(2010) 06 P&H CK 0026

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Commissioner of Income Tax		APPELLANT
	Vs	
Punjab Tractors Ltd.		RESPONDENT

Date of Decision: June 14, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 143, 260A, 36, 57, 80M

Citation: (2010) 06 P&H CK 0026

Hon'ble Judges: M.M. Kumar, J; Jitendra Chauhan, J

Bench: Division Bench

Judgement

M.M. Kumar, J.
The revenue is in appeal u/s 260A of the Income Tax Act, 1961 (for brevity, "the Act") against the order of the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (for brevity, "the Tribunal") passed in ITA No. 200/Chandi/99, vide order dated 15.12.2003. The appeal pertains to the assessment year 1995-96. The revenue has claimed that the following two questions of law would arise for determination of this Court:

(1) Whether on the facts and in the circumstances of the case, the ITAT was right in law in deleting the addition made on account of interest on interest-free loans advanced by the assessee-company to its sister concern, M/s Swaraj Mazda Ltd.?

(2) Whether on the facts and in the circumstances of the case, the ITAT was right in law in holding that deduction u/s 80M should be computed without apportioning any part of interest payment to the earning of the dividend?.

2. Brief facts may first be noticed. The assessee-respondent is engaged in the business of production of tractors and its spares. It filed return in respect of the assessment year 1995-96 on 29.11.1995 declaring an income of Rs. 29,68,55,610/-. However, on

22.5.1996, the assessee filed a revised return in which income was enhanced to Rs. 29,71,75,910/-. The Assessing Officer completed the assessment u/s 143(3) and, inter alia, made the following additions, vide his order dated 19.3.1998 (Annexure "A"):

(i) Rs. 1,52,95,000/- on account of interest on interest-free loans advanced by the assessee to its sister concern, M/s Swaraj Mazda Ltd.

(ii) Addition on account of excess deduction claimed by the assessee u/s 80M. The assessee-company received dividend income amounting to Rs. 34,32,500/- from M/s Swaraj Engineers Ltd. and Rs. 5,46,00,000/- from UTI.

3. The assessee had claimed deduction u/s 80M on the gross dividend income. The Assessing Officer was of the view that the assessee had incurred Rs. 1,65,76,739/- as interest on investments and Rs. 1,00,000/- as administrative expenses to earn such dividend. He, thus, worked out the deduction u/s 80M after reducing expenses of Rs. 1,66,76,739/- from the gross dividend income of Rs. 5,80,32,500/- (Rs. 34,32,500/- + Rs. 5,46,00,000).

4. The assessee challenged the order of the Assessing Officer before the CIT(A), who held that there was no change in the facts of the case for the year under reference with those of pertaining to the case of the assessee for the assessment years 1991-92, 1992-93 and 1993-94. Accordingly, the CIT(A) followed the orders of his predecessor and deleted the addition of Rs. 1,52,95,000/- made on account of interest on interest-free loans.

5. On the second issue, the CIT(A) held that the assessee had sufficient surplus funds that were non-interest bearing. It also recorded a categorical finding that there was no nexus between any borrowing of funds and the investment in the units. The Assessing Officer, therefore, was not correct in having apportioned a part of the interest payments to the earning of the dividend interest. However, the action of the Assessing Officer in estimating the management expenses of Rs. 1,00,000/- was found in order. Accordingly, the CIT(A) relied upon the order passed in assessee''s own case in respect of the assessment years 1993-94 and 1994-95 and directed the Assessing Officer to recompute the deduction u/s 80M without apportioning any part of interest payment to the earning of the dividends (Annexure A-1).

6. Feeling aggrieved the revenue challenged the order of the CIT(A), dated 16.12.1998, before the Tribunal. The Tribunal upheld the views of the CIT(A) on question No. 1 by observing as under:

8. We have heard both the parties and considered the rival submissions. We find that this issue is squarely covered in favour of the assessee and against the revenue by the order of ITAT Chandigarh Bench in assessee''s own case for Ays 1992-93 and 1993-94 (supra) where the Tribunal upheld the order of CIT(A) in deleting the impugned addition by recording following finding in para 14 as under:

14 We have heard both the parties and considered the rival submissions. We find that this issue came up before the Tribunal for Assessment year 1991-92 and by its order dated 6.9.2002 (supra), the Tribunal decided the issue in favour of the assessee and against the revenue. Relevant finding recorded in para 14 of the aforesaid order are as under:

