

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

ITA No. 2 of 2010

Date of Decision: February 8, 2010

Commissioner of Income Tax-I, Ludhiana

...Appellant

Versus

M/s Eastman Industries, Ludhiana

...Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Vivek Sethi, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

M.M. KUMAR, J.

The instant appeal filed by the revenue under Section 260-A of the Income-tax Act, 1961 (for brevity, 'the Act') is directed against the order dated 27.2.2009, passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for brevity, 'the Tribunal'), in ITA No. 498/Chandi/2008, in respect of the Assessment Year 2004-05.

2. Brief facts of the case are that the assessee-respondent is engaged in the business of sale purchase of Mutual Funds and Money Lending business. It has filed its return of income in respect of Assessment Year 2004-05 on 22.9.2004 declaring Nil income after adjusting B/F business losses to the tune of Rs. 9,75,060/-, out of which Rs. 8,01,881/-

related to Assessment Year 1999-2000 and Rs. 1,73,179/- pertains to the Assessment Year 2001-02. The assessee-respondent also shown net loss from sale purchase of Mutual Funds to the tune of Rs. 25,63,574/-, whereas the dividend income received from Mutual Funds has been shown at Rs. 57,76,085/-, claiming that it is exempted under Section 10(33) of the Act and was not to form part of the total income. The return was processed under Section 143(1)(a) of the Act on 31.3.2005. Thereafter, the case was selected for scrutiny and notice under Section 143(2) of the Act was issued on 23.8.2005. During the assessment proceedings, under the heading 'Addition on account of disallowance of Bad Debts written off' it was also noticed that the assessee-respondent has claimed expenses of Rs. 2,57,502/- on account of DDB receivable and Rs. 56,66,950/- towards Bad debts overseas under the head Administrative, Financial and other Expenses, which were pertaining to the Assessment Year 1997-98. The Assessing Officer came to the conclusion that the assessee-respondent had already taken exemption of profit on the said amounts on account of deduction under Section 80HHC in the Assessment Year 1997-98 and if the amount is again debited to the expenses account in the Assessment Year 2004-05, it would give double benefit to the assessee-respondent. The Assessing Officer further observed that the assessee-respondent was earlier dealing in the business of cycle and auto parts and exporting the same during the Assessment Years 1996-97 and 1997-98. However, during the Assessment Year 2004-05 there was a change of business because now the assessee-respondent is dealing in mutual funds and earning interest income. Accordingly, the Assessing Officer disallowed the claim of the assessee-respondent on account of bad debts written off, amounting to Rs. 56,66,950

and Rs. 2,57,502/- and added the same to the income of the assessee-respondent.

3. The Assessing Officer further found that the assessee-respondent has also claimed following 'interest income' as 'business income':-

(i)	Interest on income tax refunds	Rs. 4,04,937/-
(ii)	Interest from Parties	Rs. 54,20,545/-
(iii)	Interest on FDRs	<u>Rs. 38,63,248/-</u>
	Total	Rs. 96,88,730

4. In this regard, the Assessing Officer has opined that the above interest income is assessable under the head 'Income from other sources' instead of 'business income' shown by the assessee-respondent. Therefore, the B/F business loss claimed at Rs. 9,75,060/- cannot be allowed to be adjusted from the said 'interest income'. Accordingly, the Assessing Officer assessed the interest income of Rs. 96,88,730/- under the head 'Income from other sources' and disallowed the claim of the assessee-respondent for setting off of B/f business loss amounting to Rs. 9,75,060/-. On 26.12.2006, the assessment was completed under Section 143(3) at an income of Rs. 80,82,120/- (A-1).

