

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDI GARH

ITA-158-2016 (O&M)
Date of decision: - 07.12.2016

The Punjab State Cooperative Federation of House
Building Societies Ltd. Chandigarh.

... Appellant

Versus

Commissioner of Income Tax-II, Chandigarh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE S. J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: - Mr. M. R. Sharma, Advocate,
for the appellant.

Ms. Urvashi Dhugga, Advocate,
for the respondents.

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S. J. VAZIFDAR, C. J. (ORAL)

This is an appeal against the order of the Income Tax Appellate Tribunal dismissing the appellant/assessee's appeal against the order of the Commissioner of Income Tax (Appeals) which in turn had only partly allowed the appellant's appeal against the assessment order. The matter pertains to the assessment year 2009-2010.

2. According to the appellant, the following substantial questions of law arise in this appeal: -

"(i) Whether in the facts and circumstances of the case the orders (Annexure P-1), (Annexure P-2) and (Annexure P-3) are legally sustainable?

(ii) Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal is right in law in holding that the

income earned from banks other than cooperative banks as interest on its bank accounts as income from other sources being attributable to its business income and thereby not allowing deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961?

(iii) Whether in the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal is correct in law in upholding the expenses of 1% of income attributable to the earning of interest income under the provision of Section 57(iii) of the Income Tax Act, 1961?

(iv) Whether in the facts and circumstances of the case the Learned Income Tax Appellate Tribunal has grossly erred in upholding the order of the Commissioner of Income Tax (Appeals) directing the Assessing Officer to allow proportionately the disallowance made u/s 43B more so when such disallowance is made while computing the business income and as per the under the said provisions of law such disallowance would enhance the business income of the appellant and thereby computing the deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961?

(v) Whether in the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal grossly erred in upholding the order of the Commissioner of Income Tax (Appeals) holding income as business income instead of income from long term capital gain as claimed by the appellant being the income as profits on the sale of old properties as long term capital gain and thereby disallowing the necessary deductions u/s 48 and applying special rate of tax thereof?

(vi) Whether in the facts and in the circumstances of the case the Learned

Income Tax Appellate Tribunal upholding the order of the CIT(A) on various issues is legally sustainable in law, the same being based on mere presumptions and surmises?

(vii) That the appellant assessee craves leave to alter, amend, delete or add to any of the above substantial questions of law during the pendency of the present appeal."

3. Questions (i), (vi) and (vii) are only general in nature and do not require consideration.

4. Questions (ii) and (iii) are admittedly covered against the appellant in view of the judgement of a Division Bench of this Court dated 10.05.2016 in ITA-17-2016 titled as The Punjab State Cooperative Federation of House Building Societies Ltd., Chandigarh Vs Commissioner of Income Tax-II, Chandigarh and another. Questions (ii) and (iii) are, therefore, decided against the appellant.

5. Re: question (iv)

The Assessing Officer had disallowed certain expenses claimed by the appellant to be business expenses. The Assessing Officer, therefore, disallowed a sum of about ₹ 6.86 crores under Section 43B of the Income Tax Act, 1961 (in short the Act). The CIT (Appeals) granted partial relief in the following manner: -

"4.3 I have considered the submission of Ld. Counsel. In the case of the appellant, the entire interest payable does not pertain to incomes, eligible for deduction u/s 80P(2)(a)(i) of the Act. Hence, if the disallowance of interest payable is made u/s 43B, the appellant will be eligible for deduction u/s 80P(2)(a)(i) of the Act only in respect of the interest, which pertains to the income eligible for deduction under this section. As it

will not be possible to separately work out the amount of interest payable u/s 43B in respect of the income eligible for deduction u/s 80P(2)(a)(i) and incomes not so eligible; the Assessing Officer is directed to restrict the disallowance of interest payable u/s 43B of the Act on proportionate basis only in respect of income, which is not eligible for deduction u/s 80P(2)(a)(i) of the Act. Ground of appeal No. 4 is partly allowed."

6. The Tribunal noted that the taxable income of about ₹ 94 lacs was mainly from capital gain, but that there were no facts available to ascertain how much money was borrowed for the purpose of acquiring the capital assets. It is, therefore, not possible to separately work out the amount of interest payable under Section 43B of the Act in respect of the income eligible for deduction under Section 80P(2)(a)(i) and income not so eligible. It is not that the authorities have refused the appellant the proportionate benefit of a deduction under Section 80P(2)(a)(i). What is done is that the Assessing Officer has been directed to restrict the disallowance of interest payable under Section 43B on a proportionate basis. The deduction is only to the extent specified in sub section (2) thereof.

7. The learned counsel appearing on behalf of the appellant states that the Assessing Officer has not computed the same correctly. In that event, it is for the appellant to challenge the same separately.

8. The order of remand in this regard cannot be faulted. It does not raise a substantial question of law.

9. Re: Question (v)

The CIT (Appeals) and the Tribunal rightly upheld the assessment order for more than one reason. The appellant's objects, inter alia, are to grant loans to its members for constructing houses as well as to build housing complexes and to sell the units therein. All the authorities under the Act have found as a question of fact that the appellant had claimed expenses in respect of these projects which were later sold. The conclusion, therefore, that they constitute business assets cannot be said to be perverse or absurd. The Tribunal, therefore, rightly came to the conclusion that the appellant being in the business of construction and sale of properties income from selling the houses that were constructed must be treated to be income from business and profession.

10. The appeal, therefore, does not raise a substantial question of law.

11. The appeal is accordingly dismissed.

(S. J. VAZIFDAR)
CHIEF JUSTICE

सत्यमेव जयते

(DEEPAK SIBAL)
JUDGE

07.12.2016

Amogh

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