IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Income Tax Appeal No. 247 of 2011
Date of Decision: 27th May, 2015

The Commissioner of Income Tax-II, Amritsar ..Appellant

versus

M/s Vijay Bharat Cigarette Store, Dhalhousie Road, Pathankot ..Respondent

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE G.S.SANDHAWALIA.

Present : Mr. Denesh Goyal, Advocate, for the appellant.
Mr. S.K.Mukhi, Advocate, for the respondent.

****

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

This is an appeal against the order of the Income Tax Appellate Tribunal allowing the respondent's appeal against the order of the Commissioner of Income Tax (Appeals) passed under Section 263 of the Income Tax Act, 1961 (for short 'the Act') for the assessment year 2004-05. The appellant contends that the following substantial question of law arises in this appeal:-

> "*Whether on the facts and circumstances of the case, Hon'ble ITAT Bench was justified in law and on the facts in holding that learned CIT has no jurisdiction under section 263 of the Act to substitute his view in place of view taken by the A.O. being quasi-judicial authority.*"

In our view, the substantial question of law does not arise in this case.

2. On 01.11.2004, the respondent filed its return of income in the sum of ₹ 7,07,630/-. On 11.02.2005, the return was processed under section 143(1) of the Act. The Assessing Officer adopted proceedings for reopening under

Sections 147 and 148 of the Act and on 03.07.2007 made an assessment under section 143(3) and 147 of the Act at an income of ₹ 9,21,340/-.

3. On 13.08.2007, the respondent filed an appeal against the above order of assessment dated 03.07.2007. The Commissioner of Income Tax (Appeals) dealt with in detail the respondent's case regarding payment of interest to its partners. By an order dated 02.01.2012, C.I.T. (A) noted that under Clause 17 of the partnership-deed, the partners were entitled to receive from the firm the interest @ 12% per annum on their capital as per books of the firm to be calculated in their credit balance in the firm's books as on the first day of the accounting period. It was held that the payment of interest was in accordance with the provisions of Section 40(b)(iv) of the Act and the C.I.T. (A) deleted disallowance of ₹1,66,968/- and held the respondent to be entitled to total relief of ₹ 2,13,710/-. It is important to note that it was held that the partners had a credit balance on the last date of the previous accounting year and could claim interest on this balance as per the terms of the partnership deed. This order has attained finality and has not been challenged.

4. In the meantime, the C.I.T. (A) had initiated proceedings under section 263 of the Act contending that the Assessing Officer had failed to make necessary enquiries and to consider the matter in its correct perspective. On 25.01.2010, a notice to show-cause was issued in respect of the proceedings under section 263 of the Act. By an order dated 12.03.2010, C.I.T. passed an order in the proceedings under section 263 of the Act. The C.I.T. set-aside the assessment order dated 03.07.2007 and directed the Assessing Officer to pass a fresh order after proper examination of the matter.

5. By the order dated 31.01.2011 impugned in the present appeal, the Tribunal set-aside the order dated 12.03.2010.

6. This brings us to parallel proceedings in revision which has led to the passing of the order impugned in the present appeal.

7. On 30.12.2010, a fresh assessment order was passed by the Assessing Officer pursuant to the order dated 12.03.2010 passed under section 263 of the Act. By an order dated 24.03.2011, the Tribunal set-aside this order in view of the order dated 31.01.2011 which is impugned in the present appeal. As we noted earlier, the order dated 31.01.2011 set-aside the order dated 12.03.2010 passed under section 263 of the Act. As we also noted earlier, by an order dated 02.01.2012 C.I.T. (A) had allowed the respondent's appeal against the order of assessment dated 03.07.2007 and this order has attained finality. It has admittedly not been challenged by the respondent.

8. In view of the fact that the order dated 02.01.2012 has attained finality, it would in any event not be possible to proceed any further in the parallel proceedings under section 263 of the Act. The observations in the order dated 02.01.2012 regarding the validity of the payment of interest by the respondent/assessee have also attained finality.

9. The appellant can not succeed in the proceedings under section 263 only by an order and upon a finding which would be contrary to and in conflict with the findings and the decision dated 02.01.2012 of the C.I.T. (A) in the appeal filed by the respondent against the order of assessment dated 03.07.2007. This would be impermissible as two parallel proceedings cannot be allowed against the same assessment order.

10. The question of law, therefore, not only does not, but cannot arise in the present case.

11. The appeal is therefore, dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S.SANDHAWALIA)
JUDGE

27th May,2015
'ravinder'

Whether to be referred to the reporter or not.	**Yes**	**No**