IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.203

ITA-155-2012 (O&M)

Decided on : 12.07.2016

Vallabh Yarns, Sunder Nagar, Ludhiana ..... Appellant

VERSUS

Commissioner of Income Tax, Ludhiana ..... Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR,
ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Pankaj Jain, Senior Advocate, with
Mr.Divya Suri, Advocate, and
Mr.Sachin Bhardwaj, Advocate, for the appellant.

Mr.Rajesh Katoch, Advocate, for the respondent.

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S.J. VAZIFDAR, A.C.J. (Oral)

This is an appeal against the order of the Tribunal, dismissing the appellant/assessee's appeal against the order of the CIT (Appeals) which in turn dismissed the appellant's appeal against the assessment order to the extent that the same refused a deduction under Section 36(1)(iii) of the Income Tax Act, 1961. The appeal pertains to the assessment year 2007-08.

2. The appellant has raised the following substantial questions of law: -

(i) Whether under the facts and circumstances of the case, the Tribunal's order is perverse while recording findings contrary to the respondent department's stand for accepting the claim of the appellant qua the allowance of deduction for interest on unsecured loans against the income under head 'income from other sources?

(ii) Whether under the facts and circumstances of the case, the 'Netting Off' of the interest income against interest expenses can be declined on the true and correct interpretation of the provisions of Section 57(iii) of the Income Tax Act, 1961?

(iii) Whether under the facts and circumstances of the case, the claim for allowance of the 'direct expenses' attributable to earning of the 'income from other sources' can be declined on the true and correct interpretation of the provisions of section 57(iii) of the Income Tax Act, 1961?"

3. It is sufficient to consider this appeal only with respect to the first question.

4. The assessee claims to have secured loans for the purchase of building and machinery. The assessee further claims to have given the said building and machinery on rent. The assessee claimed a deduction under Section 36(1)(iii) of the Act in respect of the loans availed by it.

5. The assessment order was passed on 18.12.2009 against which the appellant filed an appeal to the CIT (Appeals). During the pendency of this appeal on 21.01.2010 the appellant filed an application under Section 154 of the Act for rectification. The assessment order was rectified by reducing the assesssed income to Rs.46,11,250/-. Consequently, the demand was also reduced to Rs.18,33,054. Thereafter the assessee moved another application under Section 154 dated 10.08.2010. This application was disposed of by an order dated

12.08.2010. The Assessing Officer upheld the appellant's contention. The Assessing Officer observed that the disallowance to the extent of Rs.22,77,739/- was not called for. The balance taxable income was assessed at Rs.22,96,464/-.

6. The CIT (Appeals) dismissed the appellant's appeal against assessment order dated 18.12.2009 on 30.09.2011. The Tribunal dismissed the appeal against that order on 08.02.2012.

7. The order of the Tribunal as well as the order of the CIT (Appeals) have not considered the said orders passed under Section 154. The Income Tax Officer by a letter dated 04.01.2011 brought the order dated 12.08.2010 under Section 154 to the attention of the CIT (Appeals). Mr.Pankaj Jain, the learned senior counsel appearing on behalf of the appellant referred to various other letters also addressed to the CIT (Appeals) in support of his contention that even the Department had supported the appellant.

8. We do not wish to express any opinion at this stage in respect of either the correctness or the effect of the orders under Section 154 or the communications addressed by the Department to the CIT (Appeals). It is possible that at the hearing itself the same may not have been brought to the attention of the CIT (Appeals) or the Tribunal. Suffice it to state that these are orders and documents which ought to have been taken into consideration by the CIT (Appeals) as well as by the Tribunal. Be that as it may. The orders, the documents and the effect thereto ought to have been taken into consideration.

9. For instance, it would be open for the appellant to contend

that the appeals before the CIT (Appeals) and the Tribunal ought to be allowed to be withdrawn or dismissed as infructuous in view of the orders passed under Section 154. In the event of the appellant's being satisfied and accepting the revisional orders under Section 154, they may well not be interested in pursuing the appeal. If such an application is made it is for the Tribunal to decide the same.

10. The appeal is, therefore, disposed of by setting aside the impugned order and remanding the matter to the Tribunal. All the contentions of the parties on merit are kept open.

[S.J. VAZIFDAR]
ACTING CHIEF JUSTICE

12.07.2016 **[DEEPAK SIBAL]**
shamsher **JUDGE**