IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RA-11-CII-2014 in
ITA-215-2007
RA-8-CII-2014 in
ITA-277-2007
Decided on : 09.12.2015

Commissioner of Income Tax-I, Ludhiana .... Non-Applicant/Appellant

VERSUS

M/s Shreyans Industries Ltd. ..... Applicant/ Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE REKHA MITTAL

Present: Mr.O.P.Goyal, Senior Advocate, with
Mr.Mukesh Verma, Advocate, for the applicant/respondent.

Mr.Rajesh Katoch, Advocate, for non-applicant/appellant.

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RAJIVE BHALLA, J.

By way of this order, we shall decide RA-11-CII-2014 in ITA-215-2007 and RA-8-CII-2014 in ITA-277-2004 as they pertain to a prayer for review of order dated 15.11.2013 whereby these appeals were disposed of by a common order.

Counsel for the applicant/respondent submits that vide judgment dated 08.11.2006, appeals filed by the revenue were allowed by answering the substantial questions of law in favour of the revenue and holding that expenditure incurred by the assessee is revenue in nature. The appellant filed a Special Leave Petition (SLP) which was allowed and the matter was remitted requiring the High Court to examine the terms of diversion of forest land for the construction of a Talewal drain but after remand, the appeal was admitted. The substantial question of law framed on 06.04.2010, were in essence identical to the questions which had already been set aside by the Supreme Court. Thereafter, vide order dated 08.01.2011 another set of three questions were framed but finally vide order dated 04.04.2013, two new questions were framed, which are in consonance with directions by the Hon'ble Supreme Court. A perusal of the impugned order, however, reveals that these questions have not been answered or considered and in fact the earlier questions of law have been answered. Counsel for the applicant submits that the impugned order may, therefore, be recalled and the matter reheard.

Counsel for the non-applicant submits that though there is an error in reproducing the relevant questions of law but a perusal of the impugned order reveals that the questions framed on 04.04.2013 have been answered. Counsel for the non-applicant submits that it appears that the questions of law have been inadvertently reproduced and even the applicant does not assert or allege that the questions have not been answered.

We have heard counsel for the parties but are not inclined to recall order dated 15.11.2013.

The applicant is right in asserting that the questions of law reproduced in the impugned order are questions initially framed. The questions, framed on 04.04.2013, read as follows: -

> "(i) Whether the permission granted by the Forest Department vide communication dated 11.09.1995 and 06.11.1995 confers enduring benefits upon the assessee?
>
> (ii) Whether on the facts and circumstances of the case, the expenditure of Rs.70,79,862/- incurred by the assessee for construction of drain on the forest land is a capital or revenue expenditure?"

It appears that wrong questions were reproduced. We, therefore, do not hesitate in acknowledging our error in reproducing the questions of law but a perusal of the impugned order reveals that both these questions were considered and answered though while doing so a question that was originally framed, was also answered.

While accepting that there was an error in reproducing the substantial questions of law and answering a question that was no longer relevant, a detailed perusal of our order reveals that all aspects of the case arising from substantial questions of law framed on 04.04.2013, have been answered. We are, therefore, not inclined to recall our order dated 15.11.2013.

Consequently, the review applications are dismissed.

A photocopy of this order be placed on the file of the connected case.

[RAJIVE BHALLA]
JUDGE

09.12.2015
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[REKHA MITTAL]
JUDGE