IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No. 20509-CII of 2013 &
ITA No. 89 of 2009 (O&M)

Date of Decision: 3.12.2015

The Commissioner of Income-tax, Karnal

....Appellant.

Versus

M/s Liberty Shoes Ltd., Karnal

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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

PRESENT: Mr. Yogesh Putney, Advocate for the appellant.

Mr. S.K. Mukhi, Advocate for the 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 20.6.2008 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Delhi Bench "B", New Delhi (hereinafter referred to as "the Tribunal") in ITA No. 2251/(Del)/2006 for the assessment year 2001-02, claiming the following substantial questions of law:-

(i) Whether on the facts and in the circumstances of the case, the Ld. ITAT was right in law in confirming the order of the CIT(A) on the issue of netting of interest for the purpose of computation of deduction u/s 80 HHC of the Act?

(ii) Whether on the facts and on the circumstances of the case, the Ld. ITAT was right in law in confirming the order of the CIT(A) directing the AO to treat the expenditure on the glow sign-boards as revenue expenditure?

(iii) Whether on the facts and in the circumstances of the case, the Ld. ITAT was right in law in upholding the orders of the CIT(A) in deleting the addition made by the AO on account of bad debts whereas no details had been furnished by the assessee before the Assessing Officer and deduction u/s 36(1)(vii) is allowable only if the bad debts is written off as irrecoverable subject to the provisions of sub-section (2) of Section 36?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return on 28.11.2000 for the assessment year 2001-02 declaring income at ₹ 5,91,03,210/-. The said return was processed under Section 143(1) on 29.4.2002 and refund of ₹ 41,64,440/- inclusive of interest amounting to ₹ 3,69,954/- under Section 244A of the Act was issued. The case was taken up for scrutiny and notices under Sections 142(1) and 143(2)

along with a detailed questionnaire were issued. The Assessing Officer framed the assessment under Section 143(3) of the Act vide order dated 25.3.2003 (Annexure A-1) and disallowed the deduction under Section 80HHC of the Act on interest income amounting to ₹ 18,10,236/- holding that the interest on deposits from banks was neither a business income nor is eligible for deduction under Section 80HHC of the Act. The claim regarding netting of interest was also not accepted by the Assessing Officer. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 7.3.2006 (Annexure A-2) partly allowed the appeal. The CIT(A) directed the Assessing Officer to allow deduction under Section 80IA of the Act on duty draw back and DEPB etc. and to allow the benefit of netting of interest for computing deduction under Section 80HHC of the Act. Further, the Assessing Officer was directed to treat expenditure on glow sign boards as of revenue in nature and to delete the disallowance of ₹ 13,52,389/- made on account of bad debts. Against the order, Annexure A-2, the revenue filed an appeal before the Tribunal. The Tribunal vide order dated 20.6.2008 (Annexure A-3) partly allowed the appeal upholding the order of the CIT(A). Hence, the present appeal by the revenue.

3. This Court vide order dated 27.8.2009 admitted the appeal to consider question (i). Question No. (ii) was covered against the revenue by the judgment of this Court dated 22.4.2008 passed in ITR No. 2 of 2000 and this fact was also not disputed by the learned counsel for the revenue and the said question was declined. Similarly, question No.(iii) was not considered for admission by this Court as it involved

disputed question of fact and the learned counsel for the revenue was not able to show that the said question had not become final.

4. Learned counsel for the revenue has filed an application bearing CM No. 20509-CII of 2013 under Section 260A(7) of the Act read with Section 151 of the Code of Civil Procedure seeking permission to re-frame the substantial questions of law and has sought to claim the following two substantial questions of law:-

1. Whether the Ld. ITAT is right in law in holding the interest earned on FDRs as income derived from export, in absence of any nexus between the interest earned and the exports made particularly when the interest was earned on the FDRs and does not fall under the head 'Profits and Gains from Business and Profession'?
2. Whether the Ld. ITAT was right in concluding that the interest income earned on FDR's is eligible for deduction under Section 80HHC after netting with interest expenditure without going into the findings of the AO with regard to the nature of the interest earned by the assessee being taxable under the head income from other sources under section 56 of the Income Tax Act, 1961?

5. Learned counsel for the parties are not at variance in so far as consideration of the amended questions of law are concerned. Accordingly, CM No. 20509-CII of 2013 is allowed and instead of

question No. (i), questions No.1 and 2, as noticed above, are to be considered.

6. It was urged on behalf of learned counsel for the revenue that the following issues arise for consideration in this appeal:-

i) Whether the interest on FDRs and the interest on refund of income tax are business activities of the assessee and was to be taken into consideration for the purpose of deduction under Section 80HHC of the Act?

ii) Whether the netting of interest on FDR is eligible for the purposes of deduction under Section 80HHC of the Act?

7. It was further contended that no definite finding has been recorded by the CIT(A) and also the Tribunal whether the interest on FDRs and interest on refund of income tax were related to the business activities of the assessee or not and, therefore, could be taken into consideration for the purpose of deduction under Section 80HHC of the Act. Equally, the issue with regard to netting of interest was also raised by arguing that the same has also not been appropriately considered by the CIT(A) as well as the Tribunal in view of various judgments of this Court. On the aforesaid premises, prayer was made to set aside the orders of the CIT(A) and the Tribunal and to remand the case to CIT(A) to decide afresh after affording opportunity of hearing to the parties.

8. On the other hand, learned counsel for the respondent-assessee supported the orders passed by the CIT(A) and the Tribunal.

9. After hearing learned counsel for the parties, we find force in submission made by learned counsel for the revenue.

10. A perusal of order of the CIT(A) and the Tribunal shows that no definite finding has been recorded by them whether the interest income earned by the assessee is derived from the business activity or not. Similarly, the issue of netting of interest has not been considered in the light of the various pronouncements of this Court. Thus, it is considered appropriate that the aforesaid issues of interest on FDRs and interest on refund of income tax for determining the deduction under Section 80HHC of the Act and also netting of interest for the purposes of deduction under Section 80HHC of the Act are referred back to the CIT(A) to decide the same in accordance with law after hearing both the parties.

11. Accordingly, the issues, as noticed above, are remanded to the CIT(A) to decide the same afresh in accordance with law after hearing both the parties. The appeal stands disposed of accordingly. Needless to say anything observed hereinbefore shall not be taken to be expression of opinion on the merits of the case.

(AJAY KUMAR MITTAL)
JUDGE

December 3, 2015
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(RAMENDRA JAIN)
JUDGE