IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 213 of 2015

Date of Decision: 11.12.2015

The Principal Commissioner of Income Tax-II, Amritsar

....Appellant.

Versus

M/s The Gurdaspur Co-operative Sugar Mills Ltd. Paniar, Gurdaspur

...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. Denesh Goyal, Advocate for the appellant.

Mr. M.R. Sharma, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of three appeals bearing ITA Nos. 213 of 2015, 210 and 302 of 2012 as learned counsel for the parties are not at variance that all the appeals can be decided together and identical questions of law and facts are involved therein. For brevity, the facts are being extracted from ITA No. 213 of 2015.

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 22.12.2014 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 55/ASR/2014 for the assessment year 2007-08, claiming the following substantial questions of law:-

i) Whether in the facts and circumstances of the case the Hon'ble ITAT has erred in deleting addition of Rs.44,55,335/- by holding that sale of scrap generated from the main business partakes the character of the same income and is eligible for claim of deduction u/s. 80P(2)(a)(iii) of the Income Tax Act, 1961?

ii) Whether in the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in allowing deduction u/s 80P(2)(a)(iii) of the I.T. Act, 1961 for the assessment year 2007-08 by respectfully following the judgment in the case of Budhewal Coop Sugar Mills vs. CIT (P&H)(FB) reported at (2009) 315 ITR 351, whereas on the same issue, the appeal filed by the Revenue u/s 260A is still pending before the Hon'ble Punjab & Haryana High Court?

3. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return on 31.10.2007 for the assessment year 2007-08 in the status of Cooperative Society (AOP) declaring loss at ₹ 5,20,19,492/- plus agriculture income of ₹ 5,62,677/- and had claimed carry forward losses

of earlier year amounting to ₹ 19,33,40,880/-. The said return was processed on 24.3.2008 under Section 143(1) of the Act. The Assessing Officer framed the assessment vide order dated 4.12.2009 (Annexure A-1) under Section 143(3) of the Act making an addition of ₹ 44,55,335/- on account of scrap lying with the assessee at the end of financial year. 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 14.11.2013 (Annexure A-2) allowed the appeal and deleted the addition of ₹ 44,55,335/- on account of scrap. Against the order, Annexure A-2, the revenue filed an appeal before the Tribunal. The Tribunal vide order dated 22.12.2014 (Annexure A-3) affirmed the order of the CIT(A) and dismissed the appeal. Hence, the present appeals by the revenue.

4. We have heard learned counsel for the parties.

5. The Tribunal on the basis of Full Bench judgment of this Court in **The Budhewal Co-operative Sugar Mills Ltd. v. Commissioner of Income Tax (2009) 315 ITR 351 (P&H)(FB)** had decided the issue in favour of the assessee. It was submitted by the learned counsel for the appellant that the revenue had filed an appeal against the said judgment before the Apex Court titled **Deputy Commissioner of Income Tax v. Budhewal Co-operative Sugar Mills Ltd. (2015) 373 ITR 35 (SC)** wherein following its earlier judgment in **Morinda Co-operative Sugar Mills Ltd. v. Commissioner of Income Tax (2013) 354 ITR 230 (SC)**, the Apex Court had remanded the matter back for adjudicating the issue afresh. On the aforesaid premises, it was prayed that these appeals be referred back to the Tribunal for fresh

decision in accordance therewith.

6. In view of the above, the matter is remitted to the Tribunal to decide the issue afresh in accordance with law after affording an opportunity of hearing to the parties.

7. The appeals stand disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

December 11, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**