IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 419 of 2009 (O&M)

Date of Decision: 20.10.2015

The Gurdaspur Co-operative Sugar Mill Ltd., Panipur, Gurdaspur
....Appellant.

Versus

Commissioner of Income Tax-II, Amritsar and another
...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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

PRESENT: Mr. M.R. Sharma, Advocate for the appellant.

Mr. Denesh Goyal, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing ITA Nos. 419 and 560 of 2009 as the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") has decided both the cases by one consolidated order and the issues involved therein are identical. For brevity, the facts are being extracted from ITA No. 419 of 2009.

2. This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 31.12.2008 (Annexure P-1) passed by the Tribunal in ITA No. 344/Asr/2008 for the assessment year 2003-04, claiming the following

substantial questions of law:-

(i) Whether in the facts and circumstances of the case the orders (Annexure P-1), (Annexure P-2) and (Annexure P-3) are legally sustainable?

(ii) Whether in the facts and circumstances of the case the ITAT has grossly erred in upholding the order of the Assessing Officer and CIT(A) holding the amount of Rs.22,15,00,000/- advanced as loan by the Punjab Rural Development Board during the period from 1991-92 to 2001-02 and converted into grants during the year under consideration is a revenue receipt and can be subjected to tax under the provisions of Section 28(iv) of the Income Tax Act?

(iii) Whether in the facts and circumstances of the case the ITAT has grossly erred in upholding the order of the Assessing Officer and CIT(A) disallowing the amount of Rs.29,07,740/- paid as salary to the employees, rates and taxes etc.?

(iv) Whether in the facts and circumstances of the case the ITAT has grossly erred in upholding the order of the Assessing Officer and CIT(A) disallowing the depreciation amounting to ₹ 3,87,637/- in respect of distillery unit having common management, premises, employees, electricity supply etc. etc. can be disallowed?

(v) Whether in the facts and circumstances of the case the ITAT has grossly erred in denying the deduction to the appellant being a cooperative society from the marketing of agriculture produce being sugarcane of its grower members u/s 80P(2)(a)(iii) of the Income Tax Act?

3. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return of income on 29.11.2003 for the assessment year 2003-04 declaring net loss of ₹ 24,43,73,547/- and agricultural income at ₹ 1,94,830/-. Along with the said return, the assessee filed a computation chart showing the statement of income. The assessment was completed under Section 143(1)(a) of the Act by the Assessing Officer vide order dated 20.1.2004 accepting the returned income. However, the assessment order was not served upon the assessee. Subsequently, the assessee filed a revised return on 31.3.2004 declaring business loss of ₹ 26,22,91,189/- and agricultural income at ₹ 1,94,830/-. The said revised return was processed under Section 143(1) of the Act at the declared loss on 15.7.2004 as is evident from the perusal of the assessment order passed in this case. A notice under Section 148 of the Act was issued on 10.5.2006 to the assessee for reopening the assessment already completed. Respondent No.2 being the Assessing Officer completed the assessment under Section 143(3)/147 of the Act vide order dated 27.7.2007 (Annexure P-2) and made an addition of ₹ 25,15,00,000/- being the amount of grant-in-aid received from State

Government. The Assessing Officer disallowed ₹ 29,07,740/- out of expenses and ₹ 3,87,637/- being the amount of depreciation claimed on distillery unit and assessed ₹ 4,08,47,650/- as net income after setting off the losses. Respondent No.2 also did not allow deduction under Section 80P(2)(a)(iii) of the Act and levied the income tax on the said amount. Feeling aggrieved, the assessee filed an appeal under Section 246 of the Act before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"] who vide order dated 28.3.2008 (Annexure P-3) upheld the order of respondent No.2 with regard to the disallowance of expenditure as well as taxing ₹ 25,15,00,000/- being the amount of loan converted into grants-in-aid under Section 28(iv) of the Act and also disallowed the claim of the assessee for deduction under Section 80P(2)(a)(iii) of the Act. Still dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 31.12.2008 (Annexure P-1) upheld the orders passed by respondent No.2 and the CIT(A) and dismissed the appeal. Hence, the present appeals by the assessee.

4. Learned counsel for the appellant-assessee argued that the legal position in **Karnal Cooperative Sugar Mills Ltd. v. CIT (2002) 253 ITR 659** on the basis of which the case was decided against the assessee was over-ruled by a Full Bench of this Court in **The Budhewal Co-op. Sugar Mills Ltd. v. Commissioner of Income-Tax, (2009) 315 ITR 351 (P&H).** It was contended that in view thereof, the Tribunal had wrongly disallowed the claim under Section 80P(2)(a)(iii) of the Act. Learned counsel for the revenue could not controvert the aforesaid position.

5. No other point was urged by learned counsel for the parties.

6. The Tribunal had relied upon the decision of this Court in the

case of **Karnal Cooperative Sugar Mills Ltd's case (supra)** to deny the benefit of deduction under Section 80P(2)(a)(iii) of the Act to the assessee. However, Full Bench of this Court in **The Budhewal Co-op. Sugar Mills Ltd's case (supra)** had overruled the said judgment against which the Supreme Court in **Deputy Commissioner of Income-Tax v. Budhewal Co-operative Sugar Mills Ltd. (2015) 373 ITR 35 (SC)** following its judgment in **Morinda Co-operative Sugar Mills Ltd. v. Commissioner of Income Tax (2013) 354 ITR 230 (SC)** remanded the matter back for adjudicating the issue afresh.

7. In view of the above, the matter is remitted to the Tribunal to adjudicate the issue afresh in accordance with law after affording an opportunity of hearing to the parties. The appeals stand disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

October 20, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**