**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.101

ITA No.273 of 2012 (O&M)
Date of decision: 12.12.2016

M/s Prem Bansal Real Estate Pvt. Ltd., Zirakpur

....Appellant

versus

The Commissioner of Income Tax, Central Circle, Ludhiana and another
....Respondents

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL**

* * * *

Present:- Mrs. Radhika Suri, Senior Advocate with
Ms. Rinku Dahiya, Advocate, for the appellant.

Mr. Rajesh Katoch, Advocate, for the respondents.

* * * *

S.J. VAZIFDAR, CHIEF JUSTICE (ORAL)

This is an appeal against the order of the Tribunal pertaining to the Assessment Year 2006-07. According to the assessee, the following substantial questions of law arise in this appeal:-

i) Whether in facts and circumstance of the case, the Income Tax Appellate Tribunal has fallen in error while applying the ratio of the judgment of National Laggard Works Vs. Commissioner of Income Tax 288 ITR Page 18 to the facts of the present case?

ii) Whether in facts and circumstances of the case the Income Tax Appellate Tribunal has failed to consider that disallowance of expenditure debited to profit and loss account would result in enhancement of profits derived from the industrial undertaking eligible for deduction under Section 80 IB of the Income Tax Act?

iii) Whether in facts and circumstances of case, the Income Tax Appellate Tribunal was in law that assessee has not established that the additions/disallowance made by AO and confirmed by CIT(A) constitute profits derived from an eligible business and is not entitle for deduction u/s 80IB?

iv) Whether the impugned order passed by Income Tax Appellate Tribunal is perverse?

2. The appeal was admitted by an order dated 08.01.2013 but only on the following substantial question of law:-

> "Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal has failed to consider that disallowance of expenditure debited to profit and loss would result in enhancement of profits derived from the industrial undertaking eligible for deduction under Section 80 IB of the Income Tax Act 1961, therefore, the additions are not justified?"

3. This question reframed by the Division Bench would cover questions No.1 and 2 raised by the assessee. Strictly speaking, however, it would not cover question No.3. If questions No.1 and 2 are answered against the assessee, question No.3 would also have to be decided against the assessee. However, questions No.1 and 2 are liable to be answered in favour of the assessee for reasons we will state hereafter. In that view of the matter question No.3 would also survive and the answer to question No.3 would not necessarily be against the either party. We accordingly, admit the appeal even as regards questions No.3 and 4 raised by the assessee.

4. Questions No.1 and 2 are liable to be answered in favour of the

assessee in view of our judgment and order passed today in ITA No.274 of 2012 as mentioned in that order. Mr. Katoch, learned counsel appearing on behalf of the respondents stated that these questions are liable to be answered in favour of the assessee in view of circular No.37/2016 dated 02.11.2016 issued by the CBDT. In view of the statement, we answered the similar questions in that appeal in favour of the assessee. Accordingly, questions No.1 and 2 are answered in favour of the assessee in view of the similar statement made in this appeal.

5. The CIT (Appeals) observed that during the course of the survey from the assessee's business premises documents were seized which reflected cash amounts of about ₹10 lacs. The assessee states that the receipts were in respect of sales of various flats and had been accounted for in the books. The Assessing Officer did not accept the contention. The assessee contended that in any event it was entitled to deduction under Section 80 IB in respect of the said amounts. The CIT(A) did not accept the contention and upheld the addition of ₹9,87,990/- having been assessed. However, the CIT (A) passed the following order:-

> ".....However, AR's alternative contention that appellant is entitled to deduction u/s 80IB on the above receipts in respect of which AO has not made any submission in her report appears to be justified. Accordingly AO is directed to allow deduction u/s 80IB on the addition of ₹9,87,990/- after verifying that same represents the part of sale proceeds of the flats and such sale proceeds are considered in sale of flats credited to the P&L Account eligible for deduction under Section 80IB."

6. The assessee is not entitled to succeed merely in view of

questions No.1 and 2 having been answered in its favour. The nature of the receipts would still have to be examined by the Assessing Officer. The CIT (A), therefore, rightly directed the Assessing Officer to allow the deduction under Section 80 IB but only after verifying that the same represents the sale proceeds of the flats and that such sale proceeds were credited in the profit and loss account liable for deduction under Section 80 IB. This would be a question of fact which the Assessing Officer must decide. The Tribunal appears to have held this issue against the assessee in view of its having held the other two issues also against the assessee. However, in view of Mr. Katoch's statement those issues are answered in favour of the assessee and it is, therefore, necessary now to ascertain whether the nature of the receipts is likely to benefit the assessee under Section 80 IB.

7. Question No.3 is therefore, answered by setting aside the order of the Tribunal in this regard and reinstating the order of the CIT(A). Needless to clarify that whether the assessee is entitled to the benefit under Section 80IB or not would depend upon the finding of the Assessing Officer upon remand.

8. It is not necessary to answer question No.4.

9. The appeal stands disposed of accordingly.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

December 12, 2016
Jyoti 1

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No