IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 843 of 2010 (O&M)

Date of Decision: 21.04.2016

The Commissioner of Income Tax-II, Ludhiana

.......Appellant

Versus

M/s Avon Cycles Ltd.

......Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Zora Singh Klar, Advocate
for the appellant.

Mr. Alok Mittal, Advocate
for the respondent.

RAJESH BINDAL,J.

This appeal has been filed under Section 260 A of the Income Tax Act, 1961 (for short 'the Act'), against the order dated 29.1.2010 passed by the Income Tax Appellate Tribunal, Chandigarh Bench (A), Chandigarh, in ITA No. 466/Chd/2007, for the assessment year 2002-03, raising the following substantial questions of law:

(i) Whether on the facts and in the circumstances of the case, the Tribunal was legally justified in deleting the addition of Rs. 20,797/- being the expenditure incurred on foreign traveling of the director's wife for non-business purposes?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was legally justified in deleting the addition of Rs.1,00,106/- made by the assessing officer on account of interest free advances to the parties though the company has raised huge funds from financial institutions and paying interest on the same?

(iii) Whether on the facts and in the circumstances of the case, the Tribunal was legally justified in directing the assessing officer to re-compute the profits of business by including 10% of the interest and dividend income as profits of business for working out deduction under section 80HHC of the Act?

(iv) Whether on the facts and circumstances of the case, the ITAT was right in law in not holding that the total sale consideration inclusive of face value of DEPB and premium amount received thereof represents profit chargeable under section 28(iiid) and 28 (iiie) of the Income Tax Act, 1961?

(v) Whether on the facts and circumstances of the case, the ITAT was right in law in not holding that profit on transfer of DEPB entitlement represents the entire amount inclusive of premium of sale of such DEPB?

(vi) Whether on the facts and circumstances of the case, the ITAT was right in law in holding that the word "profit" referred to in Section 28 (iiid) and 28(iiie) of Income Tax Act, 1961 means the difference between the sale price of DEPB and the fact value of DEPB ignoring the facts that entire amount represent the profit in the hands of assessee?

(vii) Whether on the facts and circumstances of the case the ITAT was right in law in deducting the face value of DEPB from sale price of DEPB for calculating profit under section 28(iiid) and 28 (iiie) of Income Tax Act, 1961 as if the face value is the cost incurred by the assessee to acquire the DEPB?

(viii) Whether on the facts and circumstances of the case the ITAT was right in law in holding that the word profit referred to in sections 28(iiid) and (iiie) of the Income Tax Act, 1961 requires any artificial cost to be interpolated to the extent that the face value of DEPB/DFRC should be deducted from the sale proceeds for the purpose of determination of deduction under section 80HHC of the Income Tax, 1961?

(ix) Whether on the facts and circumstances of the case the ITAT has failed to appreciate that deduction u/s 80HHC of the Income Tax Act, 1961 was rightly computed in accordance with amendment made by the Taxation Law (Amendment) Act, 2005 with retrospective effect from 1.4.1998?

Learned counsel for the appellant-revenue submitted that in view of circular No.21/2015 dated 10.12.2015 read with circular No.279/Misc/M-142/2007-ITJ (Part) dated 8.3.2016, issued by Central Board of Direct Taxes, he does not wish to press the present appeal, as the tax effect involved is less than ₹ 20 lacs. However, he prays that liberty be granted to the revenue to file an application for revival of the appeal in case something survives therein.

Dismissed as not pressed with liberty as prayed for. It is however, clarified that withdrawal of the appeal by the revenue shall not be taken as affirmation of order of the Tribunal on merits. The legal issue as claimed by the revenue is left open to be adjudicated in an appropriate case.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

21.04.2016
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