

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No. 82 of 2009
Date of decision: 25.8.2015**

The Commissioner of Income Tax, Karnal

.....Appellant.

The Karnal Cooperative Sugar Mills Limited, Merrut Road, Karnal

.....Respondent

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

Present: Mr. Yogesh Putney, Advocate for the appellant.
Mr. Rajesh Garg, Sr. Advocate with Ms. Nimrata Shergill,
Advocate for the respondent.

Ajay Kumar Mittal,J.

1. The revenue has filed this appeal under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 30.5.2008, Annexure A.3 passed by the Income Tax Appellate Tribunal, Delhi Bench (in short, “the Tribunal”) in ITA No.1866/D/2002 for the assessment year 1999-2000, claiming following substantial questions of law:-

- i) Whether on the facts and in the circumstances of the case, the learned ITAT is right in law in allowing the assessee's claim of ₹ 3 lac on account of annual subscription for education fund relating to assessment years 1994-95, 1995-96, 1996-97 ignoring the fact that the assessee had been following the mercantile system of accounting and that the liability of the annual subscription for the earlier assessment years of which the assessee was well aware was not allowable in the year relevant to the assessment year 1999-2000?
- ii) Whether on the facts and in the circumstances of the case, the learned ITAT is right in holding that amount of ₹ 10,05,000/- paid by the assessee on account of contribution towards rehabilitation fund is a business expenditure allowable under section 37(1) of the I.T.Act, 1961?
- iii) Whether on the facts and in the circumstances of the case, the learned ITAT was right in law in allowing the disallowance of Rs.5,00,000/- on account of contribution made specifically for the construction of office building of the Apex body i.e. Haryana State Federation of Sugar Mills by following the decision of the Hon'ble Supreme Court in the case of CIT vs. Bombay Dying Manufacturing Company Limited, ignoring the fact that the assessee had not advanced the amount for construction of houses under a subsidized industrial scheme for its employees as in the case decided by the Apex court and that the ratio of the decision of the Hon'ble Supreme Court in the case mentioned above was not applicable to the facts of the case of the assessee?
- iv) Whether on the facts and in the circumstances of the case, the learned ITAT was right in law in allowing the appeal of the assessee thereby deleting the addition of ₹ 57,28,554/- when already business expenditure of ₹ 39.80 lacs paid to the farmers this year had been allowed, thereby resulting in double deduction on the same head?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee had paid a sum of ₹ 2 lacs to Haryana State Cooperative Development fund on account of contribution towards education fund. Keeping in view that the said amount pertained to earlier assessment years and not relevant to the assessment year 1999-2000 and the assessee was maintaining accounts on mercantile basis, the same was disallowed. The assessee went in appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] who vide order dated 27.2.2002, Annexure A.2 allowed relief of ₹ 75000/- and sustained the disallowance to the extent of ₹ 2,25,000/-. On appeal before the Tribunal, relying upon its own decision in the case of ***Shahbad Cooperative Sugar Mills limited***, for the assessment year 1994-95, decided the issue in favour of the assessee.

3. Next, the assessee had paid an amount of ₹ 10,05,000/- towards creation of a rehabilitation fund for providing assistance to the weak sugar mills. Since this amount was not found to be spent wholly and exclusively for the business purposes as per the provisions of section 37 of the Act, the same was disallowed. On appeal before the CIT(A), the order of the Assessing officer was upheld. On further appeal before the Tribunal, following the ratio of the decision of the Apex Court in the case of ***S.A.Builders Limited vs. CIT***, (2007) 288 ITR 1, it was held by the Tribunal that the assessee was entitled to claim deduction under Section 37 of the Act.

4. The Assessing Officer also disallowed the claim of the assessee to the tune of ₹ 2,50,000/- on account of contribution to the building fund

treating the same as pertaining to the earlier years as the assessee had been maintaining its accounts on mercantile basis. The CIT(A) held that the said contribution was utilization of income of the assessee company in the form of making contribution towards the construction of the office building. Thus, the amount of ₹ 5 lacs instead of ₹ 2,50,000/- was disallowed enhancing the income of the assessee. The Tribunal relying upon its own order dated 23.6.2006 in *M/s Shahbad Cooperative Sugar Mills limited* decided the issue in favour of the assessee observing that the expenditure of ₹ 5 lacs towards construction of head office of Haryana State Federation of Cooperative Sugar Mills limited was allowable as revenue expenditure.

