

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 71 of 2015

Date of Decision: 27.8.2015

Vijay Aggarwal

....Appellant.

Versus

Commissioner of Income Tax, Central Gurgaon and another

...Respondents.

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

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

PRESENT: Mr. Aman Bansal, Advocate for the assessee.

Mr. Rajesh Sethi, Senior Standing counsel with
Ms. Pridhi Jaswinder Sandhu, Advocate for the revenue.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of five appeals bearing ITA Nos. 71, 72, 75, 102 and 121 of 2015 as learned counsel for the parties are agreed that substantial questions of law as claimed by the assessee in all the appeals are similar whereas in ITA No. 72 of 2015 relating to the assessment year 2007-08, an additional question has been claimed relating to disallowance of expenditure amounting to ₹ 2,50,000/- and in ITA No. 102 of 2015 for the assessment year 2010-11, an additional question has been claimed with regard to disallowance on account of 89 liquor bottles held by the assessee. For brevity, the

facts are being extracted from ITA No. 71 of 2015.

2. ITA No. 71 of 2015 has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the orders dated 15.10.2014 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Delhi Bench “A”, New Delhi (hereinafter referred to as “the Tribunal”) in ITA No. 307/Del/2013 for the assessment year 2006-07, dated 19.11.2012 (Annexure A-2) passed by respondent No.1 and dated 23.12.2011 (Annexure A-1) passed by respondent No.1, claiming the following substantial questions of law:-

- (i) Whether in facts and circumstances of the present case, the Ld. Authorities have erred in disallowing the deduction u/s 24 & 80C of the Income Tax Act, 1961?
- (ii) Whether in facts and circumstances of the case, the Id. Authorities below erred in acting only on the basis of assumptions and presumptions and after ignoring the well reasoned material/evidence which was brought on record by the appellant/assessee?
- (iii) Whether in facts and circumstances of the case, the action of the authorities below, the impugned orders are legally sustainable in the eyes of law?

3. In ITA No. 72 of 2015 relating to the assessment year 2007-08, following additional question of law has been claimed:-

Whether the addition made by the Ld. Authorities below on the ground of expenses incurred on birthday party of grandson without any evidence on record and mere acting on presumptions is legal and justified?

4. In ITA No. 102 of 2015 relating to the assessment year 2010-11, following additional question of law has been claimed:-

Whether act on the part of the authorities below to make an addition on account of liquor bottles in the lack of any cogent evidence and acting on presumptions is justified and legal?

5. Put shortly, the facts necessary for adjudication of the present appeal as narrated therein are that the assessee is the Managing Director of M/s Action Construction Equipment Limited and also the Director of M/s ACE Steel Fab Private Limited. The search and seizure operation under Section 132(1) of the Act was conducted on 6.11.2009 at the residential premises of the assessee at House No. 854, Sector 15-A, Faridabad. The assessee filed his return under Section 139(1) of the Act and in response to the notice issued under Section 153A of the Act, he again filed the return on 20.10.2010 declaring the income at ₹ 1,12,73,778/-. Respondent No.2 vide assessment order dated 23.12.2011 (Annexure A-1), *inter alia*, disallowed the deduction under Sections 24 and 80C of the Act. 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 19.11.2012 (Annexure A-2) partly allowed the appeal. Still dissatisfied, the assessee filed an appeal before the Tribunal who vide order dated 15.10.2014 (Annexure A-3) dismissed the appeal. Hence, the present appeal.

6. We have heard learned counsel for the parties.

7. The question which arises in these appeals is whether the assessee was entitled to deduction under Section 24(b) and 80C of the Act.

8. It would be expedient to reproduce Section 24(b) of the Act which reads thus:-

“24. Income chargeable under the head “Income from house property” shall be computed after making the following deductions, namely:-

(a) XX XX XX

(b) Where the property has been acquired, constructed, repaired, renewed or re-constructed with borrowed capital, the amount of any interest payable on such capital:

Provided that in respect of property referred to in Sub-Section (2) of Section 23, the amount of deduction shall not exceed thirty thousand rupees.

Provided further that where the property referred to in the first proviso is acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed within three years from the end of the financial year in which capital was borrowed the amount of deduction under this clause shall not exceed one lakh fifty thousand rupees.

Explanation: Where the property has been acquired or constructed with borrowed capital, the interest, if any payable on such capital borrowed for the period prior to the previous year in which the property has been acquired or constructed, as reduced by any part thereof allowed as deduction under any other provision of this Act, shall be deducted under this clause in equal installments for the said previous year

and for each of the four immediately succeeding previous years.

Provided also that no deduction shall be made under the second proviso unless the assessee furnishes a certificate from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the assessee for the purchase of such acquisition or construction of the property or conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan.

Explanation: For the purposes of this proviso, the expression “new loan” means the whole or any part of a loan taken by the assessee subsequent to the capital borrowed for the purpose of repayment of such capital.”

