IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15230 of 2015 (O&M)
Date of decision: 07.08.2023

M/s Premier Electrical Industries
.....Petitioner

Versus

Union of India and another
.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Ms. Radhika Suri, Senior Advocate,
with Mr. Abhinav Narang, Advocate,
for the petitioner.

Ms. Gauri Neo Rampal, Senior Standing Counsel,
for the respondents.

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Ritu Bahri, J.

1. Petitioner is seeking a writ in the nature of certiorari quashing the action of respondent No.2 in reopening the assessment for the assessment year 2008-09 by issuing notice dated 29.08.2014 (Annexure P-10) under Section 147/148 of the Income Tax Act, 1961 and order dated 19.06.2015 (Annexure P-17) rejecting the objections (Annexure P-15) of the petitioner-assessee.

2. The petitioner has placed on record copy of the order dated 30.05.2014 (Annexure P-9) passed by the Income Tax Appellate Tribunal, Chandigarh, for the assessment year 2009-10 with respect to the same property, whereby the income from the said property has been taken as

income from the house property.

3. In this case, while issuing notice of motion on 29.07.2015, the Assistant Commissioner of Income Tax, Circle-2 (1), Chandigarh, was directed to adjourn the proceedings to a date beyond the date fixed by this Court. Hence, the proceedings, in this case, were stayed.

4. The petitioner, through a misc. application i.e. CM-914-CWP-2017, has placed on record copy of order dated 03.10.2016 (Annexure A-1) passed by the Income Tax Appellate Tribunal, Chandigarh, for the assessment year 2011-12 with respect to the same property, whereby also the rental income has been held as income from the house property and deduction under Section 24 (a) of the Income Tax Act has been allowed to the assessee. Petitioner has further placed on record copy of the order dated 02.08.2018 (Annexure A/3) passed by the ITAT for the assessment years 2013-14 and 2014-15, whereby appeal filed by the revenue has been dismissed by observing that question of giving benefit of deduction under Section 24 (a) of the Act regarding the rental income from the house property has attained finality. While passing the order dated 02.08.2018 (Annexure A/3), the Tribunal had referred various judgments passed by different Courts on the proposition that if, the assessee had let out the building to the tenant and at the time of expiry of the lease deed, assessee would be entitled for restoration of the possession of building with super structure, therefore, merely the tenant had raised some construction over the demised property would not dis-entitle the assesse from claiming deduction under Section 24 (a) of the Act. The assessee would always be deemed to be owner of land and building so let out. It is further held that if, the tenant is claiming deduction of depreciation on their constructed building, there is no

bar in making claim of deduction under Section 24 (a) of the Act by the assessee.

5. The petitioner has further placed on record copy of assessment order dated 13.12.2011 (Annexure P-23). This order has been referred in the order dated 30.05.2014 (Annexure P-9). The Income Tax Appellate Tribunal, Chandigarh has given the benefit of deduction in respect of the interest paid against the installments of conversion charges as per Section 24 (b) of the Act. Provision of section 24 (b) of the Act reads as under:-

> "24. Income chargeable under the head "Income from house property" shall be computed after making the following deductions,
>
> (a) -----------------
>
> (b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital."

6. In the case of the assessee, as per the original contract, the property was for industrial shed and after charging the conversion charges, the contract would be for commercial property. This would be covered by the expression "renewal." The Tribunal further observed that in practical terms, the assessee could not have used the property except for running the industry in electrical items, but now the assessee has been allowed to use the same in commercial terms and that is why, the assessee has been able to exploit the same by giving commercial site on rent for the purpose of running a hotel. This was done because of the renewal made by the Chandigarh Administration by changing the usage of the property. The Tribunal, by referring to the judgment passed in ***Master Sukhwant Singh vs. ITO,*** 61 TTJ (Chd.) 643, which has been upheld by this Court, directed the Assessing Officer to allow deduction of interest paid by the assessee to the Chandigarh Administration for conversion charges, treating these charges as

renewal as per Section 24 (b) of the Act.

