IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-262-2013 (O&M)
Date of decision:- 07.05.2015

The Commissioner of Income Tax-I, Chandigarh
...Appellant

Versus

M/s Bnal Prefab Pvt. Ltd.
...Respondent

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

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

Mr. Alok Mittal, Advoate, for the respondent.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This is an appeal against the order of the Tribunal remanding the matter to the Assessing Officer to pass a fresh assessment order by considering the provisions of Section 40(a) (ia) of the Income Tax Act, 1961 (in short the Act) in accordance with the decision of the Special Bench of the Tribunal at Vishakhapatnam in *ACIT Vs Merilyn Shipping & Transports [140 TTJ 1(SB) (Vishakhapatnam)]*.

2. We have by our order and judgement dated 29.04.2015 in a group of appeals the first of which is ITA-716-2009 titled as *P.M.S. Diesels, Phagwara Vs Commissioner of Income Tax-II, Jalandhar* held in favour of the revenue and taken a view contrary to the one taken by the Special Bench of the Tribunal.

3. The appeal was admitted by an order dated 20.11.2013 on the following substantial question of law:-

> *"While directing to examine the various disallowances made after invoking provisions of Section 40(a)(ia) of the Income Tax Act, 1961 afresh whether the Hon'ble ITAT was*

> *correct in further directing to follow the decision of special Bench of Hon'ble ITAT Vishakhapatnam when the Hon'ble High Court at Hyderabad directed "interim suspension" of the Special Bench's verdict and supported by decisions of the Hon'ble High Court Kolkata and Hon'ble High Court Ahmadabad wherein it has been held subsequently that majority view of the special Bench of the Tribunal in the case of M/s Merilyn Shipping A Transport Vs ACIT does not lay down correct law."*

4. In view of our order and judgement dated 29.04.2015, the question of law is decided in favour of the revenue and against the respondent/assessee. In these circumstances, the Assessing Officer shall pass a fresh assessment order and while dealing with the issue of Section 40(a)(ia) of the Act shall do so in accordance with our aforesaid judgement and order dated 29.04.2015. Needless to add that all other contentions would be open to the parties including the respondent.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

07.05.2015
Amodh