

## Commissioner of Income Tax, Jalandhar Vs Ajit Singh Jhikka

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Nov. 16, 2006

**Acts Referred:** Income Tax Act, 1961 " Section 28, 29, 30, 31, 32

**Hon'ble Judges:** Rajesh Bindal, J; A.K. Goel, J

**Bench:** Division Bench

**Advocate:** N.L. Sharda, for the Appellant;

### Judgement

1. Following question of law has been referred for the opinion of this Court by the income tax Appellate Tribunal, Amritsar Bench, Amritsar, (for

short, "the Tribunal") arising out of its order dated 21-9-1990 in IT Appeal No. 219 (ASR) of 1987, for the assessment year 1982-83:-

Whether on the facts and the circumstances of the case, the Tribunal was justified in upholding the decision of the AAC who had directed the

Assessing officer to set off short term capital loss earned by the assessee against other business income before allowance of depreciation?

The assessee claimed set off of short term capital loss on account of sale of land and building which was not allowed by the Assessing Officer on

the ground that income of the assessee through other sources was negative. It may be mentioned that finally, assessed loss of the assessee was of

Rs. 60514. The assessee claimed that loss of Rs. 41,412 on account of short term capital loss be set off against other income before allowing

depreciation as before that there was positive income of Rs. 1,98,362. The appellate authority upheld the claim of the assessee, which was further

upheld by the Tribunal, relying upon section 71(3) of the income tax Act, 1961 (for short, "the Act").

2. We have heard learned counsel for the revenue and perused the findings recorded.

3. During the relevant assessment year, provisions of section 71(3) of the Act read as under:-

71(3). Where in respect of any assessment year the net result of the computation under sections 48 to 55 in respect of capital gains relating to

short-term capital assets is a loss and the assessee has income assessable under any head of income other than "capital gains", the assessee shall

subject to the provisions of this chapter, be entitled to have such loss set off against the income aforesaid.

4. The findings of the Tribunal, which are quite sketchy are reproduced hereunder:-

The word used is "income" against which the set off has to be. The words used are not "total income" as computed under the Act. Hence the

impugned order merits no interference at this level being based on proper appreciation of facts and law. The same stands upheld and the appeal

fails.

5. On a perusal of order of the Tribunal, we could not make out as on what reasoning the Tribunal had proceeded to dismiss the appeal of the

revenue. The profits and gains of business and profession chargeable to tax u/s 28 of the Act are computed as per provisions of sections 29 to 43

of the Act. Depreciation is one of the deduction to be made while computing income under this head. Determination of income under the head of

income from business and profession will not be complete unless all the provisions have been given effect to. Thus, there no reason to accept the

plea of the assessee that for the purpose of set off of short term capital loss, income from business should be taken before allowing depreciation.

6. Accordingly, the question referred is answered in favour of the revenue and against the assessee. Reference is disposed of accordingly.