IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 472 of 2009 (O&M)

Date of Decision: 21.9.2015

M/s Sarup Tanneries Ltd., Jalandhar

....Appellant.

Versus

The Commissioner of Income Tax-II, Jalandhar

...Respondent.

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. Sanjay Bansal, Senior Advocate with
Mr. B.M. Monga, Advocate for the appellant.

Mr. Vivek Sethi, Advocate for the revenue.

AJAY KUMAR MITTAL, J.

1. 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 23.1.2009 (Annexure A-1) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 476(Asr)/2008, for the assessment year 2005-06. The appeal was admitted by this Court vide order dated 18.1.2010 for determination of the following substantial questions of law:-

(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the loss sustained by the assessee on account of advancing of loan and standing as guarantor to/for its wholly owned subsidiary company was allowable only in the assessment year 2004-05 and not in assessment year 2005-06?

(ii) Whether the Tribunal acted illegally and perversely, on the facts and in the circumstances of the case, in arriving at a conclusion that loss claimed by the assessee was a capital loss and not a business loss?

(iii) Whether the Tribunal was legally correct in holding that the assessee was entitled to claim the carry forwarded of losses of Rs.8,76,277/- in the assessment year 2004-05 and not in the assessment year 2005-06?

2. Put shortly, the facts necessary for disposal of the present appeal as mentioned therein are that the assessee is engaged in the business of manufacturing and sale of leather goods, shoe upper, soles etc. On scrutiny of the profit and loss account of the assessee by the Assessing Officer, it was found that the assessee had claimed an expenditure of ₹ 3,86,63,896/- on account of loss due to irrecoverability of direct loan as also loan amount for the execution of standby letter of credit paid to the wholly owned subsidiary company in USA. Since the loss did not spring from the business of the assessee, its explanation qua the said loss was called for. The assessee pleaded that it was a business loss incurred on account of commercial expediency to be

allowed as business loss. The Assessing Officer vide assessment order dated 28.12.2007 (Annexure A-3) made an addition of ₹ 3,86,63,896/- on account of disallowance of loss claimed as amount written off due from the subsidiary. 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 24.7.2008 (Annexure A-2) partly allowed the appeal and deleted the addition of ₹ 3,86,63,896/- made by the Assessing Officer. Further, the CIT(A) had deleted the disallowance of ₹ 86,183/- made out of foreign travelling expenses and ₹ 1,00,000/- out of car expenses and allowed the assessee to carry forward a loss of ₹ 8,76,277/- in the assessment year 2004-05. Being dissatisfied, the revenue filed an appeal before the Tribunal who vide order dated 23.1.2009 (Annexure A-1) partly allowed the appeal. The Tribunal sustained the addition of ₹ 3,86,63,896/- made by the Assessing Officer but confirmed the findings of the CIT(A) in deleting the allowance of car expenses and foreign travelling expenses. Further, the Tribunal held that the assessee was entitled to claim the carry forward capital loss at ₹ 8,76,277/- in the assessment year 2004-05 and not in 2005-06. Hence, the present appeal by the assessee.

3. It was pointed out by learned counsel for the parties that an application under Section 254(2) of the Act bearing MA No. 46(Asr)/2009 was filed by the assessee. The Tribunal vide order dated 30.6.2010 corrected the mistake on account of not having noticed the judgment of the Supreme Court in **CIT v. M/s Amalgamations Private Limited (1997) 226 ITR 188.** It was observed by the Tribunal that the applicability of the aforesaid decision cannot be adjudicated under the provisions of Section 254(2) of the Act as it is covered under Section 254(1) of the Act.

The said application was, thus, partly allowed by recalling its earlier order on this aspect. Thereafter, revenue also filed MA No. 12(ASR)/ 2011 under Section 254(2) of the Act against the order dated 30.6.2010 which was dismissed by the Tribunal vide order dated 19.11.2012. The revenue filed appeal bearing ITA No. 53 of 2013 assailing the said order which was dismissed by this Court on 9.4.2015 with the following observations:-

> "3. The appellant filed M.A. No. 12 (ASR)/2011 under Section 254(2) of the Act against the order dated 30.06.2010 which was dismissed by the impugned order and judgment dated 19.11.2012. In view of what we have mentioned earlier, the appellant is in any event not without a remedy. However, this order in an application under Section 254(2) is not appealable.
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> 4. Needless to add that the decision in ITA-472-2009, if decided before the Tribunal decides the matter under Section 254(1), would have its own effect."

4. Learned counsel for the revenue produced the record of ITA No. 53 of 2013 for the perusal of the Court.

5. It was further submitted by learned counsel for the parties that the Tribunal after partially recalling its order dated 23.1.2009 which has been impugned in this appeal had kept the matter pending regarding admissibility of the deduction.

6. It was prayed by learned counsel for the parties that in view of the subsequent developments that have taken place after the filing of

the appeal, the present appeal be disposed of by directing the Tribunal to adjudicate the issue pending before it in accordance with law without being influenced by any finding or observation noticed by the Tribunal in its earlier order dated 23.1.2009 in that regard. Ordered accordingly.

7. The appeal stands disposed of in the manner indicated above.

(AJAY KUMAR MITTAL)
JUDGE

September 21, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**