5. Further, the Assessing officer also made addition of ₹ 57,28,554/- on account of cane penalty recoverable from the farmers by following the history of similar addition made in the case of the assessee in the assessment year 1993-94 wherein addition made on account of penalty imposed on the farmers was confirmed by the CIT(A). The CIT(A) vide order dated 27.2.2002, Annexure A.2 decided the appeal by holding that the amount actually paid by the assessee will be allowed as expenditure on cash basis. Accordingly, a sum of ₹ 39,80,482/- claimed by the assessee on account of cane penalty paid during the relevant previous years was allowed by the Assessing officer. Penalty recoverable however in the relevant previous years at ₹ 57,28,554/- was added to the income of the assessee. The assessee went in appeal before the Tribunal. Vide order dated 30.5.2008, Annexure A.3, the Tribunal decided the issue in favour of the assessee and directed to delete the impugned addition of ₹ 57,28,554/- on account of cane penalty. Hence the instant appeal by the revenue.

6. We have heard learned counsel for the parties.

Re:(i)

7. The assessee had been following mercantile system of accounting and therefore, the expenses claimed on account of annual subscription for education fund relating to the assessment years 1994-95, 1995-96 and 1996-97 were not permissible in the current assessment year 1999-2000. It was not disputed by the learned counsel for the parties that similar issue had been decided against the assessee in ITA Nos.515 of 2008 (*The Commissioner of Income Tax Vs. The Shahbad Coop. Sugar Mills Limited*) decided on 17.12.2010. Accordingly, question (i) is answered against the assessee.

Re:(ii)

8. With regard to question No.(ii), learned counsel for the revenue urged that the amount of ₹ 10,05,000/- contributed by the assessee towards rehabilitation fund was not allowable business expenditure under section 37 (1) of the Act. Learned counsel for the revenue referred to the findings recorded by the Assessing Officer and upheld by the CIT(A). Emphasis was laid on letter No.2933 dated 4.7.1998 written by Haryana State Federation of Cooperative Sugar Mills Limited to demonstrate that the amount was claimed as a matter of right. In the said letter, it was mentioned that rehabilitation fund at the rate of 5% of net profits w.e.f the year 1996-97 had been created for providing financial assistance and relief to weak cooperative sugar mills so that these mills could improve their functioning.

9. Opposing the prayer, learned counsel for the assessee relied upon findings of the Tribunal to urge that the Tribunal had categorically

held the expenditure to be for commercial expediency and thus admissible under section 37(1) of the Act.

10. After hearing learned counsel for the parties, we find that the Tribunal had allowed the claim of the assessee by noticing in its order dated 30.5.2008, Annexure A.3 that the amount of ₹ 10,05,000/- paid by the assessee was towards rehabilitation fund which was created for the benefit of all the mills including the assessee in case of need. The payment made to the said fund was in the nature of insurance and directly related to the business of the assessee. In such circumstances, the contribution of amount equivalent to 5% of the net profits towards rehabilitation fund was held to be expended wholly and exclusively for business purposes and admissible under Section 37 of the Act. It was recorded as under:-

“15. Briefly, the facts relating to the issue involved in ground no.3 are that according to the assessee Cooperative Sugar Mills Limited, it paid an amount of ₹ 1005000/- to Haryana State Cooperative Sugar mills as contribution towards rehabilitation fund for assistance to weak sugar mills. The sugar Federation is a statutory body which assists cooperative sugar mills in the state and formulates policy. It has no source of income and is run by the contribution from cooperative sugar mills. It is a sort of mutual benefit association. The rehabilitation fund is created for the benefit of all the mills, including the assessee, in the case of need. It is like an insurance. The expenditure therefor is directly relatable to the business of the assessee and so the same is allowable to the assessee.

