

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 252 of 2015 (O&M)

Date of Decision: 15.9.2015

Deepak Jain Prop. M/s Prime Commodities, Ludhiana  
....Appellant.

Versus

Commissioner of Income Tax, Ludhiana  
...Respondent.

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

PRESENT: Mr. Divya Suri, Advocate with  
Mr. Sachin Bhardwaj, Advocate and  
Mr. Madhur Sharma, Advocate for the appellant.

**AJAY KUMAR MITTAL, J.**

1. Delay of 88 days in refiling the appeal is condoned.
2. This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 20.3.2014 (Annexure A-8) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 506/CHD/2011 for the assessment year 2007-08, claiming the following substantial questions of law:-

- I. Whether under the facts and circumstances of the case, while arriving at the chargeable income u/s 29 of the Act, once the claim of the appellant as 'business' of accommodation entries is accepted, then the 'charge' has to be computed in accordance with the 'integrated

scheme of taxation' of Income Tax Act, 1961?

- II. Whether under the facts and circumstances of the case, while arriving at the chargeable income attributable to the 'accommodation entries business', can there be calculation and computation of income be confined to the receipts while ignoring the payments, being an expense for the conduct of the said business?

3. Briefly stated, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. The assessee is a sub-broker of Multi Commodities Exchange (MCX) Bombay and is doing the business under the name of Prime Commodities. The transactions are duly supported by the reconciliation of the cash received (Annexure A-1) from the customers for the purchase of commodities. The assessee filed the return of income electronically on 31.10.2007 through acknowledgment No. 7840720311007 at an amount of ₹ 2,50,090/-. The scrutiny assessment proceedings were through issuance of notice dated 2.9.2008 under Section 143(2) of the Act and thereafter notice dated 12.6.2009 under Section 142(1) of the Act was served upon the assessee for furnishing reply to the questionnaire. A show cause notice dated 12.11.2009 (Annexure A-2) was issued to the assessee. It was submitted by him that the written pleadings furnished on 20.7.2009, 1.8.2009, 19.8.2009, 5.10.2009 and 4.12.2009 (Annexure A-3 Colly) be taken as the reply. The assessee had also furnished the information relating to the purchases of different commodities on MCX made as per orders and sold in accordance with their instructions by way of the purchase and sale bills on 24.12.2009 (Annexure A-4). The Assessing

Officer framed the assessment vide order dated 31.12.2009 (Annexure A-5) under Section 143(3) of the Act at an amount of ₹ 6,02,04,380/- by making additions on account of unexplained income and the household expenses. Feeling aggrieved, the assessee filed an appeal on 25.1.2010 (Annexure A-6) before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 4.3.2011 (Annexure A-7) dismissed the appeal. Still dissatisfied, the assessee filed an appeal before the Tribunal who vide order dated 20.3.2014 (Annexure A-8) partly allowed the appeal. Hence, the present appeal by the assessee.

4. Learned counsel for the assessee relied upon the judgment of the Apex Court in **T.A. Quereshi (Dr.) v. Commissioner of Income Tax, Bhopal (2007) 2 SCC 759** to submit that the appellant was entitled to deduction of the cash deposits at the behest of the beneficiaries who were the recipients of the drafts through accommodation entries even if the activity carried on by the assessee was considered to be illegal. According to the learned counsel such deduction was admissible even after incorporation of Explanation to Section 37 of the Act.

5. After hearing learned counsel for the appellant, we do not find any substance in the said submission.

6. This Court in **ITA No. 445 of 2006 (The Commissioner of Income-tax, Jalandhar v. M/s Kap Scan & Diagnostic Centre Pvt. Ltd.)** decided on 3.12.2010 while dealing with the similar legal issue after referring to the judgment in **T.A. Quereshi's case (supra)** had decided the same against the assessee with the following observations:-

“12. Section 37 is a residuary provision. An assessee is entitled to deduction of all expenditure

which is wholly and exclusively laid out or expended for the purposes of the business which has not been expressly covered by any other specific provision of the Act.

13. In order to be eligible for an allowance under this residuary provision, the following conditions are required to be fulfilled:-

- “(i) The expenditure must not be governed by the provisions of Sections 30 to 36.
- (ii) The expenditure must have been laid out wholly and exclusively for the purposes of the business of the assessee.
- (iii) The expenditure must not be personal in nature.
- (iv) The expenditure must not be capital in nature.”

14. Explanation to sub-section (1) was inserted by the Finance (No.2) Act, 1998 with retrospective effect from 1.4.1962, which reads thus:-

“Explanation.- For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purposes of business or profession and no deduction or allowance shall be made in respect of such expenditure.”

15. The purpose for incorporation of this Explanation had been explained by CBDT in circular No. 772 dated 23.12.1998 **(1999) 235 ITR (st.) 35** as under:-

“20. Disallowance of illegal expenses.- 20.1 Section 37 of the Income-tax Act is amended to provide that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purposes of business or profession and no deduction or allowance shall be made in respect of such expenditure. This amendment will result in disallowance of the claims made by certain assesseees in respect of payments on account of protection money, extortion, hafta, bribes, etc., as business expenditure. It is well decided that unlawful expenditure is not an allowable deduction in computation of income.

20.2 This amendment will take effect retrospectively from 1st April, 1962, and will, accordingly, apply in relation to the assessment year 1962-63 and subsequent years.”

16. It, thus, emerges that an assessee would not be entitled to deduction of payments made in contravention of law. Similarly, payments which are opposed to public policy being in the nature of

unlawful consideration cannot equally be recognized. It cannot be held that businessmen are entitled to conduct their business even contrary to law and claim deductions of payments as business expenditure, notwithstanding that such payments are illegal or opposed to public policy or have pernicious consequences to the society as a whole.”

7. It was further observed in para 21 as under:-

“21. The judgments relied upon by the assessee cannot be of any assistance to the assessee as they are prior to insertion of Explanation to sub section (1) of Section 37 of the Act. Reference may also be made to the Apex Court Judgment in **Dr. T.A. Quereshi's case (supra)** on which reliance has been placed by the learned counsel for the assessee. The Hon'ble Supreme Court in that case was seized of the matter where heroin forming part of the stock of the assessee's trade was confiscated by the State authorities and the assessee claimed the same to be an allowable deduction. The Hon'ble Supreme Court held that seizure and confiscation of such stock in trade has to be allowed as a business loss and Explanation to Section 37 has nothing to do as that was not a case of business expenditure. Since the present case is not a case of business loss but of business expenditure, that judgment is distinguishable and does not help the assessee.”

8. Further, the addition of ₹ 5,98,82,294/- had been made to the total income under Sections 68 and 69 of the Act as the cash was found credited in the books of account of the assessee and had been invested in the bank account of the assessee. In such circumstances, no fault can be found with the orders of the Assessing Officer, the CIT(A) and the Tribunal which may warrant interference by this Court.

9. In view of the above, no substantial question of law arises in this appeal. Consequently, finding no merit in the instant appeal, the same is hereby dismissed.

**(AJAY KUMAR MITTAL)**  
**JUDGE**

**September 15, 2015**  
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**(RAMENDRA JAIN)**  
**JUDGE**