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The Commissioner of Income Tax Vs The Designer

Income Tax A. No. 423 of 2010

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 13, 2010

Acts Referred:
Income Tax Act, 1961 â€" Section 260A, 28, 80HHC

Hon'ble Judges: Ajay Kumar Mittal, J; A.K. Goel, J

Bench: Division Bench

Judgement

Adarsh Kumar Goel, J.
This appeal has been preferred by the assessee u/s 260-A of the Income Tax Act, 1961 (for short, ""the Act"")

against the order dated 12.10.2009 of the Income Tax Appellate Tribunal, Amritsar in I.T.A. No. 137(ASR)/2009 for the assessment year 2004-

05 proposing to raise following substantial questions of law:

(i) Whether on the facts and circumstances of the case, the ITAT was right in not holding that total sale consideration inclusive of face value of

DEPB and premium amount received thereof represents profit chargeable under Sections 28(iiid) and 28(iiie) of the Income Tax Act, 1961?

(ii) Whether on the facts and circumstances of the case, the ITAT was right in law in not holding that profit on transfer of DEPB entitlement

represents the entire amount inclusive of premium of sale of such DEPB?

(iii) Whether on the facts and circumstances of the case, the ITAT was right in law in holding that the word ""profit"" referred to in Sections 28(iiid)

and 28(iiie) of the Income Tax Act, 1961 means the difference between the sale price of DEPB and the face value of DEPB ignoring the fact that

the entire amount represents the profit in the hands of assessee?

(iv) Whether on the facts and circumstances of the case, the ITAT was right in law in deducting the face value of DEPB from sale price of DEPB

for calculating profit under Sections 28(iiid) and 28(iiie) of the Income Tax Act, 1961 as if the face value is the cost incurred by the assessee to

acquire the DEPB?

(v) Whether on the facts and circumstances of the case, the ITAT was right in law in holding that the word profit referred to in Sections 28(iiid)

and 28(iiie) of the Income Tax Act, 1961 requires any artificial cost to be interpolated to the extent that the face value of DEPB/DFRC should be

deducted from the sale proceed for the purpose of determination of deduction u/s 80HHC of the Income Tax Act, 1961?

(vi) Whether on the facts and circumstances of the case, the ITAT has failed to appreciate that deduction u/s 80HHC of the Income Tax Act,

1961 was rightly computed in accordance with amendment made by the Taxation Laws (Amendment) Act, 2005 with retrospective effect from

1.4.1998?

2. Learned Counsel for the appellant states that the matter is covered in favour of the revenue by orders of this Court dated 16.8.2010 in I.T.A.

No. 301 of 2010 CIT v. Victor Forgings and I.T.A. No. 299 of 2010 CIT v. F.C. Sondhi, wherein after noticing the judgment of the Bombay

High Court in CIT v. Kalpataru Colours and Chemicals 2010 (42) DTR 193, the matter was remanded to the Tribunal for fresh decision in

accordance with law.

3. Since we find that the matter is covered by earlier orders of this Court, we dispose of this appeal in same terms. For this purpose, we have not

considered it necessary to issue notice to the respondent, but we give liberty to the respondent to move this Court if they have any grievance

against this order.