IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 8 of 2013 (O&M)

Date of Decision : 14.09.2015

Haryana State Roads and Bridges Development Corporation

..... Appellant

Versus

Income Tax Tribunal, Chandigarh and others

.... 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. Vinod S. Bhardwaj, Advocate
for the appellant.

Mr. Tejender K. Joshi, Advocate
for the respondents.

RAMENDRA JAIN, 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 orders dated 17.2.2012 (Annexure P-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 84/CHD/2010 for the assessment year 2006-07, dated 2.11.2009 (Annexure P-2) passed by the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"] and dated 12.12.2008 (Annexure P-1) passed by the Assessing Officer. The following

substantial questions of law have been claimed in this appeal:-

(i) Whether the interest on loans is to be categorized as revenue expenditure under Section 37 of the Income Tax Act or the same is to be categorized as capital expenditure?

(ii) Whether the uses of road as commercial uses for revenue generation are different uses and the mere non-generation of income on account of absence of setting up of toll points would deprive the expenditure to be in the nature of revenue expenditure?

(iii) Whether the expenditure incurred towards improvement of existing roads that are in actual use and interest paid thereupon, amount to revenue expenditure and not capital expenditure?

(iv) Whether the absence of generation of a new asset is sufficient to deny the expenditure on interest as capital expenditure?

(v) Whether the orders passed upon the conjectures are bad and liable to be set aside?

(vi) Whether the findings based upon mis-appreciation of the facts is bad and liable to be set asideTribunal erred on facts and in law in dismissing the appeal of the appellant on the ground that the same is time barred and no reasonable or sufficient cause has been shown in filing the appeal?

2. A few facts necessary for adjudication of the instant appeal as narrated therein are that the return filed on 30.11.2006 for the assessment year 2006-07 declaring loss of ₹ 28,62,48,531/-. The revised return was filed on 17.6.2007 declaring loss of ₹ 29,23,18,828/-. A notice under Section 143(2) of the Act was issued to the assessee on 18.2.2008. A notice under Section 142(1) of the Act along with the questionnaire dated 14.11.2008 was issued to the assessee. The Assessing Officer vide assessment order dated 12.12.2008 (Annexure P-1) reduced the net loss from ₹ 29,23,18,828/- to ₹ 13,56,74,210/- by including interest income of ₹ 86,40,770/- on account of Pradhan Mantri Gramin Sadak Yojna (PMGSY) to the income and disallowed the expenditure of ₹ 80,527/-. The Assessing Officer also directed capitalization of interest of ₹ 14,79,23,322/- while disallowing the expenditure to the said extent. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who vide order dated 2.11.2009 (Annexure P-2) partly allowed the appeal and deleted the addition of ₹ 86,40,770/- on account of interest income on PMGSY. The CIT(A) also directed the Assessing Officer to verify as to whether TDS had not been deducted of ₹ 63,437/- and not ₹ 80,587/-. Still dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 17.2.2012 dismissed the appeal upholding the order dated 02.11.2009 (Annexure P-2) passed by the CIT(A). Hence, the present appeal by the assessee.

3. During the pendency of the present appeal, the appellant has filed an application under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence in the shape of documents Annexures A-1 to A-4 i.e. (i) order dated 22.10.2014 under Section 250

(6) of the Act passed by the CIT (A), Panchkula; (ii) Certificate regarding ownership of records of PWD (B&R) in the State of Haryana; (iii) loan agreement of the appellant with the Haryana Urban Development Corporation Limited (HUDCO), New Delhi; and (iv) its memorandum of association.

4. Learned counsel for the appellant submitted that the main object of the appellant-Corporation, according to its memorandum of association, is to erect, develop, improve, construct, repair, expressways, highways, roads, paths, streets, bridges etc. on behalf of the Haryana Public Works Department on Build-Operate and Transfer (BOT) or Build-Own-Operate and Transfer (BOOT) or Build-Operate-Lease and Transfer (BOLT) basis or any other scheme in a manner which facilitates to undertake the above-mentioned work and thus, apparently, creation of assets was not its principle objective. Since the order dated 22.10.2014 passed by the CIT (A), Panchkula (Annexure A-1) was not in existence at the time when the appeal was adjudicated by the Tribunal, therefore, it could not have been produced. The loan agreement and memorandum of association (Annexures A-3 and A-4) could not be produced earlier before the Authorities bonafidely. All the aforesaid documents are either public documents or Government records, and thus, their authenticity and genuineness is not questionable and need no proof under the provisions of Indian Evidence Act, 1872, which would espouse the claim of the appellant. Thus, the appellant may be permitted to adduce additional evidence by producing the aforesaid documents.

5. On the other hand, learned counsel for the respondent strongly opposed the aforesaid application for leading additional

evidence and submits that the appeal deserves to be dismissed, inasmuch as, the authorities below have given findings on appreciation of material available on record.

6. After giving our thoughtful consideration to the submissions made by both the learned counsel for the parties, we find that application for leading additional evidence deserves to be allowed, inasmuch as, all the documents (Annexures A-1 to A-4) sought to be produced by way of additional evidence are public documents i.e. order passed by the CIT (A), Panchkula, copy of owner certificate issued by the PWD (B&R), Haryana, loan agreement and memorandum of association. Hence, the authenticity and genuineness of the documents cannot be said to be doubtful. Accordingly, the present application for leading additional evidence is allowed.

7. Accordingly, in view of allowing of application for additional evidence, in our opinion, it would be appropriate that the points raised in this appeal are liable to be re-considered by the Tribunal in the light of the additional evidence sought to be produced by the appellant and then to pass a fresh speaking order in accordance with law.

8. Without touching on the merits of the appeal, the impugned order dated 17.02.2012 (Annexure P-3) is set aside. The matter is remitted to the Tribunal to re-decide the same and pass a fresh speaking order in accordance with law without being influenced by its earlier order.

9. With the aforesaid observations, the appeal is disposed of.

(RAMENDRA JAIN)
JUDGE

14.09.2015 **(AJAY KUMAR MITTAL)**
'yogesh'/gbs **JUDGE**