7. Learned counsel for the petitioner has placed on record copy of notice demand dated 31.12.2013 (Annexure P-24) for the assessment year 2011-2012, whereby a sum of Rs.48,60,926/- was being payable. As per this notice, the revenue has treated the petitioner as owner of property i.e. Plot No.147-148, Industrial Area, Phase-1, Chandigarh. Benefit of allowance under Section 24 (b) of the Act was not granted to the petitioner, as interest was paid to the Sarover Hotels P. Ltd.

8. Orders dated 13.12.2011 and 31.12.2013 (Annexure P-23 and P-24) disallowing the benefit under Section 24 (b) of the Act have been passed for the assessment years 2009-2010 and 2010-2011 respectively. These orders have not considered the judgments passed in ***CIT vs. Sunil Kumar Sharma,*** 122 Taxman 159 and ***Master Sukhwant Singh's*** case (supra).

9. Learned counsel for the petitioner has further referred to the orders dated 03.10.2016 (Annexure A-1) for the assessment year 2011-2012 and 02.08.2018 (Annexure A/3) for the assessment years 2013-2014 and 2014-2015 with respect to the same property, whereby benefit of Section 24 (a) of the Act has been granted to the petitioner/assessee by treating the rental income as income from the house property. By referring to the judgment passed by Hon'ble the Supreme Court in ***Radhasoami Satsang vs. CIT,*** 193 ITR 321, it has been held that the assessee will be deemed to be owner of land and building so let out. If, the tenant was claiming deduction of depreciation on the constructed building, there was no bar in making claim of deduction under Section 24 (a) of the Act by the assessee.

10. In the present case, for the purpose of disallowing the benefit of interest after the conversion charges were paid to the Estate Officer, the case

of the petitioner is squarely covered by the order dated 30.05.2014 (Annexure P-9). It is not the case of the respondents that the order dated 30.05.2014 (Annexure P-9) has not attained finality. No appeal under Section 268A of the Act has been filed against the said order.

11. In this backdrop, the impugned notice is liable to be set aside on the ground that the reply/objections dated 05.01.2015 (Annexure P-15) has not been examined correctly. Pursuant to the notice dated 26.05.2015 (Annexure P-16), the impugned order dated 19.06.2015 (Annexure P-17) is also liable to be set aside on the ground that it is contrary to the view already taken by the Income Tax Appellate Tribunal, Chandigarh vide its order 30.05.2014 (Annexure P-9). The Revenue has never preferred an appeal against the said order, therefore, the same has attained finality. Even, while passing the orders dated 03.10.2016 and 02.08.2018 (Annexures A-1 and A/3) for the assessment years 2011-2012, 2013-2014 and 2014-2015, with respect to the same property, the assessee had been taken to be owner of the property and rental income has been treated as income from the house property. Once, the assessee has been held to be owner, then the conversion charges paid to the Estate Office has to be treated as revenue, as interpreted in the judgments ***CIT vs. Sunil Kumar Sharma,*** 122 Taxman 159 and ***Master Sukhwant Singh's*** case (supra), which have been followed while passing the order dated 30.05.2014 (Annexure P-9). There is no explanation, as to why re-assessment proceedings have been initiated for the assessment year 2008-2009, once the assessee had been accepted to be owner of the property and the conversion charges have already been treated as revenue. Hon'ble the Supreme Court in ***Berger Paints India Ltd. vs. Commissioner of Income Tax, Calcutta,*** (2004) 12 Supreme Court Cases 42, has held that

if, the revenue does not challenge the correctness of the law laid down by the High Court and has accepted it in the case of one assessee, then it would not open to the Revenue to challenge its correctness in case of other assessess without "just cause." The Supreme Court held that it would amount to *res judicata.*

12. In the facts of the present case, vide order dated 30.05.2014 (Annexure P-9), the benefit of Section 24 (b) of the Act has been given to the assessee by treating the rental income as income from the house property. The said order was never challenged by the Revenue. At the same time, with respect to the same assessee, the re-assessment proceedings have wrongly been initiated. Once, the department itself has given the benefit under Section 24 (b) of the Act while passing the order dated 30.05.2014 (Annexure P-9), the present petition deserves to be allowed.

13 In view of the above discussion, the present petition is allowed and the impugned notice and subsequent order(s) are set aside.

(RITU BAHRI)
JUDGE

07.08.2023
ajp

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No