IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 209 of 2015 (O&M)

Date of Decision: 26.8.2015

The Principal Commissioner of Income Tax-3, Ludhiana

....Appellant.

Versus

M/s Malwa Industries Ltd., Ludhiana

...Respondent.

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

PRESENT: Mr. Rajesh Katoch, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. 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 10.9.2014 (Annexure-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 714/CHD/2012, for the assessment year 2007-08, claiming the following substantial questions of law:-

i) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT Chandigarh Bench is justified in upholding the decision of Ld. CIT(A); deleting the addition of Rs.2,90,652/- made u/s 36 (1)(iii) without appreciating the fact that the assessee company has debited huge amount to profit and loss account on account of interest expenditure. On the other hand he is advancing interest free loan to its subsidiary company?

ii) Whether on the facts and circumstances of the case the Hon'ble ITAT Chandigarh Bench is justified in upholding the decision of Ld. CIT(A); deleting the addition of Rs.2,77,318/- made u/s 40A(2)(b) as the assessee has inflated the purchases made from M/s Malwa Cotton Spinning Mills Ltd.?

iii) Whether on the facts and circumstances of the case the Hon'ble ITAT Chandigarh Bench is justified in upholding the decision of Ld. CIT(A); deleting the addition of Rs.22,41,628/- on account of bank changes without appreciating that the assessee company has made addition in fixed assets during the A.Y. Under consideration?

iv) Whether on the facts and circumstances of the case the Hon'ble ITAT Chandigarh Bench is justified in upholding the decision of Ld. CIT(A); deleting the addition of Rs.3,06,251/- expenses incurred on account of building repair without appreciating the fact that whether the expenses are of recurring nature or it is making addition to the fixed assets?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is engaged in the business of manufacturing and sale of denim fabrics and filed its return of income on 31.10.2007 for the assessment year 2007-08 at a total income of ₹ 5,68,74,300/-. The assessee paid the tax under Section 115JB of the Act. The case was selected for scrutiny and notice was issued to the assessee. The Assessing Officer framed the assessment under Section 143(3) of the Act vide order dated 18.12.2009 (Annexure-1) by making the following additions:-

i) Addition amounting to ₹ 2,90,652/- under Section 36(1)(iii) of the Act;

ii) Disallowance made under Section 40A(2)(b) of the Act amounting to ₹ 2,77,318/-;

iii) Disallowance of bank charges amounting to ₹ 22,41,628/-; and

iv) Disallowance of expenses incurred on account of building repair and maintenance amounting to ₹ 3,06,251/-.

3. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"] who vide order dated 27.4.2012 (Annexure-2) allowed the appeal and deleted the additions made by the Assessing Officer. Being dissatisfied with the order of the CIT(A), the revenue filed an appeal before the Tribunal. The Tribunal vide order dated 10.9.2014 (Annexure-3) dismissed the appeal and directed the Assessing Officer to adopt the book profits as per the profit and loss account and not to make addition on account of disallowance worked out under Sections 36(1)(iii), 40A(2)(b) of the Act,

bank charges and expenses incurred on account of building repair and maintenance. Hence, the present appeal by the revenue.

4. Learned counsel for the revenue submitted that the CIT(A) has wrongly deleted the addition of ₹ 2,90,652/- made under Section 36 (1)(iii) of the Act as the assessee had debited huge amount to profit and loss account on account of interest expenditure and is advancing interest free loan to its subsidiary company. It was further submitted that the addition of ₹ 2,77,318/- made under Section 40A(2)(b) of the Act was wrongly deleted as the assessee has inflated the purchases made from M/s Malwa Cotton Spinning Mills Ltd. According to the learned counsel, additions of ₹ 22,41,628/- on account of bank charges and ₹ 3,06,251/- as expenses incurred on account of building repair were deleted by the CIT(A) without appreciating that the assessee had made addition in fixed assets and the expenses were of recurring nature.

