IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102 **ITA-356-2019 (O&M)**
Date of Decision : 29.1.2020

The Pr. Commissione of Income Tax-2 ...... Appellant

Versus

M/s. Agri King Tractors and Equipments Pvt. Ltd. ...... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR.JUSTICE AVNEESH JHINGAN
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Present : Ms. Urvashi Dhugga, Senior Standing counsel for the appellant.

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AJAY TEWARI, J. (Oral)

1. This appeal has been filed by the Revenue under Section 260-A of the Income Tax Act, 1961(for short 'the Act') against the order dated 18.3.2019 of the Income Tax Appellate Tribunal Division Bench Chandigarh, in ITA No. 1280/Chd/2018 (Annexure A-3) for A.Y. 2015-2016 and claiming following substantial questions of law :-

> *"i. Whether on the facts and in the circumstances of the case, the order of the Ld. ITAT in directing the assessing officer to verify the claim of the assessee having not earned any exempt income in the year under consideration and allow the relief accordingly is not perverse and the legal issues raised by revenue before it should be reinstated and decided on merits ?"*
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> *ii. Whether on the facts and in the circumstances of the case, the Ld. ITAT is justified in directing the assessing officer to verify the claim of the assessee having not earned any exempt income in the year under consideration and allow the relief accordingly, ignoring the legislative intent*

expressed in CBDT's Circular No. 5/2014 dated 11.02.2014, which explicitly states that expenses relatable to earning of exempt income have to be considered for disallowance irrespective of the fact whether any such income has been earned during F.Y. or not as confirmed by Apex Court in Maxopp Investment Ltd. vs. CIT, 91 Taxman.com 154 (SC) ?

iii. Whether on the facts and in the circumstances of the case, the Ld. ITAT is justified in directing the assessing officer to verify the claim of the assessee having not earned any exempt income in the year under consideration and allow the relief accordingly, without appreciating the fact that applicability of section 14A or Rule 8D does not depend on earning of income as held by Supreme Court in the case of CIT vs. Rajender Prasad Moody (19678), 115 ITR 519 ?"

iv. Whether on the facts and in the circumstances of the case, the order of the Ld. ITAT is justified in directing the assessing officer to verify the claim of the assessee having not earned any exempt income in the year under consideration and allow the relief accordingly, without appreciating the fact that there is no such restriction stipulated either in section 14A of the Income Tax Act or Rule 8D of the Income Tax Rule ?"

v. Whether on the facts and in the circumstances of the case, the Ld. ITAT is justified in directing the assessing officer to verify the claim of the assessee having not earned any exempt income in the year under consideration and allow the relief accordingly, ignoring the principal of apportionment regardless of exempt income laid down by Ld. Supreme Court decision in CIT vs. Walfort Share and stock Brokers P. Ltd: 326 ITR (SC) and upheld by the Ld. Supreme Court in 91 Taxmann.com 154 (SC) ?"

vi Whether on the facts and in the circumstances of the case, the Ld. ITAT is justified in directing the assessing officer to verify the claim of the assessee having not earned any exempt income in the year under consideration and *allow the relief accordingly, whereas the addition was restricted by Ld. CIT (A) ignoring the fact that Ld. Supreme Court of India in Civil Appeal No. 1423 of 2015 filed by Avon Cycles Ltd. decided with Maxopp Investment Ltd. and many other cases has decided the issue in favour of the department?"*

vii Whether on the facts and in the circumstances of the case and in law, Ld. ITAT has erred in directing the assessing officer to verify the claim of the assessee having not earned any exempt income in the year under consideration and allow the relief accordingly because order of Ld. CIT Appeal is perverse in holding that it is now 'res integra' that disallowance u/s 14A cannot exceed exempt income, when Supreme Court has upheld the principles of apportionment ?"

viii Whether on the facts and in the circumstances of the case and in law, Ld. ITAT has erred in directing the assessing officer to verify the claim of the assessee having not earned any exempt income in the year under consideration and allow the relief accordingly ignoring the legality of CBDT Circular No. 5 of 2014 which is in consonance with legislative intent behind Section 14A and the charging sections 4 and 5 of the Income Tax Act, 1961, which lay down that total income under the Act would include income from all sources whether "received", deemed to be received", "accrued" or "deemed to accrue"?"

2. Vide this appeal learned counsel for the appellant has challenged the matter remanding back to the Assessing officer to verify the facts whether the respondent had erred in exemption. A perusal of the order of the Tribunal reveals as follows :-

4. Ld. AR submitted that subject to verification, the order may be upheld. Inviting attention to ITA 1281/CHD/2018 it was submitted that similar direction on same set of facts had *been prayed for in the said appeals also. The ld. CIT-DR Shri A. Gupta on perusing the record, posed no objection, it was submitted that the appeal has to be argued by Sr. DR. In view thereof, a pass over was granted. In the next round, the ld. Sr. DR relied upon the assessment order and posed no objection to the prayer for remand for verification of the fact of earning exempt income.*

5. We have heard the rival submissions and perused the material available on record. Since facts, submissions and position of law remain identical to what has been considered in ITA 1281/CHD/2018, accordingly for similar reasons, the issue herein also is remanded to the AO with the identical directions. The relevant finding is extracted hereinunder :-

"4. Considering the submissions of the parties, we are of the view that the departmental objection to the remand by the CIT (A) to the AO directing him to verify the facts has statutory support. Admittedly, the appeal being decided by the ld. CIT(A) was to be decided in terms of the statutory mandate as set out in Section 250 and 251 of the Income Tax Act, 1961. A perusal of the Statute shows that the power of the CIT(A) set aside the issue has been omitted from sub-section (1) of Section 251 by the Finance Act, 2001. The ld. CIT (A) in the exercise of his power in terms of clause (a) of sub-section (1) of Section 251 has been empowered in an appeal to either confirm, reduce, enhance or annul the assessment however the power to set aside is no longer vested in his office. It is seen that the ld. CIT(A) at best could have carried out an enquiry himself or direct the AO to make further enquiry himself or direct the AO to make further enquiry and obtain a Remand Report as set out in sub-section (4) of section 250 of the Income Tax Act,1961 which sets out the procedure to be followed while exercising the powers of CIT (A).The relevant provision is extracted hereunder for the sake of completeness:

"Procedure in appeal.

Section 250
(1).....
(2).....
(3).....
(4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to be the Commissioner (Appeals).
(5)...

4.1 We find that the ld. CIT (A) in the facts of the present case has not followed the statutory provisions as admitted the CIT(A) was not empowered to remand the issue to the AO and he was duty bound to pass an order after verifying the records or obtaining a remand report if need be. Accordingly, considering the submissions of the parties before the Bench, we deem it appropriate to uphold the direction with the above observation and direct the AO to grant relief in accordance with law after verifying the claim of the assessee having not earned any exempt income in the year under consideration. Said order was pronounced in the Open Court at the time of hearing itself."

3. In this view of the matter, no substantial question of law proposed arises. Consequently, the appeal stands dismissed.

4. Since the main case has been dismissed, the pending application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(AVNEESH JHINGAN)
JUDGE

29.1.2020
anuradha

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No