IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 705 of 2009 (O&M)

Date of Decision: 4.5.2016

The Commissioner of Income Tax-II, Ludhiana

....Appellant.

Versus

M/s National Auto Roadline Carriers, Ludhiana

...Respondent.

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

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE SHEKHER DHAWAN.

PRESENT: Mr. Z.S. Klar, Advocate for the appellant.

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

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing ITA Nos. 705 of 2009 and 380 of 2010 as according to learned counsel for the parties, the issues involved are interconnected. For brevity, the facts are being extracted from ITA No. 705 of 2009.

2. ITA No. 705 of 2009 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 27.4.2009 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench “B”, Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 560/Chd/2008, for the assessment year 2003-04. The appeal was admitted by this Court vide order dated 27.7.2010 for considering the questions proposed in para 5

of the appeal which are to the following effect:-

I) Whether on the facts and in law, the Hon'ble ITAT was justified in restoring the matter to the file of the A.O. when the counsel of the assessee agreed to the addition of ₹ 1,30,00,000/- under Section 68 of the Act, on account of failure to produce evidence in respect of credit entries in the capital account of the partner?

II) Whether on the facts and in law, the Hon'ble ITAT was justified in agreeing with the finding of the CIT(A) that the accretion to the capital account of the partner in the assessee firm was duly explained from copies of the accounts of the partners in the books of M/s Saini Motors and M/s Saini Textiles ignoring the findings of the Assessing Officer that no evidence was produced to explain the credit entries during the assessment proceedings and the objection of the Assessing Officer during the appellate proceedings that the entries were not supported by the Bank accounts?

III) Whether on the facts and in law the Hon'ble ITAT was legally justified in observing that capital accounts of the partners in the firms are duly verifiable from the return of income of the firms while restoring the issue to the file of the

Assessing Officer to verify the records/claim of the assessee and to decide as per the provisions of the Act?

IV) Whether on the facts and in law, the Hon'ble ITAT was legally justified in observing that capital accounts of the partner in the firms are duly verifiable from the return of income of the firms which have been accepted by the department when no scrutiny assessment has been made in the cases of the firms?

V) Whether on the facts and in law, the Hon'ble ITAT was legally justified in sustaining the deletion of addition of ₹ 6,16,645/- ignoring the fact that the addition has been made by A.O. keeping in view the provisions of Section 40A(2) (a) read with Section 40A(2)(b) of the Act?

3. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return of income on 30.11.2003 for the assessment year 2003-04 showing net loss of ₹ 1,76,14,565/-. The case was taken up for scrutiny. The Assessing Officer framed the assessment under Section 143(3) of the Act vide order dated 30.1.2006 (Annexure A-1) by making additions under various heads including the additions of ₹ 1.30 crore on account of unexplained credits in the capital account of partners and ₹ 6,16,645/- on account of disallowance of interest paid to M/s Saini Car Scheme under Section 40A(2)(b) of the Act. Proceedings for levy of penalty under Section 271(1)(c) of the Act were also initiated. Feeling aggrieved, the

assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. Before the decision by the CIT(A), the Assessing Officer levied penalty amounting to ₹ 56,19,129/- under Section 271(1)(c) of the Act. The assessee also filed appeal against the order of penalty before the CIT(A). The CIT(A) vide order dated 14.3.2008 (Annexure A-2) deleted the additions of ₹ 1.30 crore and ₹ 6,16,645/- made by the Assessing Officer. The imposition of penalty was also set aside vide order dated 17.3.2008. The revenue assailed the order, Annexure A-2, before the Tribunal and also challenged order deleting the penalty. The Tribunal vide order dated 27.4.2009 (Annexure A-3) restored the issue back regarding addition of ₹ 1.30 to the file of the Assessing Officer to verify the records/claim of the assessee and to decide the same as per the provisions of the Act. However, regarding addition of ₹ 6,16,645/- made by the Assessing Officer on account of disallowance of interest under Section 40A(2)(b) of the Act, the Tribunal dismissed the appeal of the revenue. The order of the CIT(A) deleting the penalty was upheld by the Tribunal vide order dated 30.4.2009. Hence, the instant appeals.

4. We have heard learned counsel for the parties.

5. Regarding question Nos. (I) to (IV) relating to disallowance of ₹ 1.30 crore on account of unexplained cash credits in the capital account of partners in ITA No. 705 of 2009, it was noticed by the Tribunal that there was no dispute that the return of the firm had become final as no proof of filing any appeal had been furnished before the Tribunal. Further, the books of other concerns were not available and were not furnished during the assessment proceedings. Accordingly, the Tribunal remanded the issue to the file of the Assessing Officer to verify the

records of the assessee and to decide the same as per the provisions of the Act by affording an opportunity of hearing to the assessee. The assessee was granted liberty to furnish evidence, if any, to substantiate its claim.

6. Learned counsel for the assessee has produced a copy of the assessment order dated 20.12.2010 passed by the Assessing Officer, whereby the claim of the assessee has been accepted. The said order is taken on record. However, it is not disputed by the learned counsel for the revenue that after remand, the order was passed on 20.12.2010 accepting the version of the assessee.

7. In view of the above, questions No.(I) to (IV) are decided against the revenue and in favour of the assessee.

8. Adverting to question No. (V) regarding deletion of addition of ₹ 6,16,645/- on account of interest paid to M/s Saini Car Scheme under Section 40A(2)(b) of the Act, the Tribunal had recorded that the amount received by the assessee from Saini Car Scheme were for business purposes. The assessee advanced a sum of ₹ 17,60,053/- as loans to employees on which no interest was charged. The advancing of loan to the employees was for business purposes of the assessee. The factual matrix was neither controverted by the revenue nor any contrary material was produced before the Tribunal to show that the addition of ₹ 6,16,645/- was wrongly deleted. The relevant findings recorded by the Tribunal read thus:-

> "4. The last ground raised by the Revenue is that the first appellate authority erred both on law and on facts in deleting the addition of ₹ 6,16,645/- on account of disallowance of interest paid to M/s Saini

Car Scheme. The learned Sr. DR supported the assessment order whereas the ld. counsel for the assessee defended the impugned order. The crux of arguments advanced by the assessee is that necessary evidence was submitted during assessment proceedings and the Assessing Officer did not raise any doubt about the payment. Plea was also raised that interest was rightly paid and consequently justifiable claimed for business purposes. This plea of the assessee could not be accepted on the plea that the same is covered under Section 40A(2)(b) of the Act. On appeal, the learned first appellate authority concluded that the amount received by the appellant from Saini Car Scheme were for business purposes of the assessee. The assessee advanced a sum of ₹ 17,60,053/- as loans to employees on which no interest was charged. The learned first appellate authority has also discussed the decision in the case of Abhishek Industries (286 ITR 1) and the same is not applicable because the appellant has not advanced any interest free loan to sister concern. The advancing of loan to employees was for business purposes of the assessee. This factual matrix was neither controverted by the revenue nor brought on record contrary material, consequently, we have not found any infirmity in the impugned order, the same is upheld. This ground of the revenue is dismissed.”

9. In view of the above, there is no error in the approach of the Tribunal which may warrant interference by this Court. Accordingly, question No. (V) is also decided against the revenue. Consequently, ITA No. 705 of 2009 is dismissed. In view of the dismissal of ITA No. 705 of 2009 where the addition has not been sustained, equally the case for imposition of penalty does not arise. Accordingly, ITA No. 380 of 2010 is also dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 4, 2016 **(SHEKHER DHAWAN)**
gbs **JUDGE**