

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No. 134 of 2009 (O&M)
Date of decision: 12.8.2015**

Commissioner of Income Tax I, Ludhiana

.....Appellant.

Shri Ramesh Gupta C/o M/s R.K.Clothe Mills, Ghass Mandi, Ludhiana.

.....Respondent

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

Present: Mr. Rajesh Katoch, Advocate for the appellant-revenue.
Mr. S.K.Mukhi, Advocate for the respondent-assessee.

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 31.7.2008 Annexure A.III passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh in ITA No.503/Chandi/2008, for the assessment year 2004-05, claiming following substantial questions of law:-

“i) Whether the Hon'ble ITAT was right in facts and circumstances of the case in treating interest income as business income instead of income from other sources?

ii) Whether the Hon'ble ITAT was right in law and facts in allowing the B/F loss to the tune of ₹ 17,50,833/- to be set off against the income which was not allowed by the AO?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee is an

individual. He filed his return of income on 18.10.2004 declaring income of ₹ 3,94,636/-. Assessment was finalized under section 143(3) of the Act on 29.9.2006 at a total income of ₹ 21,68,094/-. The income from interest was assessed by the Assessing Officer under the head income from other sources and brought forward business losses were not allowed to be set off against this income. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 28.3.2008, Annexure A.II, the Assessing officer treated the interest income as income from business and also allowed the set off of the brought forward losses amounting to ₹ 17,50,833/-. The revenue went in appeal before the Tribunal. Vide order dated 31.7.2008, Annexure A.III, the Tribunal dismissed the appeal. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.

4. The Assessing officer treated the income earned by the assessee from money lending business as income from other sources. The CIT(A) reversed the said finding and held that the income of the assessee fell under the head 'Income from business or profession'. The CIT(A) noticed that in the assessment order passed by the Assessing Officer for the subsequent assessment year 2005-06, the Assessing Officer himself had recorded that during the assessment year 2004-05, the assessee had earned income of ₹ 18,18,134/- from money lending business. The relevant findings read thus:-

“The affairs of the assessee during the preceding and succeeding assessment years also need to be observed to reach a logical conclusion. As already mentioned above, vide letter dated 26.2.2008, the learned counsel has intimated that the AO while framing the assessment order under section 143(3) for the assessment year 2005-06 has himself affirmed that the assessee was carrying on money lending business during the

assessment year 2004-05 and earned an income of ₹ 18,18,134/- therefrom. The assessee also filed a copy of the assessment order for the assessment year 2005-06 which is placed on record. The following observations of the AO in paras 5 and 6 on pages 3 and 4 of the assessment order for the assessment year 2005-06 are reproduced for the sake of convenience:

“The affairs of the assessee during the preceding and succeeding assessment years also need to be observed to reach a logical conclusion. As per information supplied by the assessee himself, during the preceding assessment year, he was engaged in the business of money lending. He had shown an income of ₹ 18,18,134/- from that business for the assessment year 2004-05. It may not be out of place to mention that during that year also, he was the only working partner of M/s R.K.Cloth Mills. For the succeeding assessment year i.e. assessment year 2005-06 again the assessee has done the business of money lending and has shown an income of ₹ 11,36,678/- from that business. However, during the current assessment year such business of money lending was not carried out by the assessee. Instead he devoted his time to purchase and sale of shares as detailed above.

The above facts, seen in totality show that the affairs of the firm do not occupy his full time and attention. Year after year, he has been utilizing his time and attention in other business activities, may be money lending share trading. During the preceding years when the assessee was carrying on the business of money lending, he was occasionally making investments in share and it could be said that dealing in shares was for investment purposes and not as regular business activity.”

Therefore, once the AO is himself accepting that the assessee is engaged in money lending business and he has made a categorical observation in this regard in the assessment framed

in the assessment year 2005-06 (supra), there appears to be no justification in considering the income from similar source in the assessment year under consideration as income under the head 'Other sources' against the claim made by the appellant otherwise.

In view of the above discussion and particularly taking into account the fact that the AO has already accepted in the assessment year 2005-06 that assessee was engaged in money lending activity, the claim of the appellant that the income earned during the relevant previous year from interest is the income from business and profession has to be accepted. This ground of appeal is therefore allowed.”

5. The Tribunal affirmed the order of CIT(A) with the following observations:-

“15. The first ground raised by the revenue in treating the income earned from money lending as business income, therefore, is identical to the ground raised in the above appeal. The only difference in the present appeal is that there was no interest income in earlier years meaning thereby there is no past history of the present assessee. However, it was argued that the assessee belongs to the same family and lending started during the impugned year only. During argument, learned counsel from both sides agreed to the effect that this is the first year of lending money and consequent earning therefrom and also that the present assessee is also from the same family.

After hearing the rival submissions and on perusal of record, we are of the view that even a single or isolated transaction can constitute business if it bears a clear indicia of trade, although the activity would normally be systematic and organized characterized by a course of dealing. Identical ratio was laid down by the Hon'ble Madras High Court in the case of CIT vs. R.M. Meenakshi Sundram (212 ITR 220) (Mad.). Identical ratio was laid down by the Hon'ble Apex Court in the case of G.Venkataswami Naidu & Co. vs. CIT (35 ITR 594) (SC).

Narain Swadeshi Weaving Mills vs. CEPT (26 ITR 765) (SC) and Lok Shikshan Trust vs. CITY (101 ITR 234) (SC). It is not necessary that in every situation the past history has to be seen because even for a past history there is a starting point. It is an admitted fact that the other members of the family are also doing the same systematic and organized activity of earning such interest income, therefore, there is no reason to deny the benefit, if any, to the present assessee. Since we have discussed the issue in detail in the preceding paras of this order, this ground of the revenue is also having no merit, therefore, dismissed.”

Learned counsel for the revenue could not demonstrate any error or illegality in the aforesaid findings of CIT(A) and the Tribunal which may warrant interference by this Court.

6. Once it has been held that the income of the assessee was to be assessed under the head income from business or profession, the assessee was thus entitled to set off against carry forward losses. The Tribunal was justified in allowing the same. Even for the subsequent assessment year i.e. 2005-06, the interest income was accepted as income from business or profession. Learned counsel for the appellant has not been able to show any illegality or perversity in the findings recorded by the Tribunal.

7. In view of the above, substantial questions of law are answered against the revenue. The appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

August 12, 2015
'gs'

(Ramendra Jain)
Judge