IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 586 of 2009 (O&M)
Date of decision: 12.8.2015

Smt.Pushpa Gupta

……Appellant.

Commissioner of Income Tax, Range I Rishi Nagar, Ludhiana.

…..Respondent

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

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

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos.586 and 587 of 2009 as the issue involved in both the appeals is identical. However, the facts are being extracted from ITA No.586 of 2009.

2. ITA No.586 of 2009 has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 27.2.2009 Annexure A.I passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh in ITA No.1064/CHD/2008, for the assessment year 2002-03, claiming following substantial questions of law:-

"i) Whether the Tribunal was not justified in confirming the very action of issuance of notice under section 148 of the Income Tax Act, 1961, by the authorities below, as valid without appreciating the trite law in the case of M/s Berger Paints India Limited vs. CIT, 266 ITR 99 (SC) wherein the Apex Court clearly held that in case the department has not challenged one issue in some assessees then it is precluded from taking action in the case of other assessees under similar facts and circumstances while in the present case since the AO itself has accepted the income from interest from money lending income as business income in AY 2005-06 under scrutiny assessment for the AY 2005-06 vide its order dated 21.11.2007?

ii) Whether the Tribunal was not justified in confirming the very action of issuance of notice under section 148 of the Income Tax Act, 1961, by the authorities below, as valid without appreciating the fact that though the ITAT itself has held on merits that the income from interest from money lending income is business income and not income from other sources which is the only reason for the very issuance of notice under section 148 of the Income Tax Act, 1961 so the orders of the ITAT are perverse?

iii) Whether the order of the Tribunal is perverse and against the provisions of law?"

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is an individual. She is engaged in the business of trading of shares, debentures and mutual funds. She has interest income from the business of money lending. She filed return of income for the assessment year 2002-03 on 31.10.2002 declaring total income of ₹ 16,796/- from the business of trading of shares, debentures and mutual funds and interest from the business of money lending. The return was processed on

26.2.2003 under Section 143(1) of the Act. Refund of ₹ 2,28,364/- was issued to the appellant. On 25.9.2006, the Assessing Officer issued notice under section 148 of the Act to the appellant and directed her to file the return of income. The appellant filed reply dated 31.3.2007 requesting the Assessing Officer to treat the return as processed under section 143(1) of the Act as filed in response to the notice issued under Section 148 of the Act. After considering the reply, assessment order was passed on 28.12.2007, Annexure A.3 whereby the Assessing Officer treated the income from interest from money lending business duly declared as per copy of income tax return, balance sheet, trading and profit and loss account as income from other sources. Against the order passed by the Assessing Officer, the appellant filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 26.9.2008, Annexure A.2, the CIT(A) treated the income from interest from money lending as business income. However, the CIT(A) upheld the orders of the Assessing officer qua issuance of notice under Section 148 of the Act. Feeling aggrieved, the assessee approached the Tribunal. Vide order dated 27.2.2009, Annexure A.1, the Tribunal though treated the interest income from money lending as business income against the holding of the Assessing Officer who treated the same as income from other sources but confirmed the order of the authorities below on the issuance of notice under section 148 of the Act. Hence the instant appeal by the assessee.

4. We have heard learned counsel for the parties.

5. In view of judgment of even date in ITA No.188 of 2009 ***(Commissioner of Income Tax I, Ludhiana vs. Smt.Pushpa Gupta)*** deciding the issue by holding that the income derived by the assessee was

assessable under the head 'Income from business or profession', learned counsel for the appellant assessee submitted that the appeals have been rendered infructuous and may be disposed of as such. Ordered accordingly.

(Ajay Kumar Mittal)
Judge

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