



§~61 and 63

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

+ ITA 904/2019

+ ITA 906/2019

PR. COMMISSIONER OF INCOME TAX-7 ..... Appellant

Through: Mr. Deepak Anand, Jr. Standing  
counsel for Mr. Zoheb Hossain, Sr.  
Standing counsel.

versus

M/S PUNJAB AND SIND BANK ..... Respondent

Through: Mr. Salil Kapoor ad Mr. Sumit  
Lalchandani, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

% **16.10.2019**

**CM APPL. 45398/2019 (delay) in ITA 904/2019 and CM APPL. 45400/2019 (delay) in ITA 906/2019**

1. By these applications, the applicant seeks condonation of delay of 107 days in filing both the applications. For the reasons stated in these applications, the delay is condoned.

2. The applications stand disposed of in the aforesaid terms.

**ITA 904/2019 and ITA 906/2019**

3. The present appeals are directed against the order dated 09.01.2019 passed by the Income Tax Appellate Tribunal in ITA No. 1441 and 1442/Del/2015 in respect to the assessment year 2011-12 and 2012-13 in respect of the respondent. The Tribunal has dismissed the said appeals



preferred by the appellant. The Tribunal held, on the issue of disallowance of contribution made to the Employees Provident Fund Trust which the respondent assessee claimed as its legitimate business expenditure, in favour of the respondent assessee and upheld the order passed by CIT (A). While doing so, the Tribunal followed its decision in the case of *DSIT v. Ranbaxy Laboratories Limited (2009) 124 ATJ (Delhi) 771*. We find that this issue is fully covered by the decision of this Court in *Principal Commissioner of Income Tax -07 vs. Punjab and Sind Bank, ITA 737/2017*. The question of law considered by this Court in the said appeal *inter alia* was question “C”. This question was answered in paragraph 7, 8 and 9 which read as follows;

“7. The third issue pertains to the correctness of the order of the ITAT in deleting the addition of Rs. 38,02,52,097/- made by the AO on account of the contribution made by the Assessee to the Punjab & Sind Bank Employees Pensions Fund Trust. The ITAT, in deciding the issue in favour of the Assessee, relied upon the decision dated 6th March 2013 of the Bombay High Court in ITA No. 2232 of 2011 (The Commissioner of Income Tax – 6, Mumbai v. M/s. Glaxo Smithkline Pharmaceuticals). It is seen that the Bombay High Court has in the above order in turn relied on two orders passed by it dated 1st March 2013 in ITA No. 568 of 2012 (CIT v. Suashish Diamonds Ltd.) and Commissioner of Income Tax v. Western India Paper & Board Mills (P) Limited (1991) 189 ITR 309 (Bom). The Bombay High Court has, in its three orders, consistently held that, although contributions to the pension funds may not be allowable under Section 36 (1) (iv) of the Act, the same is allowable under Section 37 of the Act.

8. Learned counsel for the Revenue has been unable to point out to the Court any view contrary to the one taken by the Bombay High Court.



9. It appears that although no appeal was filed by the Revenue against the order of the Bombay High Court in *M/s. Glaxo Smithkline Pharmaceuticals (supra)*, the Revenue has filed Special Leave Petitions before the Supreme Court against the subsequent orders passed in 2013. However, no stay has been granted thereof. Consequently, the Court declines to frame a question on this issue.”

4. In our view, since this Court has already taken a view in the matter, no question of law arises on this aspect.

5. Insofar as the disallowance of expenditure under Section 14A is concerned, the ITAT has relied upon the decision of the Supreme Court *Maxopp Investment Ltd vs. CIT (2018), 402 ITR 640 (SC)*. The decision of the Supreme Court reads as follows:

“48. In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as “income” under the head “profits and gains from business and profession”. What happens is that, in the process, when the shares are held as “stock-in-trade”, certain dividend is also earned, though incidentally, which is also an income. However, by virtue of Section 10(34) of the Act, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14-A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in *Walfort Share and Stock Brokers (P) Ltd. case*. Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned.



49. We note from the facts in *State Bank of Patiala* case that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8-D of the Rules and holding that Section 14-A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court.

50. It is to be kept in mind that in those cases where shares are held as "stock-in-trade", it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like *Maxopp Investment Ltd.* where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in *State Bank of Patiala* also fail, though law in this respect has been clarified hereinabove."



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6. The Tribunal has held in favour of the respondent assessee that it had earned the revenue on the shares held as stock in trade only by a quirk of fate.

7. In the light of aforesaid concluded position, both on facts and in law, in our view, no question of law arises for consideration in the present appeal. Accordingly, present appeals stand dismissed.

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VIPIN SANGHI, J

A handwritten signature in black ink, appearing to read 'Sanjeev Narula', positioned above the printed name.

SANJEEV NARULA, J

OCTOBER 16, 2019

*Pallavi*