IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 636 of 2007 (O&M)

Date of Decision: 25.8.2015

Commissioner of Income Tax, Faridabad

....Appellant.

Versus

M/s Mandeep Mushroom Ltd., Gurgaon

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. Tajender K. Joshi, Advocate for the appellant.

None for the respondent.

AJAY KUMAR MITTAL, J.

1. Delay of 55 days in re-filing the appeal is condoned.

2. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 29.12.2006 (Annexure A-III) passed by the Income Tax Appellate Tribunal, Delhi Bench “G”, Delhi (hereinafter referred to as “the Tribunal”) in ITA No. 1160/DEL/2003, for the assessment year 1998-99, claiming the following substantial question of law:-

> Whether, on the facts and circumstances of the case, the order of the Hon'ble ITAT is not perverse in deleting the addition of ₹ 2,39,315/- made by the Assessing Officer in the trading account, when the Assessing Officer had clearly pointed out various

discrepancies on the basis of enquiries made and as discussed in the assessment order?

3. Briefly stated, the relevant facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee was earning income from mushroom and strawberry growing and sale thereof. The said income was claimed as agricultural income. The assessee filed its return of income on 27.11.1998 showing loss at ₹ 6,14,961/-. The said return was processed under Section 143(1)(a) of the Act on 31.5.1999. The Assessing Officer vide order dated 28.3.2001 (Annexure A-I) framed the assessment by making an addition of ₹ 2,39,315/-. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 8.1.2003 (Annexure A-II) while partly allowing the appeal upheld the addition of ₹ 2,39,315/- made by the Assessing Officer. Still dissatisfied, the assessee filed an appeal before the Tribunal who vide order dated 29.12.2006 (Annexure A-III) following its order for the assessment year 1997-98 in the case of the assessee deleted the addition of ₹ 2,39,315/- made by the Assessing Officer. Hence, the present appeal by the revenue.

4. We have heard learned counsel for the revenue and perused the record.

5. The Tribunal while accepting the appeal of the assessee held that the addition is similar to the assessment year 1997-98 in respect of which ITA No. 267 of 2008 has been dismissed by this Court. The Tribunal has accepted the appeal of the assessee on the same reasoning. Learned counsel for the revenue did not dispute that the

present appeal is governed by the findings recorded in ITA No. 267 of 2008.

6. Accordingly, the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 25, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**