5. After hearing learned counsel for the revenue, we do not find any merit in the said submissions. The CIT(A) while deleting the addition of ₹ 2,90,652/- made by the Assessing Officer under Section 36 (1)(iii) of the Act had relied upon the earlier order passed by the Tribunal in the case of the assessee for earlier and subsequent years on account of the same reasons. The CIT(A) had noticed as under:-

> "4.3. I have carefully considered the appellant's submission. Appellant has claimed that the advances were given to subsidiary company for business purpose. The appellant has relied on the judgments of Hon'ble Supreme Court in the case **S.A. Builders Ltd. v. Commissioner of Income Tax** reported in **288 ITR 1**. It is seen that similar addition had been made

> in appellant's case during the assessment years 2005-06 and 2006-07 and the addition was deleted by CIT(A) following the decision of the Hon'ble Supreme Court in the case S.A. Builders Ltd. Vs. Commissioner of Income Tax. The order of the CIT(A) has been upheld by the Hon'ble ITAT for both the assessment years in ITA No. 696/Chandi/2008 for assessment year 2005-06 and ITA No. 1169/Chandi/2009 for assessment year 2006-07. Similar addition made in the case of appellant for A.Y. 2008-09 has also been deleted by me vide my order dated 07.03.2012. Respectfully following the decision of the Hon'ble ITAT, the addition made by the Ld. AO of Rs.2,90,652/- on this account is deleted. This ground of appeal is accordingly allowed."

6. The Tribunal had affirmed the aforesaid deletion. It was not shown that the findings in the case of the assessee on the basis of which the matter had been decided in its favour has been displaced by any higher court.

7. Further, the CIT(A) while deleting the addition made by the Assessing Officer amounting to ₹ 2,77,318/- under Section 40A(2)(b) of the Act had recorded that the assessee had submitted date-wise and item-wise detail of material purchased from related concern and outside independent parties during the relevant period which showed that there was wide fluctuations of price during these months. After considering the entire material, the CIT(A) concluded that payments made to M/s Malwa Cotton Spinning Mills- a sister concern of the assessee for the

purchase of comber waste and flat waste could not be held to be excessive or unreasonable. The findings recorded by the CIT(A) read thus:-

> "5.3. I have carefully considered the contention of the Ld. Counsel for the appellant and perused the relevant details. The appellant has submitted date-wise and item-wise detail of material purchased from related concern and outside independent parties in the month of August 2006, September 2006, November 2006, January 2007, February 2007 and March 2007. It is seen that there are wide fluctuations of price over the months. It is also seen that on the date when material was purchased from Malwa Cotton Spg. Mills Limited the rates of same item purchased from outside parties were matching and comparable. In this regard it is seen from the assessment order that during the assessment proceedings, the appellant had explained that the company had purchased two kinds of waste i.e. cotton comber waste and flat waste from M/s Malwa Cotton Spinning Mills Ltd. and from outside parties. Appellant had further explained that cotton comber waste is fine waste and is more expensive than flat waste and variation in average price during the month is because purchase piece of cotton comber waste and fine waste have been taken together. To see if the company has made excess payment it would be

important to compare the item wise prices. As mentioned in the assessment order details for such purchases made on specific dates of the month of November 2006 from related concern and from parties other than the sister concerns were duly produced before the A.O. and it was contended that on the date on which flat waste was purchased from M/s Malwa Cotton Spinning Mills Ltd., the rates of same item purchased from outside parties was higher. However, the AO did not accept this explanation and this evidence and observed that the assessee has inflated the purchases made from M/s Malwa Cotton Spinning Mills Ltd. In my opinion the Assessing Officer was not justified in observing as above. I agree with the Ld. counsel that the method adopted by the A.O. for comparing the rates of purchases made from the sister concerns is not correct method. In view of the fact that there are fluctuations in price of waste on day to day basis, the correct method is to compare the rates of purchases made by the appellant from sister concerns at a particular point of time by comparing the same with the rates given for the similar goods to other outside parties at the same point of time. As mentioned above the relevant details were duly produced at the time of assessment proceedings but the AO chose to ignore the evidence. As submitted by the appellant, date wise and item-wise detail of material purchased from related concern and outside independent parties in the month of November 2006, January 2007, February 2007 and March 2007 payment made to M/s Malwa Cotton Spinning Mills for purchase of Comber Waste and Flat Waste was neither excessive nor unreasonable.