14 We have heard both the parties and carefully considered their rival submissions with reference to the facts, evidence and material placed on record. We find that during the course of assessment proceedings, the assessee had clearly furnished monthwise details of interest free advances available with the assessee. These details show that the debit balance in the account of SML varied from Rs. 12.63 lacs to Rs. 97.67 lacs during the period from 1.4.90 to 31.3.91. As against the same the assessee had interest free advanced varying from Rs. 6.19 crores to Rs. 13.34 crores during the same period which far exceeded the amounts due from SML. The assessee had also furnished complete details before the CIT (A) to show that it had sufficient interest free advances. In order to disallow the interest, it was duty of the AO to controvert the factual submission by bringing further details or by calling further details from the assessee. Besides, the AO has also not established any direct nexus between the amounts borrowed on which interest was paid and amount given to SML. In the case of CIT v. Ferozepur Finance (P) Ltd. supra, the Hon''ble High Court of Punjab & Haryana has held that unless income accrues to the assessee, no tax can be levied. The mere fact that the assessee had not charged any interest on the amounts due from another concern would not itself justify in making the addition on notional basis. Having regard to these facts and circumstances of the case, we are of the opinion that the ld. CIT(A) was justified in deleting the impugned addition. We confirm his order and deleted this ground of appeal

The facts of the case for Assessment year under reference are similar to the facts for Assessment year 199 1-92. Even for the assessment year under reference the assessee had sufficient surplus funds to cover the impugned loans. respectfully following the aforesaid order of the Tribunal, we hold that the CIT(A) was justified in deleting the impugned disallowance of interest for both the Ays. We confirm the orders of CIT(A) and dismiss the respect grounds of appeals of the revenue for both the Ays.

7. On the second question also the Tribunal followed the principle of consistency because in the earlier assessment years the same course was followed by the CIT(A) and the Tribunal. The view of the Tribunal in that respect reads thus:

11. We have heard both the parties and carefully considered the rival submissions. We find that this issue is squarely covered by ITAT, Chandigarh Bench''s order in ITA No. 1031/97, Assessment year 1992-93 and ITA No. 8/98, Assessment year 1993-94 (supra) where the tribunal upheld the order of CIT(A) in apportioning the management expenses of Rs. 1.00 lakh and deleting the disallowance of interest against dividend income by recording the following finding in para 18 of the aforesaid order:

18 We have heard both the parties and considered their rival submissions. We find that this issue is squarely covered in favour of the assessee and against the revenue by the order dated 6.9.2002 of ITAT Chandigarh Bench for Assessment year 1991-92 (supra) where the Tribunal in para 19 of the aforesaid order has held as under:

19. We have heard both the parties and carefully considered the rival submissions. We have also gone through the facts, evidence and material placed on record. As per provisions of Section 57 of I.T. Act, 1961, the deduction is allowed from dividend income for the expenses by way of commission or bank charges for realization of dividend and any other expenditure laid out or expended wholly and exclusively for earning such income. Further the Hon''ble Supreme Court in the case of CIT v. United Trust Ltd. supra, has held that proportionate management expenses had to be deducted from the gross dividend income for the purpose of allowing relief u/s 80M. Admittedly, the assessee has not maintained any such separate account for the same. Therefore, a reasonable estimate based on evidence and material on record is required to be made. We find that the AO has estimated the expenses @ 5% of the total dividend income without due application of mind. He has not taken into account the total dividend income, the number of companies from whom such dividend income was received and the probable expenses which could have been incurred for earning such income. From para 8.1 of the CIT (A)''s order, it is clear that out of total dividend income of Rs. 2,11,20,600/- the assessee had received dividend income of Rs. 2,02,97,000/- from UTI. Thus, only dividend income of about Rs. 8.00 lacs was received from other companies. There could hardly be any expenditure incurred for collecting dividend income received from the UTI. As regards the remaining dividend income of Rs. 8.00 lacs or so the expenses could not be as high as estimated by the A.O. Thus, in the light of these facts and circumstances of the case, we are of the considered opinion that disallowance of Rs. 1.00 lac sustained by the CIT(A) for allowing relief u/s 80M is most fair and reasonable. The order of the CIT(A) does not merit any interference. The same is upheld and this ground of appeal is dismissed.

