211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1) ITA-557-2010 (O&M)
Date of Decision: 16.07.2024

CIT, Jalandhar …Appellant

Vs.

M/s Max India Ltd. …Respondent

(2) ITA-696-2010 (O&M)
Date of Decision: 16.07.2024

CIT, Jalandhar-I, Jalandhar …Appellant

Vs.

M/s Max India Ltd. …Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present Mr. Ranvijay Singh, Sr. Standing Counsel for the appellant(s).

Mr. Neeraj Kumar Jain, Advocate for the respondent.

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SANJEEV PRAKASH SHARMA, J.(Oral)

1. These appeals are dealt with together as common question of law and facts are involved in the same. Facts of the case are being taken from ITA-557-2010.

2. While admitting this appeal on 19.09.2010, the questions of law as framed in para No.5 of the appeal were proposed for adjudication by this Court and the same read as follows:-

> I. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is right in law in quashing the order U/s 263 of the Income Tax Act, 1961, when the order passed by the AO has rightly been held erroneous so far as prejudicial to the interest of the revenue by the learned Commissioner of the Income Tax?
> II. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is right in law in quashing the order passed under Section 263 of the Income Tax Act, 1961, when the learned Commissioner of Income Tax, specifically pointed out that expenses made towards the health care business were not related to the business of the assessee being a new business and having no connection with existing business?
> III. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is right in law in quashing the order passed under Section 263 by the Commissioner of Income Tax on the issue of disallowance of payment of non-compete fee when there was no business need of the assessee company to make such payment?

3. Both the counsels are at *ad-idem* that the question of law with regard to allowability of pre-operative expenditures for extension of healthcare division and non-compete fee demand as revenue deduction stands already decided and concluded by the decision of this Court. So far as the decision of the ITAT in setting aside the order passed under Section 265 of the Act, 1961 and allowing expenses made towards healthcare business as revenue deduction, the same was affirmed by this Court in its order dated 08.09.2015 passed in ITA-426-2010 for the assessment year 1999-2000 i.e. for the year prior to the year in question i.e. AY 2000-2001.

4. As regards order passed under Section 263 of the Act, 1961, disallowing payment of non-compete fee paid to Mr. Ashwani Windlass, the same was examined for the succeeding assessment year 2001-2002 to 2003-2004 and to other individuals in assessment year 2004-2005 to 2006-2007 and were deleted by the ITAT and the appeal preferred by the revenue for assessment year 2001-2002 was dismissed by this Court on 10.09.2018, albeit on account of loan tax effect. The High Court in ITA-193 and 195 of 2013 again held the demand of non-compete fee to be allowable revenue deduction vide judgment dated 06.08.2018.

5. Having noticed the aforesaid facts, we are satisfied that the same issue for assessment year 2000-2001 has to be also decided by this Court, as this Court has consistently reached to the same conclusion in favour of the assessee as noticed hereinabove.

6. In view of the above, we do not find any reason to take different view and the appeals are, therefore, found to be without merits and questions of law are accordingly answered in favour of the assessee and we hold that the expenditure was allowable revenue deduction. The decision of the ITAT is upheld and the appeals are accordingly dismissed.

7. No costs.

8. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

16.07.2024.
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1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No