5. Feeling aggrieved, the assess-respondent filed an appeal before the Commissioner of Income Tax (Appeals)-I, Ludhiana, who vide order dated 6.3.2008 (A-II) deleted the addition on account of disallowance of bad debts written off amounting to Rs. 56,66,950/- and Rs. 2,57,502/- made by the Assessing Officer. On the issue of 'Interest Income' assessed under the head 'Income from other sources', the CIT (A) treated the income earned on FDRs amounting to Rs. 38,63,248/- as 'Income from other

sources' and the balance income of Rs. 58,25,482/-, which was claimed to be pertaining to money lending business, has been held to be the business income of the assessee-respondent and allowed the benefit of set-off of B/F business losses out of this income. Against the order dated 6.3.2008 passed by the CIT (A), the revenue-appellant filed an appeal before the Tribunal. The Tribunal confirmed the order of the CIT (A) in deleting the addition made on account of disallowance of bad debts written off in view of the provisions of Section 36(1)(vii) and Section 36(2) of the Act and also on account of treating the income claimed to be pertaining to money lending business amounting to Rs. 58,25,482/- as 'Business Income' of the assessee-respondent thereby allowing the benefit of set-off of B/F business losses out of this income, vide order dated 27.2.2009 (A-III).

6. The revenue-appellant has filed the instant appeal claiming that the following two questions of law would emerge from the impugned order and deserve to be adjudicated by this Court:-

- “(i) Whether on the facts and in law, the Income Tax Appellate Tribunal was justified in deleting the addition of Rs. 56,66,950/- and Rs. 2,57,502/- made by the Assessing Officer by disallowing the claim of bad debts written off which were declared on accrual basis in earlier assessment years and deduction under Section 80HHC was claimed on the same in the respective years, keeping in view the provisions of Section 14A of the Income Tax Act, 1961?
- (ii) Whether on the facts and in law, the Income Tax Appellate Tribunal was justified in treating the 'interest

income' earned from money lending as 'business income' whereas the same was assessed under the head 'income from other sources'?

7. The Tribunal has answered the aforesaid two questions in para 14 by referring to the order of the CIT (A), which has returned a finding of fact. The finding recorded by the CIT (A) is that the amount of deductions in all under Section 80HHC comes to Rs. 56,66,950/-. In respect of Assessment Year 1997-98, deduction is Rs. 29,39,114/- while for the Assessment Year 1996-97, it is Rs. 27,27,836/-. The Tribunal further referred to the finding of the CIT(A) that the aforesaid factual position has remain unrebutted by the revenue-appellant as no effort has been made to dislodge the stand of the assessee-respondent on the basis of any cogent material. Such being the nature of finding of fact, we do not think that any question of law much less a substantial question of law, within the meaning of Section 260-A, would arise for determination by this Court.

8. The other question with regard to interest income is the income assessable under the head 'Business Income'. The Assessing Officer did not consider the interest income as assessable under the head 'Business Income' instead of treating the same as assessable under the head 'Income from other sources' and accordingly, he denied the set-off of brought forward in respect of business losses. The Tribunal although, did not bank upon the contention of the assessee-respondent with regard to absence of money lending licence yet decided in favour of the assessee-respondent by recording a finding of fact that the assessee-respondent had the business of sale and purchase of mutual funds and money lending which was carried out as an organised activity over a period of time. Basing reliance on the order

of the CIT (A), the Tribunal has concluded that there was no justification to disbelieve the conclusion drawn by the CIT (A). The argument of the revenue-appellant that the interest income falls under Section 56(2) of the Act and is assessable under the head 'Income from other sources' has also been rejected on the ground that the income assessable under the head 'Income from other sources' are of the nature which are otherwise not found to be assessable under any other heads of income. The interpretation of the Assessing Officer was not accepted.

9. Keeping in view the aforesaid factual finding, we are not inclined to accept that there would be a substantial question of law for determination by this Court as it is pertinent to mention that challenge herein has been laid only qua two aforesaid questions. However, with regard to some of the other issues, the order passed by the Tribunal is for determination of fact to the extent of the aforesaid questions of law. The order is upheld. However, in respect of the other part of the order, the remand order shall apply as directed by the Tribunal.

(M.M. KUMAR)
JUDGE

(JITENDRA CHAUHAN)
JUDGE

February 8, 2010

Pk Kapoor