IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 188 of 2009 (O&M)
Date of decision: 12.8.2015

Commissioner of Income Tax I, Ludhiana

……Appellant.

Smt.Pushpa Gupta

…..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 order shall dispose of ITA Nos.188, 533 and 534 of 2009 as the issue involved in all the three appeals is identical. However, the facts are being extracted from ITA No.188 of 2009.

2. ITA No.188 of 2009 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.3 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh in ITA No.499/CHANDI/2008, for the assessment year 2004-05, claiming following substantial questions of law:-

> "i) Whether the Hon'ble ITAT was right in law and facts and in the circumstances of the case in treating the interest income as business income whereas the same was assessed under the head 'income from other sources'?

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ii) Whether the Hon'ble ITAT was right in law and facts in directing the AO to adjust B/F losses of ₹ 72,28,044/- related to the assessment year 2001-02 against interest Income of ₹ 75,35,208/-?

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee is an individual. She filed her return of income on 15.10.2004 declaring Income of ₹ 2,69,354/-. The assessee derives income from profit from sale and purchase of shares and interest. In the audit report in para B Column 8(a), the nature of the business has been mentioned as trading of shares, debentures and mutual funds etc. and money lending. The assessee adjusted the B/F losses relating to the assessment year 2001-02 amounting to ₹ 72,28,044/- from the interest income of ₹ 75,35,208/- from the Income of assessment year 2004-05. The assessee treated the interest income as business income. The Assessing Officer treated the interest income as income from other sources and did not allow the benefit of set off of losses of the assessment year 2001-02. Accordingly, the Assessing Officer computed the total income of the assessee at ₹ 74,97,400/- vide order dated 26.9.2006, Annexure A.1. The assessee went in appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 6.3.2008, Annexure A.2, the CIT(A) allowed the appeal on the issue of interest income by treating the same as business income. The CIT(A) also allowed the issue of set off of brought forward business losses with profit from money lending business of the assessee considering that the income from interest under the head 'Income from business or profession'. Not satisfied with the order, the department went in appeal before the Tribunal. Vide order dated 31.7.2008, Annexure A.3, the Tribunal dismissed the

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appeal. Hence the instant appeals by the revenue.

4. We have heard learned counsel for the parties.

5. It was not disputed by the learned counsel for the parties that the Tribunal while adjudicating the issue in favour of the assessee had relied upon ITA No.269/Chandi/2008 against which ITA No.208 of 2009 (***Commissioner of Income Tax I, Ludhiana vs. Late Smt.Reeta Gupta C/o M/s R.K.Cloth Mills, Ghass Mandi, Ludhiana)*** has been filed. In view of our order of even date passed in ITA No.208 of 2009 (supra), the questions are answered in the same terms. The appeals are dismissed.

(Ajay Kumar Mittal)
Judge

August 12, 2015 **(Ramendra Jain)**
'gs' **Judge**

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