



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

127

ITA-102-2024 (O&M)
Decided on : 18.09.2024

Pr. Commissioner of Income Tax-1, Chandigarh

... Appellant(s)

Versus

The Ropar District Coop. Milk Producers Union Limited

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Yogesh Putney, Sr. Standing Counsel
for the appellant – revenue.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. Present appeal has been preferred by Pr. Commissioner of Income Tax-1, Chandigarh (PCIT), assailing the order passed by the Income Tax Appellate Tribunal, Chandigarh (ITAT), setting aside its order passed under Section 263-A of the Income Tax Act, 1961 (for brevity, 'Act'), whereby, the order passed by the Assessing Officer, dated 19th February, 2021, was set-aside, holding that the claim of deduction under Section 24(a) of the Act @ 30% from the annual rental value of the three booths taken on lease by the assessee from the Municipal Corporation, Chandigarh, is 01.07.1987, could have been treated as rental income from the property and would therefore, not to be deductible in terms of Section 24(a) of the Act and hence, the assessment order was erroneous and prejudicial to the revenue.

2. Learned Sr. Standing Counsel for the appellant – revenue submits that the ITAT has erred in relying upon the earlier order passed by



the CIT(Appeals) and the ITAT for the earlier assessment years, wherein, such rental income was held to be an income from house property and deductible in terms of Section 24(a) of the Act.

3. He further submits that the appeal was preferred against the earlier order passed by the ITAT before the High Court vide ITA Nos. 86 and 96 of 2017, however, the same were dismissed as withdrawn on 26.08.2019 on account of low tax effect, and would therefore, not to be treated as precedent to set-aside the order of the PCIT under Section 263 of the Act.

4. Learned counsel for the revenue also submits that the Assessing Officer's order does not reflect that any inquiry was conducted by him before passing the assessment order with regard to the claim of deduction under Section 24(a) of the Act, and therefore, the order under Section 263 of the Act, ought not to have been interfered by the ITAT.

5. We have carefully considered the submissions and found that apart from considering the order earlier passed by it, the ITAT also examined the order of the PCIT and found that merely on account of change of opinion entertained by the PCIT, the order of the Assessing Officer could not have been interfered with under Section 263 of the Act. The provision of Section 263 of the Act can be invoked by the PCIT only when it finds that the order passed by the Assessing Officer is erroneous and that it is prejudicial to the interest of the revenue.

To find that the order is erroneous, it has to give a finding that no inquiry was conducted before the Assessing Officer and that even non-application of mind. However, we find that the PCIT in its order dated 27.03.2023, has made the following observations:-



“..... It is amply and expressly clear that the investigation/inquiry carried out by the Assessing Officer is unsatisfactory, superficial and incomplete along several of these matters/dimensions including the due and necessary and complete examination of the documentary particulars/details mandated.”

Thus, it reflects that there was an investigation and inquiry carried out by the Assessing Officer before passing of the assessment order. Thus, it cannot be said that the order passed is erroneous.

6. With regard to the claim under Section 24(a) of the Act, we find that the PCIT has fallen in error to hold that the assessee, who takes a property on lease for business purpose cannot be deemed to be owner of that property, and therefore, cannot claim income from that property.

7. Considering the provisions of Section 22 to 26 of the Act, we find that a holder of an impartible estate, which he may have taken on lease, would be deemed to be an individual owner for the purpose of letting out merely because, it is a case where the allotment on lease of the three booths was done to the assessee, which he has further sub-let to the individuals for carrying on the business of milk booths and receiving rent from the concerned individuals, it cannot be said that the income from the property has not been received.

The view taken by the PCIT that such an income would be treated as income from other sources is found to be wholly erroneous and we are in agreement with the earlier view taken by the ITAT that such income received as rent from the booths is deductible in terms of Section 24(a) of the Act.



8. It is also noticed that the legislature has subsequently clarified by noticing Section 27(iii), which reads as under:-

“27. “Owner of house property”, “annual charge”, etc. defined.—For the purpose of sections 22 to 26—

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(iii) a member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a house building scheme of the society, company or association, as the case may be, shall be deemed to be the owner of that building or part thereof;”

9. Considering all the aspects, we do not find any reason to interfere with the order passed by the ITAT. Appeal stands dismissed accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

September 18, 2024
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No