

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

**ITA No. 208 of 2009 (O&M)
Date of decision: 12.8.2015**

Commissioner of Income Tax I, Ludhiana

.....Appellant.

**Late Smt.Reeta Gupta C/o M/s R.K.Cloth 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.269/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 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 was an individual. She had filed her return of income on 10.10.2004 declaring income of ₹ 42,20,191/- i.e. ₹ 1,75,396/- from business of clothes as proprietor of M/s Reeta Industries and ₹ 41,95,010/- from money lending business. The interest income from money lending had been shown at ₹ 48,20,155/- and net profit of ₹ 41,95,010/-. While framing assessment, the Assessing Officer assessed income at ₹ 70,32,250/- by treating the interest income of ₹ 47,05,978/- as income from other sources instead of business income as claimed by the assessee and did not allow set off against brought forward losses. The interest was received from eight persons and the assessee used own funds for money lending except in case of her daughter in law. The assessee went in appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 12.2.2008, Annexure A.II, the appeal was allowed on the issue of interest income by treating the same as business income as against income from other sources. The issue of set off of brought forward business losses of earlier years with profit from money lending business of the assessee considering it income from interest under the head 'Income from business or profession' was also allowed. Aggrieved by the order, the Department went in appeal before the Tribunal. Vide order dated 31.7.2008, Annexure A.III, the Tribunal dismissed the appeal holding that the interest income was business income. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.
4. With regard to question No.(i), the Assessing Officer held that the assessee had not carried out any business of money lending as the said activity was not recognized as a money lending by the Banking Regulation

Act. Interest earned on deposits is assessable under the head 'Income from other sources' under Section 56 of the Act. The assessee had shown receipt of interest only from eight parties during the whole year which cannot be taken as the main business activity of the assessee. The activity carried on by the assessee can be termed as internal management of funds which is not the money lending business but spread over to the family members or other connected persons.

5. The CIT(A) while allowing the appeal filed by the assessee held that the assessee had been carrying on business of money lending for the last many years and there was continuous rotation of money wherein deposits were made with different parties. It was also recorded that for the immediately preceding assessment year 2003-04, the Assessing Officer vide order dated 9.1.2006 under Section 143(3) of the Act had accepted similar claim of the assessee. Thus, the claim of the appellant for the current assessment year 2004-05 was also accepted. The relevant findings read thus:-

“For rejecting the appellant's claim, the AO has observed that the money during the relevant period has been advanced by the appellant to only 8 parties. However, as already discussed, there cannot be any yard stick regarding minimum number of parties from whom interest is received to decide as to whether such income could be considered to be the business income or otherwise. This alone would not decide the nature of interest income of an assessee and the entirety of the facts and circumstances would have to be taken into account. Another objection of the AO in this regard, is that appellant has not taken any licence for money lending business. However, as already pointed out by the learned counsel, no such licence is required to be taken for an individual and such licences are required for corporate only. Further the decision of ITAT,

Bombay Bench in the case of B.N.Khandelwal Vs. ITO (supra) as reproduced in the written submissions of the learned counsel for the appellant above, supports the case of the appellant in this respect. As held by the Hon'ble Tribunal, the absence of money lending licence is not so crucial for the purposes of Income Tax Act, 1961 if nature of activity undertaken by the assessee can be decided on the face of other facts. In that case, the assessee was shown to be engaged in granting loans on regular basis and income has also been shown as business income, which also reflected the intention of the assessee. Therefore, in the facts and circumstances of that case, in the absence of licence for money lending business, interest earned by the assessee was held to be from business and profession. The principle laid down in this decision of the Hon'ble ITAT also goes in favour of the appellant's ground.

Further, the AO has observed that the appellant had not debited any expenses on account of business of money lending. However, as pointed out in the written submissions of the appellant, the appellant rather fruitfully deployed its funds with the parties of repute whom she was confident for the security of principal as well as interest. I agree with the contention of the learned counsel that it is not essential that to run such business the appellant must have incurred such expenses.

In view of the above discussion and taking into account the fact that the appellant in the earlier years was also claiming interest income as business income while filing returns of income on this basis and the same having been accepted by the department in the order under Section 143(3) dated 9.1.2006 for the assessment year 2003-04, the claim of the appellant that the income earned during the relevant previous year from interest is the income from business and profession is to be accepted. This ground of appeal is therefore, allowed.”

6. The Tribunal while upholding the findings recorded by the CIT

(A), noticed in its order dated 31.7.2008, Annexure A.III as under:-

“10....We are of the view that it is not a precondition that every individual is necessarily to get himself registered with RBI in the business of money lending. More important is that it should be declared for the purpose of taxation and that has been done by the assessee. The moot question before us is the consideration of categorization of income as “business income” or “income from other sources”. Where the assessee is regularly engaged in money lending business and is earning interest therefrom, interest income is to be taxable under the head “business income”, regardless of the fact that the assessee has obtained any licence for such money lending business or not. For this proposition, we are fortified by the decision in the case of Smt. Gulab Sundari Bapana vs. DCIT (79 ITD 115) (Mum) and in the case of Loka Shikshana Trust vs. CIT (101 ITR 234) (SC), wherein the Hon'ble Apex Court held that the regular course of dealing in money lending could not be brushed aside merely for the reason that the assessee was not having any money lending licence. In that case, the assessee entered into number of transactions over the year and earned interest on loans and advances given in the ordinary course of its activities. The Hon'ble Apex Court held that “absence of money lending licence is not so crucial for the purpose of Income Tax Act, if the nature of activity undertaken by the assessee can be decided on the basis of other facts.” Admittedly, the assessee was engaged in granting of loans on regular basis and interest income was shown as business income, also attained finality on identical fact in earlier assessment year and accepted by the department as business income, the department is not justified in diverting from its earlier stand in the impugned assessment year. This ground of the revenue therefore, is having no merit.”

Learned counsel for the revenue could not demonstrate any error or perversity in the findings recorded by CIT(A) as well as the Tribunal

warranting interference by this Court.

7. With regard to question No.(ii), the Assessing Officer held that income from interest is not to be assessed as income from business, rather the same is covered under the head income from other sources under section 56(1) of the Act. The CIT(A) reversed the finding recorded by the Assessing Officer which was upheld by the Tribunal. 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 entitled for set off against carry forward losses. The Tribunal was thus justified in allowing the same.

8. Accordingly, the substantial questions of law are answered against the revenue. The appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

August 12, 2015
'gs'

(Ramendra Jain)
Judge