IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 182 of 2015 (O&M)

Date of Decision: 14.10.2015

Commissioner of Income Tax (Central), Gurgaon

....Appellant.

Versus

M/s Marigold Merchandise (P) Ltd., New Delhi

...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. Rajesh Sethi, Senior Standing Counsel with
Mr. Arun Biriwal, Advocate and
Ms. Pridhi Jaswinder Sandhu, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing ITA Nos. 182 and 229 of 2015 as according to the learned counsel for the appellant, the issues involved herein are identical. For brevity, the facts are being taken from ITA No. 182 of 2015.

2. Delay of 214 days in refiling ITA No. 182 of 2015 is condoned.

3. 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 27.12.2013 (Annexure A-3) passed by the Income Tax

Appellate Tribunal, Delhi Bench "F", New Delhi (hereinafter referred to as "the Tribunal") in ITA No. 2667/Del/2013, relating to the assessment year 2007-08, claiming the following substantial questions of law:-

(i) Whether in the facts and in the circumstances of the case the order (Annexure A-3) of the Hon'ble ITAT is not perverse when it is seen that the correct and legal view point of the A.O. and CIT(A) holding that the assessee was an adventure of nature of trade, has been reversed without there being any sustainable material for the same?

(ii) Whether in the facts and circumstances of the case in hand, the view point of ITAT holding that the assessee's gains were profits from sale of specified agricultural land which does not come within the definition of assets as prescribed u/s 2(14) and by virtue of Section 2(1A)(a) read with Section 2(14)(iii) read with section 10(1) are to be treated as exempt income, can be said to be legal and valid?

(iii) Whether or whether not the findings have been recorded by ITAT on misreading and misinterpretation of facts and evidence emanating on record?

(iv) Whether the ITAT did not commit grave error in arriving at such conclusions after adopting erroneous criteria and by importing such facts and circumstances which are contrary to record?

4. A few facts necessary for adjudication of the present appeals as narrated in the appeal i.e. ITA No. 182 of 2015 may be noticed. A search and seizure operation under Section 132 of the Act was conducted on 17.9.2008 in Kamdhenu Group of cases including M/s Marigold Merchandise Pvt. Ltd. (the assessee herein). A notice dated 9.3.2010 under Section 153A of the Act was issued to the assessee who filed its return on 30.3.2010 for the assessment year 2007-08 declaring nil income and current loss at ₹ 2,73,866/-. Thereafter, notice dated 20.5.2010 under Sections 143(2) and 142(1) of the Act along with questionnaire was issued to the assessee who filed details and documents to the same. The assessment order dated 28.12.2010 (Annexure A-1) under Section 143(3) of the Act was passed by the Assistant Commissioner of Income Tax, Central Circle, Alwar by making an addition of ₹ 31,40,73,445/-. Feeling aggrieved, the assessee filed appeal under Section 250(6) of the Act before the Commissioner of Income Tax (Appeals), Central Jaipur [for brevity "the CIT(A)"]. The CIT (A) vide order dated 27.2.2013 (Annexure-A-2) dismissed the appeals for both the assessment years 2007-08 and 2008-09. Still dissatisfied, the assessee challenged the order, Annexure A-2, by filing an appeal before the Tribunal. The Tribunal vide order dated 27.12.2013 (Annexure A-3) allowed the appeals of the assessee for both the assessment years, i.e. 2007-08 and 2008-09. Hence, the present appeals by the revenue.

5. We have heard learned counsel for the revenue.

6. The issue that arises for consideration is that when the

Assessing Officer who passed the assessment order was based at Alwar and the first appeals were adjudicated by the CIT(A), Central Jaipur and the second appeals were adjudicated by the Tribunal at Delhi, whether the appeals under Section 260A of the Act before this Court would be maintainable.

7. The matter is no longer *res integra*. This Court in **Commissioner of Income Tax (Central) Gurgaon v. M/s Parabolic Drugs Ltd. ITA No. 49 of 2012** decided on 11.10.2012 following the Division Bench judgment of this Court in **The Commissioner of Income Tax, Faridabad v. M/s Motorola India Ltd. ITA No. 44 of 2005** decided on 3.10.2007 had held as under:-

> "8. Accordingly, the present appeal is dismissed by holding that this Court has no territorial jurisdiction to adjudicate upon the lis over an order passed by the Assessing Officer at New Delhi. Consequently, the appeal is returned to the Revenue for filing before the competent Court of jurisdiction in accordance with law."

8. In view of the above, the present appeals are dismissed as this Court has no territorial jurisdiction to adjudicate upon the lis over an order passed by the Assessing Officer at Alwar. Consequently, both the appeals are returned to the revenue for filing before the competent court of jurisdiction in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

October 14, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**