

Interest at the rate of 15 per cent per annum may be charged on the balance amount in view of the fact that HUDA is paying interest @ 15 per cent on enhanced compensation as per new land Acquisition Act.”

(7) The facility extended to the petitioner to pay the enhanced price demanded in this manner is obviously just and reasonable and no ground therefore, survives to challenge the mode and manner of the recovery of it.

(8) Mr. Ram Lal Gupta, counsel for the petitioner in C.W.P. 11036 and 11571 of 1988 on his part sought to question the enhanced price demanded on the ground that it comprised not only the enhanced compensation for the land acquired that HUDA had been called upon to pay, but also development charges thereon. This, the Advocate-General, Haryana, after obtaining instructions from the authority concerned, has categorically denied. It clearly stated by him that development charges did not constitute component of the enhanced price demanded from the petitioner.

(9) It follows therefore, that the petitioners are liable to pay the enhanced price demanded from them, but they shall be at liberty to pay it within 30 days of the date of this order or in instalments as per the mode accepted and agreed to by HUDA. This bunch of writ petition is disposed of accordingly. In the circumstances, there will be no order as to costs.

R.N.R.

*Before G. C. Mital and S. S. Sodhi, JJ.*

COMMISSIONER OF INCOME-TAX, AMRITSAR,—*Applicant.*

*versus*

M/S. AMRITSAR SWADESHI WOOLEN MILLS. AMRITSAR,—*Respondent.*

*Income Tax Reference No. 23 of 1983.*

12th April, 1989.

*Income Tax Act, 1961—S. 35B, 143, 144-B and 256(1)—Service of Draft Assessment on assessee—Objections made by assessee—Assessee claiming weighted deductions at later stage—Such claim—Validity of.*

Commissioner of Income-tax, Amritsar v. M/s Amritsar Swadeshi  
Woolen Mills, Amritsar (G. C. Mital, J.)

*Held*, that the claim of deductions under one head or the other, under one section or the other is not a matter covered by Section 144B of the Act. Such a claim could be made even in proceedings under Section 144B of the Act. The counsel for the Revenue could not dispute that if it was a case of assessment under Section 143, the assessee could raise the point of weighted deduction during the proceedings, even if such a deduction was not claimed in the return filed by it.

(Para 4)

*Reference Under Section 256(1) of the Income Tax Act 1961, by Income Tax Appellate Tribunal to the Hon'ble High Court of Punjab and Haryana for opinion of the following questions of law arising out of the order of the Tribunal's dated 25th May, 1982 in R.A. No. 120 (ASR)/1982 in I.T.A. No. 259(ASR)/1981:—*

- “1. *Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in restoring the appeal on the issue of the additional claim for weighted deduction under section 35B made by the assessee,—vide his letter dated 22nd May, 1980, for fresh disposal in accordance with law ?*
2. *Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in maintaining that assessee was entitled to revise the return of income before the assessment was made although the draft assessment had been made and sent to the I.A.C. for issuing deductions under section 144B?”*

(Assessment Year : 1977-78).

L. K. Sood, Advocate, for the Applicant.

S. S. Mahajan, and H. S. Sangha, Advocates, for the Respondents.

### JUDGMENT

*Gokal Chand Mital, J.*

(1) On 29th March, 1980, the Income Tax Officer served a draft assessment order under Section 144B of the Income Tax Act, 1961 (hereinafter called ‘the Act’), on the assessee. On 3rd April, 1980, the assessee filed objections and the matter was sent to the Inspecting Assistant Commissioner and on receipt of the directions from him, the matter was taken up by the Income Tax Officer. On 22nd

May, 1980, the assessee filed a letter before the Income Tax Officer to claim weighted deduction under Section 35B of the Act. The Income Tax Officer by order dated 23rd September, 1980, framed assessment and declined to give the benefit of weighted deduction as this matter was not raised in the objections filed against the draft assessment order. On assessee's appeal, he failed to get the benefit of weighted deduction from the Commission of the Income Tax (Appeals), but on further appeal the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'), allowed the point to be raised and sent back the case to the Commissioner of Income Tax (Appeals) for decision of the appeal afresh.

(2) At the instance of the Revenue, the following questions have been referred for opinion of this Court :

- “1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in restoring the appeal on the issue of the additional claim for weighted deduction under section 35B made by the assessee,—*vide* his letter dated 22nd May, 1980, for fresh disposal in accordance with law ?
2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in maintaining that assessee was entitled to revise the return of income before the assessment was made although the draft assessment had been made and sent to the I.A.C. for issuing deductions under section 144B ?”

(3) The only point raised before us at the instance of the Revenue is that the assessment proceedings were being taken under Section 144B of the Act and the Income Tax Officer had the jurisdiction to deal with only those matters which were covered by the objections raised against the draft assessment order and as per directions of the Inspecting Assistant Commissioner and since there was no direction from the Inspecting Assistant Commissioner with regard to the grant of weighted deduction under Section 35B of the Act, the matter could not be considered by the Income Tax Officer or any other Appellate Authority, and, therefore, the Tribunal has erred in law in allowing the point to be raised at the appellate stage and in sending back the case to the Commissioner of Income Tax (Appeals) for fresh decision.

Commissioner of Income-tax, Amritsar v. M/s Amritsar Swadeshi  
Woolen Mills, Amritsar (G. C. Mital, J.)

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(4) We are unable to appreciate the argument raised by the counsel for the Revenue because the matter of grant of weighted deduction, under Section 35B of the Act was not the matter which was to be included in the draft assessment order. The provisions of Section 144B of the Act are applicable only when the Income Tax Officer comes to the conclusion that additions to the tune of Rs. one lac or more deserve to be made. Wherever a draft assessment order is served on the assessee proposing addition of Rs. one lac or more against such draft assessment order the assessee has to raise objections justifying non-addition. Claim of deductions under one head or the other, under one section or the other is not a matter covered by Section 144B of the Act. Such a claim could be made even in proceedings under Section 144B of the Act. The counsel for the Revenue could not dispute that if it was a case of assessment under Section 143, the assessee could raise the point of weighted deduction during the proceedings, even if such a deduction was not claimed in the return filed by it. Moreover, it has been held in *C.I.T. v. Oswal Woollen Mills Ltd* (1), that after completion of assessment proceedings, at Appellate stage benefit under Section 35B of the Act of weighted deduction can be claimed and such a point can be allowed to be raised. For claiming such deduction, we find no difference whether the assessment proceedings are being made under Section 143 or 144B of the Act. In this view of the matter, the Tribunal was right in allowing the point to be raised at the Appellate stage and in remanding the matter to the Commissioner of Income Tax (Appeals) for fresh decision. Accordingly, we answer the first question in the affirmative, in favour of the assessee.

(5) In view of the aforesaid, the second question is academic and is returned un-answered.

(6) The reference stands disposed of accordingly with no order as to costs.

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P.C.G.

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