IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 275 of 2017 (O&M)
Date of decision: 26.09.2017

The Pr. Commissioner of Income Tax, Patiala.

……Appellant

Vs.

State Bank of Patiala

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Zora Singh Klar, Senior Standing Counsel
for the appellant-revenue.

Ajay Kumar Mittal,J.

1. The appellant-revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 29.11.2016, Annexure A.6, passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short, "the Tribunal") in ITA No. 871/CHD/2016, for the assessment year 2009-10, claiming following substantial question of law:-

> "Whether in the facts and circumstances of the case, the Hon'ble ITAT, Chandigarh is legally correct in deleting the addition of ₹ 45,76,00,000/- (₹ 2,32,60,607/- made under Section 143(3) + ₹ 43,43,39,393/-, made under Section 143(3) r.w.s 263) on account of apportionment of expenses against exempted income under Section 14A of the Income Tax Act, 1961 read with rule 8D of the Income Tax Rules, 1962 by holding that the order under Section 263 of the Income Tax Act, 1961 passed by the Principal Commissioner of Income Tax, Patiala has already been quashed by the Tribunal?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. Assessment under Section 143(3) of the Act was made by the Assessing Officer at an income of ₹ 1065,37,96,820/- which included disallowance of ₹ 2,32,60,607/- on account of apportionment of expenses against exempted income under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (in short, "the Rules") vide order dated 23.12.2011, Annexure A.1. Later on, Principal Commissioner of Income Tax, Patiala passed order under Section 263 of the Act on 18.03.2014, Annexure A.2, holding the aforesaid assessment order to be erroneous and prejudicial to the interest of the revenue and set aside the assessment order with direction to enhance income of the assessee by ₹ 43.544 crore being the difference of disallowance. The assessee challenged the order under Section 263 of the Act before the Tribunal. Vide order dated 28.03.2016, Annexure A.3, the Tribunal quashed the order under Section 263 of the Act. In compliance to the order dated 18.03.2014 under Section 263 of the Act, the Assessing Officer passed order on 15.10.2014 under Section 143(3) read with Section 263 of the Act by making further addition of ₹ 43,43,39,393/- under Section 14A of the Act. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A) relying upon the order passed by the Tribunal dated 28.03.2016 held that order dated 15.10.2014, passed by the Assessing Officer under Section 143(3) read with Section 263 of the Act stood infructuous and accordingly allowed the appeal of the assessee vide order dated 27.05.2016, Annexure A.5 given in Appeal No. 224/IT/CIT(A)/PTA/14-15. Not satisfied with the order, the department filed an appeal before the

Tribunal. Vide order dated 29.11.2016, Annexure A.6, the Tribunal dismissed the appeal of the department on the ground that since the order under Section 263 of the Act had been set aside and quashed by it, the assessment order under Section 143(3) read with Section 263 of the Act would not survive and the present proceedings stood infructous. Hence, the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the appellant-revenue.

4. Learned counsel for the appellant-revenue very fairly submitted that the issue involved in the present appeal is covered against the revenue, by judgments of this Court in ITA No. 270 of 2016, ***The Pr. Commissioner of Income Tax, Patiala Vs. State Bank of Patiala*** decided on 27.02.2017 and ITA No. 193 of 2017, ***The Pr. Commissioner of Income Tax, Patiala Vs. State Bank of Patiala*** decided on 22.05.2017 Accordingly, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

September 26, 2017 **(Amit Rawal)**
'gs' **Judge**
Whether speaking/reasoned Yes/No
Whether reportable Yes/No