9. A plain reading of the above provision shows that an assessee is entitled to deduction on the amount of any interest payable on the capital borrowed for the purposes of acquiring, constructing, repairing, renewing or reconstructing the said property. In other words, the property is required to be acquired, constructed, repaired, renewed or reconstructed with the borrowed capital. It is concurrently recorded by the authorities that the property was purchased by the assessee in November, 2005 whereas the loan was taken from ICICI Bank on 31.12.2005. Thus, the loan was taken subsequent to the purchase of the property and cannot be said that the same was utilized for acquiring the property. In such circumstances, the Assessing Officer, the CIT(A)

and the Tribunal were justified in declining the benefit of Section 24(b) of the Act. Equally, once it is held that the assessee had not borrowed any capital for the purchase of the property, the assessee was not entitled to any deduction under Section 80C(1) read with 80C(2)(xviii) of the Act.

10. In view of the above, we find that it is a question of fact and the authorities on appreciation of evidence had rightly declined the claim of the assessee for the deduction under Section 24(b) and 80C of the Act. Thus, no question of law as claimed arises.

11. Adverting to the additional claim of the assessee in ITA No. 72 of 2015 on account of expenses incurred on birthday party of grandson, the Tribunal had partly allowed this claim by reducing the addition from ₹ 5 lacs to ₹ 2.5 lacs. The findings recorded by the Tribunal read thus:-

“11. We have heard rival parties and have gone through the material placed on record. We find that invitation as placed in paper book page 82 is from Saurabh and Nishu Aggarwal who are son and daughter in law of the assessee. The A.O. has made whole of the addition in the hands of the assessee which is not justified. Therefore, keeping in view all the facts and circumstances we hold that the addition of Rs.2.50 Lacs will meet the ends of justice and in view of the above, ground No.5 in Assessment year 2007-08 is partly allowed.”

12. The Tribunal had granted partial benefit to the assessee by holding that in the facts and circumstances only half of the amount should be added in the hands of the assessee. This being finding of fact

does not involve any question of law.

13. Similarly, in ITA No. 102 of 2015, the additional challenge has been laid to the addition of ₹ 2,22,500/- on account of 89 liquor bottles. The Tribunal had recorded that since the assessee was staying in a joint family consisting of his son and daughter-in-law and all the bottles cannot be said to have been purchased in one year and the existence of so many bottles can only point out to the fact that these must have been gathered over a period of time and, therefore, an addition of ₹ 1 lac would meet the ends of justice. We do not find any error in the approach adopted by the Tribunal and, therefore, no interference is called for by this Court. No legal principle is involved in such adjudication.

14. In view of the above, no substantial question of law arises in these appeals. Accordingly, finding no merit in these appeals, the same are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 27, 2015
gbs

(RAMENDRA JAIN)
JUDGE

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 72 of 2015

Date of Decision: 27.8.2015

Vijay Aggarwal

....Appellant.

Versus

Commissioner of Income Tax, Central Gurgaon and another

...Respondents.

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

PRESENT: Mr. Aman Bansal, Advocate for the assessee.

Mr. Rajesh Sethi, Senior Standing counsel with
Ms. Pridhi Jaswinder Sandhu, Advocate for the revenue.

AJAY KUMAR MITTAL, J.

For orders, see **ITA No. 71 of 2015 (Vijay Aggarwal v.**

Commissioner of Income Tax, Central Gurgaon and another).

**(AJAY KUMAR MITTAL)
JUDGE**

August 27, 2015
gbs

**(RAMENDRA JAIN)
JUDGE**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 75 of 2015

Date of Decision: 27.8.2015

Vijay Aggarwal

....Appellant.

Versus

Commissioner of Income Tax, Central Gurgaon and another

...Respondents.

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

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AJAY KUMAR MITTAL, J.

For orders, see **ITA No. 71 of 2015 (Vijay Aggarwal v.**

Commissioner of Income Tax, Central Gurgaon and another).

**(AJAY KUMAR MITTAL)
JUDGE**

**August 27, 2015
gbs**

**(RAMENDRA JAIN)
JUDGE**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 102 of 2015

Date of Decision: 27.8.2015

Vijay Aggarwal

....Appellant.

Versus

Commissioner of Income Tax, Central Gurgaon and another

...Respondents.

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

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AJAY KUMAR MITTAL, J.

For orders, see **ITA No. 71 of 2015 (Vijay Aggarwal v.**

Commissioner of Income Tax, Central Gurgaon and another).

**(AJAY KUMAR MITTAL)
JUDGE**

**August 27, 2015
gbs**

**(RAMENDRA JAIN)
JUDGE**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 121 of 2015

Date of Decision: 27.8.2015

Vijay Aggarwal

....Appellant.

Versus

Commissioner of Income Tax, Central Gurgaon and another

...Respondents.

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

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AJAY KUMAR MITTAL, J.

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**(AJAY KUMAR MITTAL)
JUDGE**

**August 27, 2015
gbs**

**(RAMENDRA JAIN)
JUDGE**