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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

ITA No. 7 of 2018
Decided on : 04.07.2018

Pr. Commissioner of Income Tax-I, Chandigarh

. . . Appellant

Versus

Sh. Ravinder Kumar Gupta r/o House No. 250, Sector 19-A, Chandigarh.

. . . Respondent

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CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Urvashi Dhugga, Sr. Standing Counsel for the appellant.

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AVNEESH JHINGAN, J.

1. The Revenue (hereinafter referred to as the 'appellant') has filed this appeal against the order 12.07.2017 passed by the Income Tax Appellate Tribunal, Chandigarh (in short, 'the Tribunal') allowing the appeal of the assessee.

2. As per the appellant following substantial questions of law arise:

> *(i) "Whether on the facts and circumstances of the case Hon'ble ITAT was correct in law in holding that Pr. CIT was not right in invoking the provisions of the section 263 of the IT Act as inadequate enquiry was conducted by the assessing officer in the case and where inadequate enquiry has been conducted the Pr. CIT can invoke the provisions of section*

263 of the IT Act particularly in view of the applicability of clause 'a' of 'Explanation 2' to the provision of section 263 of the IT Act which has been inserted w.e.f. 1.6.2015.

(ii) "Whether on the facts and circumstances of the case, Hon'ble ITAT was correct in law to set aside the order of Pr. CIT as the cases relied upon by the Hon'ble ITAT are distinguishable on facts as compared to the facts of the case of the assessee."

3. The assessment year involved is 2012-13. The bare facts necessary for adjudication of the present appeal as narrated in the appeal are that the return filed by the assessee were selected for scrutiny and the assessment under Section 143(3) of the Income Tax Act, 1961 (for short 'the Act') was finalized vide order dated 31.12.2014. The assessing officer made additions of ₹5,92,193/- on account of low net profit rate and ₹42,000/- on account of disallowance of interest free advance given for non-business purposes.

4. On the basis of audit objection, Section 263 of the Act was invoked. Revision was done on the ground that the Assessing Officer had not verified and examined the loan advanced amounting to ₹ 84,92,000/- by the assessee to his wife allegedly for business purposes. Further assessee had not substantiated that the loan given to the wife had no nexus with the borrowed funds. Vide order dated 22.02.2016, the assessment order was set aside and assessing officer was directed to carry out the investigation as per discussion in the revisional order and thereafter frame the assessment afresh.

5. Being aggrieved of the order, the assessee preferred an appeal before the Tribunal. During the pendency of the appeal, the assessing

officer in pursuance of the remand, framed assessment vide order dated 21.12.2016.

6. The Tribunal vide order dated 12.07.2017 accepted the appeal of the assessee. The Tribunal allowed the appeal holding that there was no finding in the order passed under section 263 of the Act that the assessment order was erroneous. The Tribunal examined the issue raised by the CIT on merits as well and adjudicated the same in favour of the assessee.

7. We have heard the learned counsel for the appellant.

8. Learned counsel for the appellant contended that the Tribunal erred in setting aside the order passed under Section 263 of the Act. Assessment order was rightly revived as Assessing Officer had not made adequate enquiry about the loan advanced to the wife of the assessee as to whether it was for business purposes and not made from the borrowed funds.

9. Since we do not find any infirmity in the findings recorded by the Tribunal on merits, accordingly it is not considered appropriate to express any opinion on the ambit of Section 263 of the Act.

10. The assessee advanced a loan of ₹ 85,00,000/- to his wife for construction of super structure on the land owned by her in Mullanpur. The super structure was to be used by the husband for conducting his business. The statements and evidence to this effect were produced before the Assessing Officer and the same have been relied upon by the Tribunal. Even the CIT while exercising powers under Section 263 of the Act did not dispute that the said issue was examined during the assessment proceedings. In the replies filed before the Assessing Officer it was pleaded that construction of godown on the land owned by assessee's wife was for

business of assessee and for this purpose the loan of ₹ 85,00,000/- was advanced. It was established that the loan was given for business purposes.

11. The second issue that the assessee failed to establish that the loan advanced was not from the borrowed funds cannot be sustained in view of the factual findings recorded by the Tribunal. During the assessment proceedings the assessee had substantiated that he had his own capital amounting to ₹3,36,63,807/- which in itself was sufficient for advancing a loan of ₹85,00,000/-. Thus, assessee had his own funds available.

12. This Court in case reported as (2016) 381 ITR 107:2015 (84) RCR (Civil) 20 titled as ***Bright Enterprises Pvt. Ltd. Vs. Commissioner of Income Tax, Jalandhar,*** expressing similar view taken by the Bombay High Court in ***Commissioner of Income Tax Vs. Reliance Utilities & Power Ltd., (2009) 313 ITR 340,*** held as follows :-

> *"16. As we noted earlier, the funds reserves of the appellant were sufficient to cover the interest free advances made by it of Rs.10.29 crores to its sister company. We are entirely in agreement with the judgment of the* ***Bombay High Court in Commissioner of Income Tax Vs. Reliance Utilities & Power Ltd.,*** *(2009) 313 ITR 340, para-10, that if there are interest free funds available a presumption would arise that investment would be out of the interest free funds generated or available with the company if the interest free funds were sufficient to meet the investment."*

13. Learned counsel for the appellant-revenue has not been able to

point out any error in the order passed by the Tribunal warranting interference by this Court. Thus, no substantial questions of law arise.

14. The appeal is dismissed.

[AJAY KUMAR MITTAL]
JUDGE

[AVNEESH JHINGAN]
JUDGE

04.07.2018
pankaj baweja

Whether speaking/reasoned ? *Yes / No*
Whether reportable ? *Yes / No*