IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 170 of 2014 AND
X-objection No. 47-CII of 2015 (O&M)

Date of Decision: 24.8.2015

The Commissioner of Income Tax-II, Panchkula

....Appellant.

Versus

Shri Rakesh Kumar Khosla, Prop. Khosla Trading Company,Ambala City

...Respondent.

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

PRESENT: Mr. Yogesh Putney, Advocate for the appellant.

Mr. Sunish Bindlish, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Delay in filing and refiling the cross-objections is condoned.

2. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 26.9.2013 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 556/CHD/2013 for the assessment year 2009-10, claiming the following substantial questions of law:-

I. Whether the Hon'ble ITAT was right in law and in the facts of this case to set-aside the order of the CIT(A) and directing the A.O. to make an addition of ₹ 2,00,000/- in trading account deleting the addition made by the A.O. by ignoring the fact that the A.O. made an addition of ₹ 41,24,000/- on the ground that the assessee failed to justify the adoption of sale price at less than opening stock price with documentary evidence?

II. Whether the Hon'ble ITAT was right in law and in the facts of the case in deleting the addition whereas the Hon'ble ITAT had itself held that there was no justification for selling particularly the rice DB at much lower price than the closing stock price or opening stock price?

2. The facts, in short, necessary for adjudication of the instant appeal as narrated therein are that the assessee filed his return of income on 29.9.2008 for the assessment year 2009-10 declaring an income of ₹ 3,79,160/-. The assessment was completed by the Assessing Officer vide order dated 29.12.2011 (Annexure A-1) at an income of ₹ 45,03,160/-. The Assessing Officer made an addition of ₹ 41,24,000/- on account of differences in opening stock price and sale price. 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 3.4.2013 (Annexure A-2) dismissed the appeal of the assessee. Being dissatisfied, the assessee filed an appeal before the Tribunal who vide order dated 26.9.2013 (Annexure A-3) while partly allowing the appeal held that the estimated addition of ₹ 2,00,000/- is required to be made and directed the Assessing Officer to make the addition of ₹ 2,00,000/- in the trading account. Hence, the present

appeal by the revenue. The assessee also filed cross-objections challenging the addition of ₹ 2,00,000/- sustained by the Tribunal.

3. We have heard learned counsel for the parties.

4. Learned counsel for the revenue submitted that the Tribunal while partly accepting the appeal of the assessee had directed that in their opinion the estimated addition of ₹ 2,00,000/- was required to be made without giving any basis for the same as against the addition of ₹ 41,24,000/- made by the Assessing Officer. It was also urged that the Assessing Officer had rightly made the addition and he could not have assessed the sale price at much lower price than the closing stock price or opening stock price.

5. On the other hand, learned counsel for the assessee in his cross-objections had challenged the direction for addition of ₹ 2,00,000/- sustained by the Tribunal. It was submitted that it was also required to be seen by the Tribunal as to what would be the effect of the closing stock of this year on the opening stock of the next year.

6. The Assessing Officer made an addition of ₹ 41,24,000/- on the ground that the assessee failed to justify the adoption of sale price at less than opening stock price with documentary evidence. Further, the Assessing Officer held the said addition was the only income which the assessee got out of books of account and had not declared in his returned income. On appeal by the assessee, the CIT(A) upheld the order of the Assessing Officer and dismissed the appeal. On further appeal by the assessee, the Tribunal held that the Assessing Officer could not have estimated the sale price on the basis of rates of closing stock or some other notional basis without pointing out any defect in the sale price. The Tribunal while partly allowing the appeal of the assessee

had sustained the addition of ₹ 2,00,000/- in the trading account. A perusal of para 8 of the order of the Tribunal shows that no legally justified reasons have been recorded for arriving at the said conclusion.

7. In view of the above, the matter requires to be remanded. Accordingly, the appeal as well as the cross-objections are disposed of and the order dated 26.9.2013 (Annexure A-3) passed by the Tribunal is set aside. The matter is remitted to the Tribunal to decide the same afresh on merits in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

August 24, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**