

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

**ITA No. 311 of 2009 (O&M)
Date of decision: 1.9.2015**

Commissioner of Income Tax II, Chandigarh

.....Appellant

M/s Agro Dutch Industries Limited, Chandigarh

.....Respondent

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

Present: Ms. Urvashi Dhugga, Advocate for the appellant-revenue.

Mr. Ravi Shankar, Advocate with Mr. B.M.Monga, Advocate for
the assessee-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 15.10.2008, Annexure A.3 passed by the Income Tax Appellate Tribunal, Chandigarh Bench, 'B' in ITA No.356/Chandi/2008, for the assessment year 2001-02, claiming following substantial question of law:-

“Whether on the facts and in the circumstances of the case and in law, the order of ITAT is perverse as Tribunal has failed to adjudicate the issue in treating the interest on FDRs income under the head income from other sources and allowed the corresponding deduction of interest expenses under section 36(1)(iii) of the Income Tax Act, instead

under section 57(iii) of the Act?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee declared total income of ₹ 1,10,860/- in its return of income filed on 30.10.2001 including income under the head 'income from business and profession' of ₹ 1,36,478/- and a loss of ₹ 25,617/- under the head 'income from other sources'. The loss under the head 'income from other sources' was computed as under:-

Interest from banks on FDRs	₹ 11,31,147/-
Less :Interest expenditure	₹ 11,56,764/-
Loss	₹ 25,617/-

The Assessing officer vide order dated 20.12.2007, Annexure A.1 determined income at ₹ 26,27,973/- under the head 'income from other sources' against loss of ₹ 25,617/- returned by the assessee. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The assessee did not contest the determination of interest income at ₹ 26,27,973/-. Out of the said amount, a sum of ₹ 16,15,449/- was claimed as pertaining to the letters of credit opened for acquiring capital goods. The said income had been considered to reduce the capital cost and this plea had been upheld by the CIT(A). Consequently, the appeal was partly allowed by the CIT(A) vide order dated 27.2.2008, Annexure A.2. Against the balance income of ₹ 10,12,524/- in revenue account assessable under the head 'income from other sources', the assessee claimed deduction under section 57(iii) of the Act amounting to ₹ 11,56,764/- before the Tribunal by filing appeal. The Tribunal vide order dated 15.10.2008, Annexure A.3 relying upon the decision of the Apex

Court in ***CIT vs. Karnal Cooperative Sugar Mills Limited***, (2000) 243 ITR 2 held that the interest paid to ICICI and IDBI bank on funds utilized to make the impugned FDRs was allowable deductions under section 57(iii) of the Act against the interest income on such FDRs. The appeal was thus allowed. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.

4. The Tribunal came to the conclusion that the income derived by the assessee was exigible to tax under the head 'income from other sources'. Once that was so, any expenses incurred by the assessee for earning the said income would fall under Section 57(iii) of the Act. Accordingly, amount of ₹ 11,56,764/- which were the expenses incurred by the assessee for earning the interest under the head 'income from other sources' was rightly allowed by the Tribunal. The relevant findings recorded by the Tribunal read thus:-

“10. In our considered opinion, the documents and the material on record clearly establish that the assessee has incurred interest on loans from ICICI and IDBI bank which have been utilized for the purchase of the FDRs which have yielded the interest income in question. The FDRs in question have been placed as margin money for obtaining letters of credit for imports made by the assessee. Thus, factually speaking the interest paid as connected with the fixed deposits was credited by the assessee for opening the letter of credit. At this point we may note that the interest income of FDRs in relation to the letters of credit obtained for import of capital goods stands capitalized i.e. it has been reduced from the capital cost by the CIT(A). The interest income remaining relates to the imports on revenue account alone which is not disputed by the Department.

11. The observation of the CIT(A) in para 12 to the effect that 'the interest expenses in the case of the assessee has not been expended for the purchase of earning the interest income', in

our considered opinion, is dehors the material on record. Infact the said observation is a mere bald assertion without reference to any fact situation or material. Moreover, we find that this was not the case of Assessing Officer at any stage.

12. The case of the assessee before the Assessing Officer was that it has incurred interest expenditure on funds utilized to make FDRs in question which have yielded interest income. The FDRs were kept in the bank as margin money of obtaining loans. In support of the connection of the interest paid on loan with the FDRs in question, the assessee has enclosed the relevant account statements, details of interest paid etc. before the Assessing Officer as is evident from para 2.4 of the assessment order, the Assessing Officer has not negated the connection between the interest paid on loan and FDRs. The only difficulty made out by the Assessing Officer to deny deduction claimed under section 57(iii) was that in view of the voluminous details, interest paid to ICICI and IDBI for the funds utilized for the FDRs, cannot be exactly determined. Therefore, considered in this light and especially in view of the fact situation, that there was no material has been referred to by the CIT(Appeals) to hold that the interest expenditure has not been expended for the impugned FDR, we do not find any weight in the aforesaid conclusion by the CIT(Appeals). As a consequence, it has to be held that the interest paid to ICICI and IDBI band on funds utilized to make the impugned FDRs is an allowable deduction under section 57(iii) against the interest income on such FDRs.

13. Thus, the claim of the assessee under section 57(iii) of the Act on account of interest expenditure amounting to ₹ 11,56,764/- being more than the amount of interest assessable under the head 'income from other sources', there remains a loss of ₹ 1,44,240/- assessable under the head 'income from other sources'. We hold accordingly.”

5. Learned counsel for the revenue has not been able to show that

the findings recorded by the Tribunal are erroneous or perverse in any manner. Consequently, the substantial question of law is answered against the revenue. The appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

September 1, 2015
'gs'

(Ramendra Jain)
Judge