the assessee in this year or not?

7. It would be expedient to refer to Explanation to Section 23 of the Act, which reads thus:-

> "**23. Annual value how determined.**- (1) For the purposes of Section 22, the annual value of any property shall be deemed to be-
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> (a) the sum for which the property might reasonably be expected to let from year to year; or
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> (b) Where the property or any of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), amount so received or receivable; or
>
> (c) Where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the

actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable:

Provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.

Explanation – For the purposes of clause (b) or clause (c) of this sub-section, the amount of actual rent received or receivable by the owner shall not include, subject to such rules as may be made in this behalf, the amount of rent which the owner cannot realise.

XX XX XX"

8. As per the aforesaid Explanation, the amount of rent which the owner cannot realize is not to be included in clause (b) or clause (c) of sub-section (1) of Section 23 of the Act for determining the amount of actual rent received or receivable by the owner.

9. The Tribunal relying upon Section 25AA of the Act had held that the unrealized rent could not be taxed in the year in question but would fall for taxation in the year it is so realized even if the assessee may not be owner of the property in that previous year. We do not find any infirmity in the approach of the Tribunal as according to Section 25AA of the Act as well, the unrealized rent cannot be taken to be

taxable in the hands of the assessee under the head "income from house property" when it is not realizable.

10. Learned counsel for the revenue had referred to Rule 4 of the Rules. From a perusal of the orders passed by the Assessing Officer, the CIT(A) and the Tribunal, we notice that no aid was taken by the Assessing Officer either in his order or before the CIT(A) or the Tribunal from the said rule. However, no argument was raised based on Rule 4 of the Rules and, therefore, no reference was made by the Tribunal to Rule 4 of the Rules. Moreover, the revenue could not refer to any material on record to show that the assessee was ever confronted to establish the requirements of Rule 4 of the Rules to claim benefit of unrealized rent. Accordingly, the substantial question of law claimed on that basis does not arise.

11. Adverting to the judgments in **D.C. Anand and sons** and **D.M. Vakil's cases (supra)** relied upon by the learned counsel for the appellant-revenue, it may be noticed that the principle of law enunciated therein, is well recognized, however, in view of the findings noticed hereinbefore, no benefit can be derived by the revenue from the aforesaid pronouncements.

12. In view of the above, there is no merit in the instant appeal and the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

October 19, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**