IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.101-2

ITA No.274 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

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

Mr. Rajesh Katoch, Advocate
for the respondents.

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S.J. VAZIFDAR, CHIEF JUSTICE (ORAL)

CM No.27753-CII of 2012

For the reasons stated in the application, the delay of 128 days in filing the appeal is condoned subject to all just exceptions.

Main Appeal

This is an appeal against the order of the Tribunal pertaining to the Assessment Year 2007-08. 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.

3. Mr. Rajesh Katoch, learned counsel appearing on behalf of the respondent-Department states that questions No.2 and 3 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. The Circular refers to the following judgments of three High Courts:-

(1) Income-Tax Officer-Ward5(1) vs. Keval Construction, Tax Appeal No.443 of 2012, December 10, 2012, Gujarat High Court.

(2) Commissioner of Income Tax-IV, Nagpur vs. Sunil Vishwambharnath Tiwari, IT Appeal No.2 of 2011,

September 11, 2015, Bombay High Court.

(3) Principal CIT, Kanpur vs. Surya Merchants Ltd., I.T. Appeal No.248 of 2015, May 03, 2016, Allahabad High Court.

The Circular further states that the views taken in these judgments have attained finality as the Department has accepted the same. Mr. Katoch states that in view thereof these issues are liable to be answered in favour of the assessee.

4. Accordingly in view of Mr. Katoch's statement, questions No.2 and 3 are answered in favour of the assessee.

It is, therefore, not necessary to decide the other questions raised by the assessee.

5. The appeal stands disposed of.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

December 12, 2016
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(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No