16. The Assessing officer disallowed the deduction claimed under section 37 by the assessee on the reasoning that the amount sent by the assessee cannot be said to be an expenditure laid out wholly and exclusively for the business

purpose of the assessee. The CIT(A) similarly relying upon various case laws reported in the case of Ishwari Khetyan Sugar Mills (P) Limited vs. CIT, 86 ITR 635 (All); Meattles Limited vs. CIT, Delhi and Rajasthan, 68 ITR 79 (Del.); Ciba Dyes Limited vs. CIT, 25 ITR 102 (Bom); CIT vs. Gwalior Sugar Company Limited, 150 ITR 320 (MP); MSP Senthikumara Nadar and Sons vs. CIT, 32 ITR 138 (Mad); CIT vs. Chandulal Keshavlal & Co. 38 ITR 601 (SC); Burlap Dealer Limited vs. CIT 48 ITR 153 (Cal.) held that the contribution made by the assessee company to the rehabilitation fund can by no stretch of imagination be said to have been incurred for the purpose of business of assessee and hence assessee's claim amounting to ₹ 1005000/- is not an allowable expenditure and therefore, the CIT(A) upheld the disallowance made by the Assessing Officer.

17, Before us learned AR for the assessee reiterating the submission made before the tax authorities below further submitted that the assessee cooperative sugar mills has to work under the rules and guidelines issued by Haryana State Federation Cooperative Sugar Mills Limited, Chandigarh which is a statutory body created to assist and help cooperative sugar mills in the state and formulate policies. It created a rehabilitation fund for providing assistance to weak sugar mills. The Federation asked the assessee society to contribute as assistance and relief to weak cooperative societies an amount equivalent @ 5% of the net profits.

18, Thus an amount of ₹ 1005000/- was paid by the assessee towards rehabilitation fund created for the benefit of all mills, including the assessee in case of need, so the payment was like an insurance and was therefore, directly related to the business of the assessee and was allowable as deduction.”

Learned counsel for the revenue could not demonstrate any error or perversity in the approach of the Tribunal warranting interference by this

Court. Accordingly, question No.(ii) is answered in favour of the assessee and against the revenue.

Re:(iii)

11. Adverting to question No.(iii), similar issue had come up for consideration before this court in ITA No.104 of 2007 (*The Commissioner of Income Tax vs. The Shahbad Coop. Sugar Mills Limited*) decided on 17.12.2010 in favour of the assessee with the following observations:-

“9. As regards contribution for construction of office building, it is clear that the assessee did not get any benefit of enduring nature from the payment for building of the apex body. The building did not belong to the assessee which situation is similar to the facts of judgment of the Hon'ble Supreme Court. This being so, the principle laid down therein was rightly applied by the Tribunal to the present case. Accordingly, question No.2 has to be answered in favour of the assessee and against the revenue.”

Further, the Tribunal while adjudicating the said issue had observed as under:-

“24. Briefly the facts relating to the issue involved in this ground of appeal are that the tax authorities below disallowed the entire contribution of ₹ 5 lakhs made by the assessee towards building fund on the reasoning that the members were not required to make any such contribution specifically for the construction of the office building of its Apex body viz. Haryana State Federation Cooperative Sugar Mills. So, practically it was utilization of income of assessee company in the form of making contribution towards the construction of the office building and by no stretch of imagination the contribution made by assessee company towards making a capital assets of the apex body could be said to be incidental to

the business of the assessee company.

25. Before us, learned AR for the assessee referring to the case of M/s Shahbad Cooperative Sugar Mills Limited vs. JCIT decided by ITAT Delhi Bench 'F' in ITA No.4830/Del/2002 dated 23rd June 2006 (copy of which has been placed on record in paper book pages nos. 19 to 21) submitted that an identical issue on identical facts as involved in the instant case of the assessee, came up for consideration before the Tribunal and the Tribunal decided the issue in favour of the assessee and against the revenue holding this expenditure allowable as a revenue expenditure by observing in para 8 of the order as under:-

