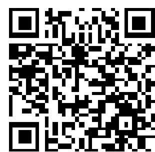

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 17.02.2014

+ **ITA 284/2013**

ANAND KUMAR .....Appellant

Through: None.

Versus

COMMISSIONER OF INCOME TAX-VIII, NEW DELHI AND ANR. .....Respondents

Through: Sh. Kamal Sawhney, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V. EASWAR

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. Even after second call, no one has appeared for the appellant. Learned counsel for the Revenue is present. The matter has been taken up for hearing.

2. This is an appeal under Section 260A of the Income Tax Act, 1961 ("*the Act*"), against an order of the Income Tax Appellate Tribunal ("*ITAT*") dated 22.10.2012 for the Assessment Year 1998-99.

3. Anand Kumar, the assessee in this case, filed a return of income for the AY 1998-99 declaring an income of ₹7,66,512/- claiming interest on Fixed Deposit Receipts ("*FDRs*") which were pledged with banks to avail credit export facilities as "business income", thus claiming a deduction for the entire interest under Section 80HHC of the Act, claiming to be a 100% exporter. The Assessing Officer ("*AO*") passed an order under Section 143(3) of the Act dated 28.2.2001, assessing the income of interest from the FDRs as "income

from other sources" under Section 56. On appeal, this order was confirmed by the CIT (Appeals) by an order dated 24.1.2002. The ITAT reversed this finding, holding that the interest was "business income". The Revenue appealed to the High Court under Section 260A, and this Court restored the matter to the file of the AO for the exercise to be re-done in view of the ruling of the Court in *CIT* v. *Shri Ram Honda Power Equipment Ltd.*, 289 ITR 475 (Delhi), which was held to cover the substantial question of law said to arise in the case. Subsequently, on remand, the AO, by an order under Section 143(3) of the Act, dated 27.10.2008, held that the interest on FDRs was "income from other sources" and not "business income". Aggrieved by this order, the assessee appealed to the CIT (Appeals), which upheld the order of the AO. This was again carried in appeal to the ITAT, leading to the impugned order.

4. The gist of the assessee's contentions is that in the preceding AY, 1997-98, the interest on the FDRs pledged with the banks was considered by the AO to be "income from business". However, in the course of that assessment, although the interest was held to be "business income", netting was disallowed. The CIT (Appeals) in that year allowed netting of interest. The matter subsequently went in appeal to the ITAT and finally this Court. This Court, in its order dated 19.1.2007, held that:

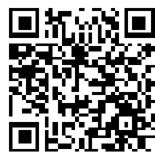
> "*[i]t was correctly noted by the ITAT that the AO having accepted the interest income as business income, the only question that required consideration was whether deduction should be of 90% of the gross interest or net interest. The Court also confined the question of law only to this issue.*"

5. The assessee's argument – in the appeal memorandum – is that since the AO, and the subsequent authorities, in the previous AY had held, on the same facts, the income from interest to be "business income", consistency must be maintained and income, in the AY under consideration, too, is to be considered as "business income".

6. The ITAT, in the present AY 1998-99, in the impugned order, considered these arguments as to the previous assessment in AY 1997-98, and held as follows:

> "*4… a confusion has been created by stating that the decision rendered in the assessee's own case pertaining to assessment year 1997-98, has been followed by Hon'ble High Court in assessment year 1998-99 i.e. assessment year under consideration. Since the assessee failed to represent his case before the Asessing Officer but (sic) verily the matter was discussed at length before the learned CIT(Appeals). But in the interest of justice, we find it justifiable to restore the matter back to the file of the Assessing Officer so that he can reconsider the decision of Hon'ble High Court dated 27.7.2007 for assessment year 1998-99 and the judgment/order dated 19.1.2007 rendered in ITA No. 596/2004 allegedly pertaining to the assessment year 1997-98 and the decision in the case of Shri Ram Honda Power Equipment (supra) and thereafter re-determine the issue in question. With the above observations, we restore the entire appeal to the file of the learned Assessing Officer and allow the same for statistical purposes. We are refraining from making any observation on the legal fact whether the decision of Shri Ram Honda (supra) covers and (sic) don't cover the facts and issues of the case.*"

7. The ITAT, therefore, has not gone into the merits of the case, nor the issue of consistency as alleged by the assessee or the



applicability of the decision in *Shri Ram Honda* (supra). The AO had – in the second round of assessment – in the order under Section 143(3) dated 27.10.2008 not discussed the applicability of the decision in *Shri Ram Honda* (supra), as required by the terms of the remand in the first round of litigation, albeit due to the assessee's failure to represent before the AO. While the CIT (Appeals) did deal with the application of the judgment in *Shri Ram Honda*, the ITAT has taken a liberal and beneficial view of the matter by remanding the case to the AO to reconsider the assessment in light of that decision and the conclusions reached as regards interest income in previous years, as the order dated 27.10.2008 was silent on that question. The ITAT has not made any findings in the impugned order, let alone determined or discussed any issue of fact or law (one way or the other) relevant to the assessment of interest income in this case.

8. For the above reasons, the Court finds that no substantial question of law arises, and ITA 284/2013 is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.V. EASWAR
(JUDGE)

FEBRUARY 17, 2014