* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 1272/2008**

Date of Decision: 14th December, 2009

P.C. BHANDARI & CO. PVT. LTD.
45-GOLF LINKS,
NEW DELHI ..... Appellant
Through: Ms. Sashi M. Kapila, Advocate

versus

ASSTT. COMMISSIONER OF INCOME TAX, CIRCLE: 14(1)
..... Respondent
Through: Mr. Subhash Bansal, Advocate

% **CORAM:**
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

J U D G M E N T

A.K. SIKRI, J. (ORAL)

1. Admit.

2. Following substantial question of law arises for determination:

(i) Whether the ITAT has laid down an entirely erroneous proposition in law by holding that unless each and every item of expenditure is shown to have a direct, immediate and proximate nexus to each source of income, it is not an allowable expenditure?

3. With the consent of learned counsel for the parties, we have heard the matter finally at this stage itself.

4. The appellant/assessee is a private limited company and is engaged in the business of manufacturing and sale of tents, cotton textiles, jute, flex, wool, silk, ready-made garments etc. As per the object clause in the Memorandum of Association, one of the objects is to deal in securities, stocks, shares as well.

5. In the assessment year in question the assessee had no trading activity. However, according to the assessee it had incurred expenses of Rs.14,38,099/-. Out of these an amount of Rs.8,00,000/- on account of write off of bad debts relating to the tent business which was not claimed as expenditure by the assessee itself in the year income tax return filed. Balance amount of Rs.6,38,099/- was claimed as expenditure. Out of this, a sum of Rs.1,22,795/- was disallowed under Section 14A of the Act towards earning of exempted dividend income. In sum and substance, the assessee had claimed deduction of administration expenses to the tune of Rs.5,19,982/-. As mentioned above there was no trading activity in this year. However, assessee had shown gross receipts under the heads interest income, long term capital gains and dividend income amounting to Rs.14,99,612.80. The Assessing Officer did not allow the aforesaid expenditure from the income shown by the assessee. The Assessing Officer was of the view that since there was no trading activity in this year, thus no business income, administrative expenses could not be allowed against the income which was under the head 'capital gains' or 'income from

other sources'.

6. The assessee carried the matter in appeal before the CIT (A). Submission of the assessee was that there was no trading activity in that particular year. According to the assessee as per the object clause in the Memorandum of Association, the assessee had a right to deal in securities, stocks, shares etc. and, therefore, the dividend income or the income from long term capital gain, which the appellant earned from the sale of security stocks be treated as business income. It was also submitted that, even if the aforesaid income is to be treated as income from other sources, the assessee was entitled to deduction of the aforesaid expenditure as it could set off the same in terms of Section 71 of the Act. CIT (A) also did not go into this aspect specifically and rejected the appeal on the ground that there was no business activity and from this he jumped to the conclusion that there was no 'cessation of business'. Further, the appeal preferred by the assessee before the Income Tax Appellate Tribunal(ITAT) has met the same result.

7. After going through the impugned order passed by the ITAT, we observe that the contentions of the appellant are not appropriately dealt with by the Tribunal. There is no specific finding or observation of the Tribunal on the aspects highlighted by the appellant. In these circumstances, the grievance of the appellant is that the approach of the Tribunal in allowing the deduction of the aforesaid expenses is clearly uncalled for, inasmuch as the Tribunal has gone on one to one

basis namely the expenditure could be allowed only against the specific source of income.

8. Learned counsel for the appellant has also referred to the decision of the Supreme Court in ***Commissioner of Income-tax, West Bengal-III*** vs. ***Rajendra Prasad Moody, 115 ITR 519***, and ***Commissioner of Income-tax (Delhi Central) v. Bharat Insurance Co. Ltd., 142 ITR 342.*** She has also pointed out that for the assessment year 2005-06 the CIT (A) had in fact accept the aforesaid proposition advanced by the appellant and on that basis deleted the penalty levied against the appellant under Section 271(1)(c) of the Act. Order dated 23rd January, 2009 passed in this behalf by the CIT (A) has been produced for our perusal.

9. We find substance in the aforesaid arguments raised by learned counsel for the appellant. What was necessary for the Assessing Officer to find out as to whether the claim of the appellant that the appellant had not closed down the business and there was no cessation of business is correct or not. Even if there was no trading in that particular year, one cannot jump to the conclusion therefrom that the business had been closed down. At the most, business would be in dormancy. Merely because of this reason it cannot be stated that there would not be any expenditure incurred. Test of commercial expediency would be applicable to Section 57 (iii) as well as it applies to Section 37(1) as held by Supreme Court in ***Eastern Investments Ltd.*** vs. ***Commissioner of Income-tax, 20 ITR 1.*** In case it is found that the business had only been suspended in that particular year and

had not been closed down, then the aforesaid expenditure would be allowable as business expenditure. In such a case in the absence of any income under the head 'business income' it could be treated as business loss and the assessee was entitled to set off of this business loss against the income from other sources as provided under Section 71 of the Act.

10. Since such an exercise has not been done by the Assessing Officer or the other authorities, we set aside the impugned orders by answering the question in favour of the assessee and against the Revenue. The matter is remitted back to the Assessing Officer to examine the matter in the aforesaid perspective and pass fresh assessment orders.

A.K. SIKRI, J.

SIDDHARTH MRIDUL, J.

DECEMBER 14, 2009

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