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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 960/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-7 ..... Appellant

Through: Mr. Sanjay Kumar, SSC along with Ms. Easha Kadian and Ms. Hemlata Rawat, JSCs.

versus

M/S PUNJAB NATIONAL BANK ..... Respondent

Through: Mr. S. Krishnan, Adv.

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\+ ITA 540/2023

PR. COMMISSIONER OF INCOME TAX-7 ..... Appellant

Through: Mr. Puneet Rai, SSC.

versus

PUNJAB NATIONAL BANK ..... Respondent

Through: Mr. S. Krishnan, Adv.

**CORAM:**
**HON'BLE MR. JUSTICE YASHWANT VARMA**
**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

**O R D E R**

% **22.03.2024**

1. These two appeals by the Revenue seek to impugn the orders of the Income Tax Appellate Tribunal [‘**ITAT**’] dated 16 March 2018 [ITA 960/2018] and 13 April 2022 [ITA 540/2023]. From the questions which have been posited, we find the following question to be common in both the appeals:-

A1. Whether the ITAT is legally justified in allowing deduction of an amount credited to PNB Employees’

Pension Fund under Section 43B of the Income Tax Act, 1961 ['**Act**'] even when the amount was not payable as per terms and conditions of the pension fund?

2. In ITA 960/2018, the ITAT has taken note of the unambiguous findings returned by the Commissioner of Income Tax (Appeals) ['**CIT(A)**'] and which had found that the contributions had been made to the pension fund in question. This is evident from a reading of Paras 41 and 43 of the ITAT's order which are reproduced hereinbelow:-

> "**41**. On appeal, the learned CIT(A) deleted the disallowance by observing as under:-
>
> > *"I have carefully considered the submissions of the ld. AR and perused the findings given by the AO in the assessment order. It is a fact that the Pension Trust Fund of the assessee Bank is an approved fund. The assessee Bank had already remitted the amount to the Trust which is covered by the provisions of section 43B of the Income Tax Act. The amount of contribution has increased rapidly due to implementation of mandatory Accounting Standard 15, upward revision of salaries, promotion of employees to higher cadre etc. As per the Pension Fund Trust Regulations of the bank, the contribution by bank is fixed at the rate of 10 per rent which is well within the limits. There is no increase in such rate during the years."*
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> **xxxx xxxx xxxx**
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> **43.** <u>The DR could not point out any specific error in the order of the learned CIT(A) by bringing any cogent, positive material on record. Therefore, we find that no good reasons to interfere with the orders of learned CIT(A) which is confirmed and the grounds of appeal of the Revenue is dismissed</u>."

3. In view of the aforesaid and irrespective of whether the contribution was in excess of the statutory prescription, in our considered opinion as long as the deposit was made to the pension fund, the provision of Section 43B of the Act would stand satisfied.

4. In view of the aforesaid, we find no ground to interfere with the view as expressed by the ITAT.

5. Insofar as the other questions in ITA 960/2018 are concerned, we note that they relate to various disallowances and deletions, which are concluded by findings of fact as noted by the ITAT. In any view, they do not appear to raise any substantial question of law.

6. Consequently, ITA 960/2018 fails and shall stand dismissed.

7. Having heard Mr. Rai, learned counsel appearing for the appellant as well as Mr. Krishnan, learned counsel representing the respondent-assessee in ITA 540/2023, we note that insofar as proposed Question No. iv is concerned and which relates to a similar issue of contribution to the pension fund and deductions under Section 43B, the same would have to be answered against the appellant in light of the order rendered today in ITA 960/2018.

8. That then takes us to proposed Question No. iii. Mr. Rai draws our attention to the provisions made in Section 10(23FB) of the Act to submit that once any income derived from a venture capital or invested in a venture capital is exempted, any loss that may be caused to that investment cannot be set off. We are of the considered opinion that the said question would merit consideration.

9. Further, having heard the submission addressed by Mr. Rai, learned counsel appearing in support of the appeal, we also find that proposed Question No. ii raises substantial issues which would merit consideration. The appeal shall consequently stand admitted on the aforesaid question also. The two questions of law on which ITA 540/2023 stands admitted are reproduced hereinbelow:

> A. Whether in the facts and circumstances of the case and in law, the ITAT as well as the CIT(A) erred in

deleting addition of INR 17,70,89,577 made by the AO in respect of losses in Market to Market ["**MTM**"] derivatives?

B. Whether in the facts and circumstances of the case and in law, the ITAT as well as the CIT (A) erred in deleting addition of INR 809,52,69,679/- on account of depreciation/loss on investments?

10. In order to enable learned counsels for parties to address submissions on the rest of the issues, let the appeal be called again on 15.07.2024.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**

**MARCH 22, 2024**

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