IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 359 of 2017
Date of decision: 14.11.2017

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 12.01.2017, Annexure A.7, passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short, "the Tribunal") in ITA No. 1203/CHD/2016, for the assessment year 2010-11, 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 ₹ 19.70 crores (₹ 7,03,49,029/- made under Section 143(3) + ₹ 12,67,00,000/-, made under Section 143(3) r.w.s 263) made 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 when the revenue has not accepted the order of the Hon'ble High Court against quashing the order under Section 263 of the Income Tax Act, 1961 and SLP is recommended?"

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 vide order dated 15.03.2013, Annexure A.1, for the assessment year 2010-2011 by making addition of ₹ 7,03,49,029/- 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”) alongwith making additions on various other issues. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax Appeals [CIT(A)]. Vide order dated 09.01.2015, Annexure A.2, the CIT(A) confirmed the addition of ₹ 7,03,49,029/- on this issue. On 18.03.2014, Commissioner of Income Tax, Patiala (the CIT), passed order under Section 263 of the Act holding aforesaid assessment order dated 15.03.2013 to be erroneous and prejudicial to the interest of the revenue and set aside the assessment order with a direction to enhance income of the assessee by ₹ 19.70 crores by making addition of ₹ 12.67 crores on account of apportionment of expenses against exempted income under Section 14A of the Act read with rule 8D of the Rules. Accordingly, order under Section 143(3) read with Section 263 of the Act was made by the Assessing Officer on 07.11.2014, Annexure A.4, and further addition of ₹ 12,67,00,000/- was made under Section 14A of the Act, in compliance to the order under Section 263 of the Act dated 18.03.2014 passed by the CIT. Feeling aggrieved against the order dated 09.01.2015 passed by the CIT(A), confirming addition of ₹ 7,03,49,029/-, the assessee filed an appeal before the Tribunal on this issue alongwith some other issues. The assessee also challenged the order under Section 263 of the Act passed by

the CIT. Vide order dated 11.08.2016, Annexure A.5, the Tribunal deleted the addition made by the Assessing Officer under Section 143(3) of the Act amounting to ₹ 7.03 crores on account of apportionment of expenses against exempted income under Section 14A of the Act read with Rule 8D of the Rules and also set aside the order passed by the CIT under Section 263 of the Act. The department filed an appeal against this order before this Court which was decided against the revenue vide order dated 22.05.2017 in ITA No. 193 of 2017. The assessee also challenged the order under Section 143(3) read with Section 263 of the Act before the CIT(A). Vide order dated 08.09.2016, Annexure A.6, the CIT(A) relying upon the order of Tribunal dated 11.08.2016 ordered that since the order under Section 263 of the Act had been set aside by the Tribunal, therefore, consequent order passed by the Assessing Officer under Sections 143(3) read with Section 263 of the Act dated 07.11.2014 became infructuous and the same was treated as dismissed for statistical purposes. The department challenged the order passed by the CIT(A) before the Tribunal. Vide order dated 12.01.2017, Annexure A.7, the Tribunal dismissed the appeal filed by the revenue on the ground that since the order under Section 263 of the Act had been set aside and quashed by the Tribunal, the entire proceedings in pursuance to the order under Section 263 of the Act had become infructuous and no addition could be made against the assessee. Hence, the instant appeal by the revenue before this Court.

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

4. It is not disputed by the learned counsel for the appellant-revenue that the issue involved in the present case stands concluded against the revenue in ITA No. 270 of 2016, ***The Pr. Commissioner of Income Tax, Patiala Vs. State Bank of Patiala*** decided on 27.02.2017 wherein

after considering the relevant provision and the case law on the point, it was recorded as under:-

> "After hearing learned counsel for the parties, we notice that the issue on merits has been decided in favour of the assessee in State Bank of Patiala's case (supra) [(2017) 78 Taxman.com 3]. The amount of disallowance under Section 14A was restricted to the amount of exempt income only and not at a higher figure. Once that was so, we do not consider it appropriate to discuss the scope of Section 263 of the Act as the same has been rendered academic in view of the issue being answered in favour of the assessee on merits. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed."

Similar decision was taken by this Court in ITA No. 193 of 2017, ***The Pr. Commissioner of Income Tax, Patiala Vs. State Bank of Patiala*** decided on 22.05.2017.

5. In view of the above, no substantial question of law arises in the present appeal and consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

November 14, 2017 **(Amit Rawal)**
'gs' **Judge**
Whether speaking/reasoned **Yes**
Whether reportable **Yes**