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

ITA No.136 of 2011 (O&M)
Date of decision: 23.01.2017

Vishal Tools Industries

....Appellant

Versus

Commissioner of Income Tax, Jalandhar

....Respondent

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

Present: - Mr. Pankaj Jain, Sr. Advocate, with
Mr. Sachin Bhardwaj, Advocate, for the appellant.
Mr. Vivek Sethi, Advocate, for the respondent.

**AJAY KUMAR MITTAL, J. (ORAL)**

**CM No.7550-CII of 2011**

Delay in refiling the appeal is condoned.

CM stands disposed of.

**ITA No.136 of 2011**

The assessee has preferred this appeal under Section 260A of the Income Tax Act, 1961 (in short 'the Act') for the assessment year 1999-2000 against the order of the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (in short 'the Tribunal') passed in ITA No.153/Asr/2009 dated 30.10.2009, claiming following substantial questions of law: -

"i. Whether on the true and correct interpretation of section 147, the assumption of jurisdiction at the instance of Superior Authority is contained within the words "Assessing Officer has reasons to believe"?

ii. Whether on the true and correct interpretation of section 254(1), the Tribunal as last fact finding authority can record a conclusion of fact, dehors the material hence a perversity and unreasonable findings?

iii. Whether on the true and correct interpretation of section

234B the levy of interest is mandatory where there is a conflict of decision and the admitted that liability stands paid?

iv. Whether on the true and correct interpretation of section 57 (iii) of the claim of expenditure for earning the interest is to be allowed under the head Income From Other Sources while computing the Chargeable Income?”

2. Learned counsel for the appellant-assessee very fairly submitted that the aforesaid substantial questions of law, as claimed by the assessee, are concluded by the decision of this Court in the case of the assessee itself in ***ITA No.120 of 2011*** decided on 02.05.2012 where the assessee had approached this Court in respect of assessment year 2002-03. However, it was pointed out by learned counsel for the appellant that civil miscellaneous application No.13771-CII of 2011 had been filed under Section 260A of the Act claiming additional substantial question of law, which is as under: -

> “Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in denying the benefit for 'netting of' for interest to the assessee while computing deduction u/s 80HHC of the Act?”

3. Notice of CM No.13771-CII of 2011 was issued on 24.05.2016. No reply to the application has been filed. Learned counsel for the respondent-revenue does not dispute the legal and factual statement made by learned counsel for the assessee.

4. After hearing learned counsel for the parties, prayer made in the CM is allowed and substantial question of law claimed therein is also taken up for consideration.

5. Learned counsel for the appellant-assessee brought it to our notice that in the order dated 02.05.2012 passed in ***ITA No.120 of 2011*** in respect of the same assessee, this question had also arisen for consideration by this

Court wherein after following the decision of the Apex Court in ***ACG Associated Capsules Private Limited v. Commissioner of Income Tax, Central-IV, Mumbai,*** (2012) 3 SCC 321 relating to netting of interest for computation of deduction under Section 80HHC of the Act, case was remanded to the Assessing Officer for passing fresh order in terms of the said judgment of the Apex Court. Accordingly, prayer was made that the matter may be remanded to the Assessing Officer on the issue raised in the additional substantial question of law to pass order in terms of the aforesaid order.

6. After hearing learned counsel for the parties and in view of the above, substantial question of law at numbers (i) to (iv) are adjudicated against the assessee in view of the order passed in ***ITA No.120 of 2011***. However, in view of question No.(v) which has been allowed to be taken up as additional substantial question of law, matter is remanded to the Assessing Officer for passing order in terms of the judgment of the Apex Court in ***ACG Associated Capsules Private Limited*** (supra) after hearing the appellant in accordance with law.

7. Accordingly, appeal stands disposed of.

**(AJAY KUMAR MITTAL)**
**JUDGE**

**(RAMENDRA JAIN)**
**JUDGE**

**January 23, 2017**
R.S.

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No