The facts of the present case are similar to the facts of the case for assessment year 199 1-92. Respectfully following the aforesaid order, we confirm the order of CIT(A) and dismiss the respective grounds of appeals of the revenue for both the assessment years.

8. The facts of the case for Assessment year under reference are the same. Respectfully following the aforesaid order of the Tribunal, we confirm the order of the CIT(A) and dismiss this ground of appeal of the revenue."

9. We have heard learned Counsel for the parties at considerable length and have perused the paper book with their able assistance.

RE: QUESTION No. 1

10. The first question does not need any detailed discussion because when the matter was admitted, ITA Nos. 16 and 17 of 2004 pertaining to Assessment Years 1992-93 and

1993-94 between the same parties on the aforesaid question of law were already admitted. Accordingly, this appeal was also admitted to be heard along with ITA Nos. 16 and 17 of 2004. Those appeals have been disposed on the aforesaid question by a Division Bench of this Court vide order dated 21.1.2009 and the matter has been remitted back to the Tribunal for decision afresh in accordance with the judgment of Hon''ble the Supreme Court rendered in the case of S.A. Builders Ltd. Vs. Commissioner of Income Tax (Appeals), Chandigarh and Another, . The order of the Division Bench reads thus:

During the course of hearing learned Counsel for the rival parties are agreed that the deduction available to an assessee u/s 36(1)(iii) of the Income Tax Act, 1961 in respect of the interest component on capital borrowed is to be determined in consonance with the judgment rendered by the Apex Court in S.A. Builders Ltd. Vs. Commissioner of Income Tax (Appeals), Chandigarh and Another, so as to determine the commercial expediency of the assessee, in extending interest free loan. Since the needful had not been done by the Assessing Officer, as also, the Appellate Authorities, learned Counsel for the parties are agreed that the orders passed by the Assessing Officer as well as the Appellate Authorities be set aside.

Ordered accordingly.

Learned Counsel for the parties are also agreed that the adjudication of the present controversy be remanded back to the Income Tax Appellate Tribunal, Chandigarh, requiring it to re- adjudicate the issue whether the respondent-assessee is entitled to deduction u/s 36(1)(iii) of the Income Tax Act, 1961, on the interest component in respect of capital borrowed, based on the parameters laid down in S.A. Builders Ltd.''s case (supra), and while doing so, to grant liberty to the rival parties to lead evidence, if they so desire.

11. Therefore, we adopt the same course for the sake of consistency and set aside the order of the Tribunal on the first question of law. Accordingly, the matter is remanded back to the Tribunal in terms of order of this Court passed in ITA Nos. 16 and 17 of 2004, dated 21.1.2009. The parties through their counsel are directed to appear before the Tribunal on 12.7.2010.

RE: QUESTION No. 2

12. It has come on record that in respect of question No. 2, the Tribunal has followed its earlier order in ITA No. 103 1/97 (assessment year 1992-93) and ITA No. 8/98 (assessment year 1993-94). The Tribunal has upheld the order of the CIT(A) in apportioning the management expenses of Rs. 1,00,000/- and deleting the disallowance of interest against dividend income by recording the finding that out of total dividend income of Rs. 2,11,20,600/-, the assessee had received dividend income of Rs. 2,02,97,000/- from the UTI. Thus, it has received dividend income of Rs. 8,00,000/- from other companies. The CIT(A) had inferred that there could hardly be any expenditure

incurred for collecting dividend income received from the UTI and for the remaining dividend income of Rs. 8,00,000/- or so the expenses could not be as high as estimated by the Assessing Officer. The aforesaid findings of the CIT(A) have been duly affirmed by the Tribunal upholding the disallowance of Rs. 1,00,000/- sustained by the CIT(A) for allowing relief u/s 80M. Against the order of the Tribunal the revenue has categorically stated in para 4.1 that the department has accepted the order of the Tribunal and has preferred no appeal before this Court. Following the principle of consistency, as laid down in the case of M/s. Radhasoami Satsang Saomi Bagh, Agra Vs. Commissioner of Income Tax, ; Berger Paints India Ltd. Vs. Commissioner of Income Tax, Calcutta, ; CIT v. J.K. Charitable Trust (2009) I SCC 196; and C.K. Gangadharan and Another Vs. Commissioner of Income Tax, Cochin, , we are of the view that the second question deserves to be answered against the revenue and in favour of the assessee.

13. The instant appeal stands disposed of in the above terms.