IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 91 of 2014

Date of Decision: 17.9.2015

Punjab State Cooperative Supply and Marketing Federation Ltd., Chandigarh

....Appellant.

Versus

Commissioner of Income Tax-II, Chandigarh

...Respondent.

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

PRESENT: Mr. S.K. Mukhi, Advocate for the appellant.

Ms. Urvashi Dhugga, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 29.8.2013 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench “A”, Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 189/Chd/2007, relating to the assessment year 1997-98, claiming the following substantial questions of law:-

i) Whether, on the facts and circumstances of the case, the Tribunal is justified in confirming the disallowance of business loss claimed under section 41(1) of the Income Tax Act, 1961 of Rs.5,08,02,633/- on account of damaged stock of paddy on the basis of auditors note/

certificate for the year under consideration and by ignoring the fact that amount realized on sale of such damaged stock in subsequent years have been taken as income as per the provisions of Income Tax Act, 1961 as duly accepted in the respective assessment under scrutiny u/s 143(3) of Income Tax Act, 1961 which would lead to double taxation?

ii) Whether, on the facts and circumstances of the case, the Tribunal is justified in confirming the disallowance of business loss claimed under section 41(1) of the Income Tax Act, 1961 of Rs.5,08,02,633/- on account of damaged stock of paddy on the basis of auditors note/certificate for the year under consideration by erroneously holding that no evidence was brought on record to prove the said stock being damaged or unfit for milling and also to prove the recovery or sale of the said damaged stock in subsequent years by ignoring the fact that amount realized on sale of such damaged stock in subsequent years have been taken as income as per the provisions of Income Tax Act, 1961 duly accepted in scrutiny assessment by the Revenue?

iii) Whether, on the facts and circumstances of the case, the Tribunal is justified in confirming the disallowance of deduction of Rs.29,42,11,642/- u/s 80P(2)(a)(iii) of the Income Tax Act, 1961?

iv) Whether, on the facts and circumstances of the case, the Tribunal is justified in confirming the disallowance of deduction of Rs.29,42,11,642/- u/s 80P(2)(a)(iii) ignoring the fact that validity of retrospective amendment in assessee's own case is pending admitted before Hon'ble

Supreme Court of India?

v) Whether the order of the Tribunal is perverse and against the provisions of law?

2. This Court vide order dated 13.8.2014 held that questions No.(iii) and (iv) did not arise for consideration as learned counsel for the appellant admitted that the said questions stand covered by the decision of this Court in **CWP No. 3241 of 1999 (Punjab State Cooperative Supply & Marketing Federation Ltd. v. Union of India and others)**. On 13.8.2014, learned counsel for the appellant prayed for time to amend questions No. (i) and (ii) and filed the amended substantial question of law which is to the following effect:-

> Whether, on the facts and circumstances of the case, the Tribunal is justified in confirming the disallowance of business loss claimed by the appellant of Rs.5,08,02,633/- on account of damaged stock of paddy on the basis of auditors note/certificate for the year under consideration by erroneously holding that no evidence was brought on record to prove the said stock being damaged or unfit for milling and by ignoring the fact that amount realized on sale of such damaged stock in subsequent years have been taken as income as per the provisions of Income Tax Act, 1961 as duly accepted in the respective assessment years under scrutiny assessment u/s 143(3) of Income Tax Act, 1961 which would lead to double taxation?

3. Briefly stated, the facts necessary for adjudication as narrated in the appeal may be noticed. The appellant is a Cooperative Society engaged as procurement agency for wheat, paddy and agricultural products. The appellant filed its income of return on 31.10.1997 for the assessment year 1997-98 at a gross total income of

₹ 1,09,15,87,795/-. Thereafter, the assessee filed revised return on 8.5.1998 declaring the income at ₹ 72,98,37,533/-. The said return was processed and notice under Section 143(2) of the Act was issued. The assessee explained that there was no issue regarding re-audit as reduction has been made under the head “physical balance paddy” from 186.32 crores to 181.24 crores in trading account of paddy. It was explained that the difference of paddy stock is shown as physically available but actually damaged and not fit for milling. The stock was valued at zero in view of observation of audit vide report/certificate dated 29.10.1997 (Annexure A-5). The Assessing Officer vide assessment order dated 27.3.2000 (Annexure A-1) made an addition of ₹ 5,08,02,633/-. Against the second issue before the Assessing Officer regarding deduction under Section 80P(2)(a)(iii) of the Act, the SLP has been accepted by the Supreme Court vide order dated 3.9.2012 (Annexure A-4). 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 7.12.2006 (Annexure A-2) upheld the addition made by the Assessing Officer. Still dissatisfied, the assessee approached the Tribunal by way of an appeal and also submitted written submissions, Annexure A-8. The Tribunal vide order dated 29.8.2013 (Annexure A-3) rejected the claim of the assessee. Hence, the present appeal.

4. Learned counsel for the appellant submitted that certain amount out of the damaged stock of paddy of ₹ 5.08 crores was received by the assessee in the financial year 1997-98 relating to the assessment years 1998-99 onwards upto assessment year 2003-04. It was urged that the amount so received was taxed in the year of receipt and in such

a situation the matter is required to be referred back to the Assessing Officer to give benefit of any such amount to the assessee, otherwise it would amount to double taxation.

5. On the other hand, learned counsel for the revenue could not controvert the aforesaid stand of the assessee but maintained and supported the order passed by the Tribunal.

6. After hearing learned counsel for the parties, we find that the matter is required to be remanded keeping in view the facts urged by the assessee. Accordingly, the issue is remitted to the Assessing Officer to decide it afresh in accordance with law after affording an opportunity of hearing to the assessee.

7. The appeal stands disposed of.

(AJAY KUMAR MITTAL)
JUDGE

September 17, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**