IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **ITA No. 147 of 1999**
Date of Decision:-08.01.2015

M/s Road Masters Industries of India Pvt. Ltd., Rajpura

...Petitioner

Versus

Commissioner of Income Tax, Patiala and others

...Respondents

Present:- Mr. Akshay Bhan, Senior Advocate with
Mr. Aalok Mittal, Advocate
for the petitioner.

Ms. Urvashi Dhugga, Advocate
for the respondents.

1. **ITA No. 148 of 1999**

M/s Road Masters Industries of India Pvt. Ltd., Rajpura

...Petitioner

Versus

Commissioner of Income Tax, Patiala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Akshay Bhan, Senior Advocate with
Mr. Aalok Mittal, Advocate
for the petitioner.

Ms. Urvashi Dhugga, Advocate
for the respondents.

HEMANT GUPTA J.(Oral)

This order shall dispose of Income Tax Appeal Nos.147 and

148 of 1999 arising out of the order passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh on 31.5.1999 dismissing two appeals filed by the assessee arising out of assessment years 1981-82 and 1982-83. The assessee has framed following substantial questions of law :-

> "(i) Whether the facts and circumstances of the case, the orders Annexures P-4, P-5 and P-7 are legally sustainable ?
>
> (ii) Whether in the facts and circumstances of the case, the up-holding of the addition made by the Assessing Officer on issues not pending on the file of the Assessing Officer is legally sustainable?
>
> (iii) Whether in the facts and circumstances of the case, the confirmation of the order passed by the Assessing Authority on issues which were pending on the file of the first Appellate Authority is legally sustainable ?
>
> (iv) Whether in the facts and circumstances of the case, the addition of Rs.4,37,098/- on account of weighted deduction is legally sustainable ?
>
> (v) Whether in the facts and circumstances of the case, the addition made by the Assessing Authority in giving appeal effect to the order dated 22.8.1991 of the I.T.A.T. on a issue specifically remanded back to the first appellate authority by

the I.T.A.T. and pending before the C.I.T. (A) is legally sustainable ?"

The brief facts leading to the present appeals are that the Assessing Officer initially passed an order of assessment on 15.2.1984 in relation to the assessment year 1981-82 raising demand of Rs.8,55,231/- and on 31.3.1984 in relation to the assessment year 1982-83 raising demand of Rs.27,58,718/-. The appeals filed by the assessee against the said order of assessments were partly accepted on 3.3.1986 and 30.3.1986 respectively. The Revenue went in further appeal before the Tribunal. The Tribunal vide common order dated 22.8.1991 in respect of two assessment years accepted the appeals preferred by the Revenue and directed the first Appellate Court to pass a speaking order on the issue. The relevant extract from the order pertaining the assessment year 1981-82 reads as under:-

"7. Coming to ground No.5 it relates to the claim made by the assessee at Rs.4,37,098/-. This issue is also discussed by the learned First Appellate Authority in the appellate order made for the assessment year 1982-83. We will set aside the impugned order and restore the same to the file of the learned first appellate Authority for fresh hearing, of course, after hearing the assessee and the Assessing Officer in as much as his reasoning cannot be sustained. The learned First Appellate Authority has only said that ,"I have carefully considered the submissions made before me and find that the claim of the appellant is in order and thus entitled to further relief of Rs.4,73,635/- which is allowed". The learned First Appellate Authority is directed to pass a speaking order on the issue. On this ground, the revenue succeeds for statistics.

8. Revenue's appeal for the assessment year 1981-82 stands allowed partly on merits and partly for statistics in the above terms."

In respect of assessment year 1982-83 the appeal was also partly allowed after giving the following findings:-

"10. The next grievance of the revenue is about the claim of bad debt which has been allowed by the learned First Appellate Authority. While deciding assessee's ground No.13 before him, he has discussed the issue in para 9 of the impugned order. A perusal of the details in para 9 of the order reveal that while the accounting period of the assessee in relation to assessment year under appeal ended on 30.8.1981, most of the bills have been made in 1974, 1976, others are of year 1979 as also of 14.6.1980. On this also we will set aside the impugned order and restore the same to the file of the learned First Appellate Authority for

> bringing on record the material with which the assessee supports its case. The assessee and the Assessing Officer shall be heard and a speaking order passed."

After the aforesaid order was passed by the Tribunal, the learned Assessing Officer passed a consequential order giving effect to the order passed by the Tribunal on 10.10.1991. Still further the assessee filed an appeal against the order passed by the Assessing Officer giving effect to the order of Tribunal, which was dismissed by the Commissioner of Income Tax (Appeals) on 17.3.1992 holding that once the findings of the Commissioner Income Tax (Appeals) have been set aside by the Tribunal, the only surviving order is that of the Assessing Officer and, therefore, he is justified in reviving the demand against the assessee. However, after re-hearing, another order was passed by the Commissioner Income Tax (Appeals) on 14.9.1994 and returned the following findings :-

> "3.3. I have gone through the facts of the case and the order of my learned predecessor. He has discussed case of each bad debt separately in his order and all the details were given. It is, however, seen that mainly all the bad debts under consideration had not really become bad during assessment year 1982-83. For example in the case of M/s Kartarpur Cycle Home, M/s Azad Cycle Works, M/s Ram Dayal Ved Parkash and M/s Daud H. AGA and Sons action for recovery of

bad debts was still being taken by the appellant. In addition to this no findings in terms of Section 36(2) has been recorded at any stage. It will be fair and just in the circumstances to restore the matter to the Assessing Officer for proper verification and enquires in the case of each bad debt and for recovery whether conditions laid down in Section 36(2) are fulfilled. Assessing Officer is directed to give opportunity to the appellant before arriving at his conclusion in this matter."

It is thereafter, the assessee filed further appeal before the Tribunal, which has since been dismissed vide order dated 31.5.1999 against which order, the present appeals have been preferred. The learned Tribunal has recorded a finding that the Assessing Officer was free in these cases to revive the demand in relation to the issue, which were restored to the file of learned Commissioner of Income Tax (Appeals) as the relief to the assessee stands withdrawn till the issue not decided by the learned Commissioner Income Tax (Appeals) afresh. In these circumstances, the assessee filed the present appeal raising the above mentioned substantial questions of law for the consideration of this Court.

We have gone through the record and find that none of the substantial question of law arises for consideration. After the order of the Commissioner of Income Tax (Appeals) was set aside by the Tribunal and the matter remitted back to the Commissioner Income Tax (Appeals), the parties are before the First Appellate Court against the order of assessment finalized by the Assessing Officer. Such order of assessment finalized by the Assessing Officer, subject to such modification as has been ordered by the Tribunal, is a final and operative order till such time the same is set aside in appeal by the Commissioner of Income Tax (Appeals). Mere fact that the appeal is pending before the Commissioner of Income Tax (appeals) after the orders of the Tribunal does not oust the jurisdiction of the Assessing Officer to initiate recovery proceedings on the basis of the order passed by it. However, such recovery proceedings shall be subject to final decision in appeal by the Commissioner of Income Tax (Appeals) or thereafter. Therefore, the additions made by the Assessing Officer would be deemed to be final till such time the same are set aside in appeal.

In view thereof, we do not find any substantial question of law arises for consideration; hence, the appeals are dismissed.

(HEMANT GUPTA)
JUDGE

January 08, 2015 ***(HARI PAL VERMA)***
Vijay Asija ***JUDGE***