Keeping in view the above position, the addition made by the Ld. AO of Rs.2,77,318/- on this account is deleted. This ground of appeal is accordingly allowed."

8. The aforesaid findings were upheld by the Tribunal. No illegality or perversity could be demonstrated in the concurrent findings recorded by the CIT(A) and the Tribunal which may call for interference by this Court. Thus, no legal issue arises in this regard.

9. Taking up next issue, the addition of ₹ 22,41,628/- made by the Assessing Officer on account of bank charges debited to the profit and loss account was deleted by the CIT(A) by observing that the said amount was incurred by the assessee on account of processing fees paid to the bank to process the working capital facility to meet day to day requirement of funds which was recurring in nature. These facilities were held to be of yearly duration and its benefit accrued during the year. Further, similar addition was deleted by the Tribunal in the earlier and subsequent years as well. The CIT (A) observed as follows:-

"6.3. I have carefully considered the appellant's submission and perused the assessment order. These expenses have been incurred by the appellant on account of processing fees paid by the appellant to bank to process the working capital facility to meet day to day requirement of funds which is recurring in nature. Further as clarified in the written submissions the fund based and non fund based working capital facilities sanctioned by the banks had been utilized by the appellant to meet the day-to-day requirement of funds for business. The working capital facilities are generally for a period of one year and such charges are levied by the bank every year. As pointed out by the AR of the appellant, it is seen that similar addition had been made during the Asstt. Years 2005-06 and 2006-07 and the addition was deleted by CIT(A). The order of the CIT(A) has been upheld by the Hon'ble ITAT for both the Asstt. Years in ITA No. 696/Chandi/ 2008 for Asstt. Year 2005-06 and ITA No. 1169/Chandi/2009 for Asstt. Year 2006-07. Similar addition made in the case of appellant for A.Y. 2008-09 has also been deleted by me vide my order dated 07.03.2012. Respectfully following the decision of the Hon'ble ITAT, the addition made by the Ld. AO of Rs.222,41,628/- on this account is deleted. This ground of appeal is accordingly allowed."

10. The Tribunal had affirmed the said deletion. Again, learned counsel for the revenue was not able to displace the reasoning and the findings of fact recorded by the CIT(A) and the Tribunal so as to raise any law point.

11. Lastly, while deleting the addition of ₹ 3,06,251/- made by

the Assessing Officer on account of building repair and maintenance expenses, the CIT(A) had held as under:-

> "7.3. I have carefully considered the appellant's submission. The fact remains that expenditure of Rs.1,25,030/- and Rs.1,81,221/- had been incurred on repair of road and boundary wall of factory building respectively. The AO has not doubted the genuineness of these expenses. It is not the AOs case that the expenses were bogus. It is also not the AOs case that the expenses were not incurred towards road and boundary wall. The only issue raised by the AO in the assessment order is whether these expenses are of revenue or capital in nature. Perusal of the written submission show that the appellant had commenced its Mfg. activities in financial year 1997-98 and the factory building was already in existence. The expenditure towards maintenance of an existing asset is purely revenue in nature. Moreover, looking into the nature and quantum of expenses it can reasonably be inferred that these expenses were towards repair and maintenance and were revenue in nature. The addition made on this account is therefore deleted. This ground of appeal is accordingly allowed."

12. The Tribunal also recorded that the genuineness of the expenses amounting to ₹ 3,06,251/- (i.e. ₹ 1,25,030/- and ₹ 1,81,221/-) was not in doubt. The said expenses were incurred for maintenance of

road and boundary wall as the factory building of the assessee was already in existence and had started its manufacturing activities in the financial year 1997-98. Keeping in view the quantum of expenditure, it was held to be revenue in nature. The CIT(A) and the Tribunal had rightly decided the issue which does not involve interpretation of any provisions of law.

13. In view of the above, no substantial question of law arises in this appeal. Accordingly, the instant appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 26, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**