

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

ITA-37-2014

Date of decision:- 02.07.2015

Commissioner of Income Tax-I, Ludhiana.

...Appellant

Versus

Rakesh Gupta

...Respondent

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

Present: Mr. Rajesh Katoch, Advocate,
for the appellant.

Mr. S.K. Mukhi, Advocate,
for the respondent.

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

The appellant has raised the following substantial questions of law:-

“(i) Whether on the facts and circumstances of the case, the Hon’ble ITAT was right in law in upholding the order of the ld. CIT(A) wherein disallowance made under Section 36(1)(iii) was deleted ignoring the judgement of Hon’ble Punjab & Haryana High Court in the case of CIT Vs Abhishek Industries Ltd. reported 286 ITR 1, relied upon by the Assessing Officer?”

“(ii) Whether on the facts and circumstances of the case, the Hon’ble ITAT was justified in law in upholding the order of the ld. CIT(A) wherein disallowance of higher depreciation on account of expenditure on installation of electrical line for power transmission and metering treated as not part of Wind Mill by the A.O. was deleted by the CIT(A)?”

“(iii) Whether on the facts and circumstances of the case, the Hon’ble ITAT was right in law in treating the power evacuation infrastructure as part of wind mill and as renewable energy device whereas the AO has brought on record sufficient material to prove

that same was in fact not a renewable energy device and hence not eligible for depreciation @ 80%?

(iv) Whether on the facts and circumstances of the case, the Hon'ble ITAT was right in law in allowing depreciation on contribution for power evacuation facility even though the assessee has no ownership of the asset being only a contributor for availing the facility?"

2. Questions (ii) (iii) and (iv) are admittedly covered by a judgement of the Division Bench of this Court dated 18.12.2014 titled as *Commissioner of Income Tax-I, Ludhiana Vs M/s Eastman Impex* (ITA-350-2013). The questions are answered against the appellant/department. The appeal as far as these questions are concerned is, therefore, dismissed.

3. As regards question (i), the appellant's case is that an amount of ₹ 8.89 crores was advanced by the respondent/assessee to his son. The respondent/assessee on the other hand contends that during the assessment year in question 2008-2009, only about ₹ 2.14 crores was advanced by him to his son. It would make no difference. The Tribunal has rightly upheld the detailed and reasoned order of the CIT (Appeals). The CIT (Appeals) has analyzed the cash available with the respondent. For instance, the opening balance of capital as on 01.04.2007 was about ₹ 13.45 crores and the closing balance as on 31.03.2008 was about ₹ 10.40 crores. The opening balance as on 01.04.2007 was about ₹ 73.57 crores and the closing balance as on 31.03.2008 was about ₹ 86.60 crores. The opening balance of interest free unsecured loans from family and friends as on 01.04.2007 was about ₹ 55.95 crores and the closing balance of interest free unsecured loans from family and friends as on 31.03.2008 was about ₹ 51.46 crores. It was not the case of the AO that the assessee had diverted the funds borrowed on interest for the purpose of advancing the sum to his son for business. The Tribunal noted

that the AO had in fact accepted that no such borrowed funds had been diverted/advanced by the assessee to his son. There was no nexus between the funds borrowed by the assessee and the funds diverted/advanced to his son. There were free reserves available with the assessee to advance the interest free loan to his son.

It is not possible to hold that the appreciation of these facts was perverse or absurd. No question of law, therefore, arises in this regard either.

4. The appeal is accordingly dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

02.07.2015

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