IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 285 of 2008
Decided on : 30.01.2017

The Haryana State Coop. Housing Federation Ltd.

. . . Appellant

Versus

Commissioner of Income Tax, Panchkula and another

. . . Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. M.R. Sharma, Advocate
for the appellant.

Mr. Yogesh Putney, Advocate
for the respondents.

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AJAY KUMAR MITTAL, J. (Oral)

The assessee has approached this Court under Section 260A of the Income Tax Act, 1961 (in short 'the Act'), against the order dated 27th September, 2007, passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chndigarh (hereinafter referred to as 'the Tribunal'), in Income Tax Appeal No. 918/Chandi/2006, for the assessment year 2003-04, claiming the following substantial questions of law:-

"i) Whether in the facts and circumstances of the case the orders (Annexure P-1), (Annexure P-2) and (Annexure P-3) are legally sustainable ?

ii) Whether in the facts and circumstances of the case, the learned Income Tax Appellate Tribunal is right in law in holding that the appellant is not entitle to deduction up to ₹1,48,64,914/- u/s 80P (2)(a)(i) as against the business income assessed at ₹1,60,74,331/- and not entitled to deduction as envisaged under the said provision the Income Tax Act, 1961 ?

iii) Whether the Tribunal is correct in law in interpreting *the provision of Section 80P (2) (a) (i) which is not in accordance with the law laid down by various judicial pronouncement of the Hon'ble Court of India ?*

iv) Whether in the facts and circumstances of the case the ITAT has grossly erred in holding that the appellant is not entitle to deduction of expenses on account of interest paid on the borrowed funds u/s 57 more so when the income has been assessed under the provision of section 56 as income from other sources ?

v) Whether in the facts and circumstances of the case the ITAT order holding appellant not entitle to deduction u/s 80P (2) (a) (i) and also not entitle to deduction of expenses u/s 57 out of the interest income which has been assessed as income from other sources is legally sustainable, the same being based on mere presumptions and surmises ?

vi) Whether in the facts and circumstances of the case the order of the ITAT is legally sustainable in law ?"

2. At the very outset, learned counsel for the appellant stated that questions No. (i) & (vi) are general in nature and thus would not arise from the order of the Tribunal for consideration. As regards, question No.(ii), learned counsel for the appellant very candidly submitted that the same is not pressed and thus may be disposed of as such. So far as question No.(iii) is concerned, it is covered against the appellant by the judgment in **Totgars Co-operative Sale Society Ltd. V. ITO, [2010] 322 ITR 283 (SC)** and decision of this Court in **ITA No.40 of 2016**, titled as **Punjab State Cooperative Federation of Housing Societies Ltd. Vs. Commissioner of Income Tax-II, Chandigarh and another,** decided on **07th December, 2016**. Accordingly, the aforesaid question of law is decided against the appellant. As per the admission order dated November 03, 2008, the appeal was admitted for consideration of question No. (iv) in para 22 of the appeal.

It was submitted by the learned counsel for the appellant that questions No.(iv) & (v) are overlapping and the same relate to the deduction of expenses on account of interest paid on the borrowed funds under Section 57 of the Act, especially, when the income of the assessee had been assessed as income from other sources under Section 56 of the Act.

3. Reliance was placed upon the decision of this Court rendered in Punjab State Cooperative Federation of Housing Societies Ltd.'s (supra), wherein, on the similar issue, the matter had been remitted back.

4. In the present case, the appellant had claimed the income to be business income and therefore, no claim for deduction under Section 57 of the Act was made. Once the income of the assessee is treated as income from other sources by the revenue authorities, the assessee would be entitled to claim deduction under Section 57 of the Act in respect of expenses incurred for earning that income. Thus, it would be in the interest of justice that the matter is remitted back to the Assessing Officer to decide the claim of the assessee for deduction under Section 57 of the Act. Accordingly, the issue under question No.(iv) is sent back to the Assessing Officer, who shall decide the same afresh, in accordance with law, after affording an opportunity of hearing to the appellant.

4. In view of the above, the impugned order is modified to that extent and the appeal is disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

(RAMENDRA JAIN)
JUDGE

January 30, 2017
J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*