'Ground No.1 (iii) relates to contribution to sugar federation for construction of building. The same was disallowed by the Assessing Officer on the ground that the expenditure is capital in nature and has to be spent on the office building which was yet to be constructed during the previous year relevant to assessment year 1996-97. It was further observed that the expenditure claimed by the assessee is not at all commensurate with the profits earned by the assessee and hence the claim is not justified and cannot be allowed as deduction under section 37 of the Act. The decision of the departmental authorities on this issue does not appear to be in conformity with the law laid down by the Supreme court in the case of CIT vs. Bombay Dyeing Manufacturing co. Limited 219 ITR 521. It was held in that case that where the amount was advanced to the government which purchased the land in its own name and the building constructed thereon became property of the Government and not of the assessee, the amount contributed constitute revenue expenditure. In the case in hand also the amount was contributed specifically for the construction of the office building of the apex body i.e. Haryana State Federation Cooperative Sugar Mills Limited. Such a claim is allowable as a revenue expenditure.'

26. The learned DR for the revenue was not able to controvert the above submission of learned AR for the assessee and thus impliedly conceded to the submission of learned AR for the assessee.

27. On going through the facts of the instant case of the assessee under consideration as well as that of case (supra) decided by the Tribunal we find that in both the cases facts and issue involved is identical. Hence judicial propriety demands that we respect and follow the judicial decisions of coordinate Benches delivered on same issues. Therefore, respectfully following the decisions (supra) of the Tribunal it is held that the impugned expenditure of ₹ 5 lakhs incurred by the assessee towards the construction of head office of Haryana State Federation of Cooperative Sugar Mills Limited, Chandigarh is allowable as a revenue expenditure and the tax authorities below erred in disallowing the same and hence their orders in this regard are set aside. Accordingly, the ground No.4 of the assessee's appeal is allowed.”

Accordingly, question No.(iii) is answered in favour of the assessee and against the revenue.

Re:(iv)

12. Considering question No.(iv), learned counsel for the revenue submitted that the cane penalty which was received by the assessee amounting to ₹ 57,28,554/- was income relating to assessment year 1999-2000 and had been rightly brought to tax by the Assessing Officer and upheld by the CIT(A). It was urged that the Tribunal on wrong premises had deleted the addition.

13. Opposing the prayer of the revenue, learned counsel for the assessee relying upon judgment of the Madras High Court in ***Commissioner of Income Tax vs. Salem Cooperative Sugar Mills Limited***, (1998) 229 ITR

285 submitted that no income had accrued to the assessee and therefore, the assessee had rightly excluded the aforesaid amount from income.

14. After hearing learned counsel for the parties, we do not find any substance in the submissions of learned counsel for the assessee. The assessee had received ₹ 57,28,554/- as penalty imposed on the farmers who had failed to supply the contracted quantity of the sugarcane to the assessee. Further, the assessee had claimed deduction of ₹ 39,80,442/- in calculating the taxable Income on account of amount paid to farmers out of penalty imposed in earlier years. When the assessee had reduced the amount of penalty paid back to the farmers as it had been added back in the earlier years, then in that situation, the amount of penalty imposed on the farmers during the previous year from 1.4.1998 to 31.3.1999 relevant to assessment year 1999-2000 amounting to ₹ 57,28,554/- was taxable in this year i.e. assessment year 1999-2000 as it was revenue receipt in the hands of the assessee. The Tribunal was, thus, in error in reversing the orders of the Assessing Officer as well as the CIT(A). The issue before the Madras High Court in *Salem Cooperative Sugar Mills Limited's* case (supra) was that where the Central Government had by way of a Molasses Control Order directed that certain amount had to be kept in a fund and it did not belong to the assessee. The assessee could not utilize the amount in the fund for any other purpose. On that basis, it was held that there was no income which had accrued while the amount was deposited in the said fund. Such is not the position in the present case. Accordingly, Question No.(iv) is thus answered in favour of the revenue and against the assessee.

15. In view of the above, the appeal is partly allowed as noticed

herein above. The questions of law are answered in the manner indicated above.

(Ajay Kumar Mittal)
Judge

August 25, 2015
'gs'

(Ramendra Jain)
Judge