IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 986 of 2008
Date of decision: 25.8.2015

The Shahabad Cooperative Sugar Mills Limited
……Appellant.

The ACIT, Kurukshetra Circle, Aayakar Bhawan, Kurukshetra

…..Respondent

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

Present: Mr. S.K.Mukhi, Advocate for the appellant.
Mr. Yogesh Putney, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. The assessee has filed this appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 28.5.2008, Annexure A.1 passed by the Income Tax Appellate Tribunal, Chandigarh Bench (in short, "the Tribunal") in cross appeals i.e. ITA No.797/Chandi/2005 of the appellant and ITA No.800/CHANDI/2005 of the revenue for the assessment year 2002-03. This appeal was admitted on 28.4.2010 to consider following substantial questions of law:-

> a) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified on facts and in law in confirming the findings of the authorities below while denying deduction to the appellant society of its income under

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section 80P (2)(a)(iii) of the Income Tax Act, 1961 despite the fact that the issue stands referred to the Full Bench of this Hon'ble Court in ITA No.232/2003?

b) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified on facts and in law in confirming the findings of the authorities below while denying deduction on account of interest on stiky loans being the interest doubtful of recovery and having been credited to suspense account in view of the established principles of law and that of accountancy as supported by the judgment of Hon'ble Supreme Court of India in the case of UCO Bank vs. CIT (1999) 237 ITR 889 (SC)?

c) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified on facts and in law in concurring with the findings of the AO that the amount spent on repair and maintenance of the building and construction of boundary wall thereof was capital expenditure instead of revenue as claimed by the appellant?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee Cooperative society filed its return declaring income of ₹ 43,868/- under the head house property. In computation of income, net profit from business was shown by the assessee at ₹ 1,28,57,256/- against which business loss carried forward from earlier years was set off to the extent of the income and net profit disclosed was at nil. The Assessing Officer issued notice under section 143 (2) of the Act and made assessment under section 143(3) of the Act determining the taxable income of the assessee at ₹ 1,78,46,060/- after setting off of the brought forward business loss/unabsorbed depreciation of ₹1,75,76,215/- vide order dated 31.3.2005, Annexure A.3. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax

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(Appeals) [CIT(A)]. Vide order dated 14.7.2005, Annexure A.2, the appeal was partly allowed. Both the appellant and the revenue went in appeals before the Tribunal. Vide common order dated 28.5.2008, Annexure A.1, the Tribunal partly allowed the appeal of the assessee and dismissed that of the revenue. Hence the instant appeal by the assessee.

3. We have heard learned counsel for the parties and perused the record.

4. It was urged by learned counsel for the revenue that so far as question No.(a) is concerned, the same does not arise. A perusal of the order passed by the Tribunal shows that the assessee had not claimed deduction under Section 80P(2)(iii) of the Act. Thus, once the claim was never made by the Assessee before the Assessing Officer, the same would not arise for consideration in the present appeal. The Tribunal in para 6 of its order recorded as under:-

> "It is observed from the order of the Commissioner of Income Tax (A) that the claim of the assessee has not been entertained on two grounds firstly, the assessee had not made any claim either in the original return or in the revised return; secondly, for the assessment year 2000-01, it was held that the assessee is not entitled to deduction under section 80P(2)(iii) of the Income Tax Act, 1961. In the light of the above facts, we find no justification to interfere with the order of the Commissioner of Income Tax (A). The ground of appeal raised by the assessee is accordingly dismissed."

In view of the above finding, question No.(a) does not arise.

5. As regards question No.(b), it was not disputed by the learned counsel for the assessee that the same is covered against the assessee by the decision dated 24.10.2013 rendered by this Court in ITA No.235 of 2009, ***(The Shahabad Cooperative Sugar Mills Limited vs. CIT, Aayakar***

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Bhawan, Sector 13, Karnal).

6. Taking up question No.(c), the amount spent on repair and maintenance of the building and construction of boundary wall thereof was held to be capital expenditure. It was noticed that the amount had been spent for the purchase of ACC sheets, dryer and construction of boundary wall. Learned counsel for the assessee was unable to substantiate that the said expenditure would qualify as revenue expenditure in the facts and circumstances of the present case. The finding recorded by the Tribunal reads thus:-

> "24. The facts relating to this issue are that the assessee had incurred expenditure of ₹ 5,38,718/- on repair and replacement of machinery and boundary wall. The Assessing Officer treated the entire expenditure as of capital nature and after allowing depreciation, the disallowance of ₹ 4,84,847/- was made. The Commissioner of Income Tax (A) has confirmed the disallowance.
>
> The learned counsel for the assessee contended that the disallowance is unwarranted as the entire expenditure has been incurred on account of repairs and maintenance of machinery and boundary wall.
>
> The learned D.R. on the other hand invited our attention to the finding of the Assessing Officer that the amount has been spent in the purchase of ACC sheets, dryer and construction of boundary wall.
>
> In our view, the finding of the Assessing Officer not having been rebutted by any evidence, we find no justification to interfere with the orders of the revenue authorities. The ground of appeal raised by the assessee is accordingly dismissed."

7. In view of the above, the substantial questions No.(a) does not arise whereas question Nos. (b) and (c) are answered against the assessee

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and in favour of the revenue. Consequently, the appeal is dismissed.

(Ajay Kumar Mittal)
Judge

August 25, 2015 **(Ramendra Jain)**
Judge

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