IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 357 of 2015

Date of Decision: 30.10.2015

M/s Haryana State Minor Irrigation & Tubewell Corporation Ltd., Chandigarh

....Appellant.

Versus

Commissioner of Income Tax, Panchkula and another

...Respondents.

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 SHEKHER DHAWAN.

PRESENT: Ms. Radhika Suri, Senior Advocate with
Ms. Rajni Pal, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 6.2.2015 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Benches “A” and “B”, Chandigarh (hereinafter referred to as “the Tribunal) in ITA No. 329/Chd/2014, for the assessment year 2004-05, claiming the following substantial questions of law:-

(i) Whether in facts and circumstances of the case, the expenditure can be disallowed after the closure of the business and thereby bringing to tax the entire receipts?

(ii) Whether in facts and circumstances of the case, the salary paid to the staff for the completion of the post closure formalities till the winding up the company is to be treated as business expenses even after the closure of the business?

(iii) Whether in facts and circumstances of the case, the interest paid to the State Government on the short term loan taken for payment of retrenchment compensation and salary to the staff is to be treated as business expense even after the closure of the business?

(iv) Whether in facts and circumstances of the case, the other expenses incurred for the completion of the post closure formalities till the winding up the company is to be treated as business expense even after the closure of the business?

2. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is a Haryana Government Undertaking and is dealing in installation of tubewells, lining of water courses, maintenance of W/C, manufacturing of pumps, gates and deposit work. Upon issuance of notice on 30.8.2005, the assessee filed its return of income on 25.9.2006 for the assessment year 2004-05 declaring loss at ₹ 8,38,88,253/-. A notice

under Section 143(2) of the Act was issued to the assessee. During the year in question, the only source of income was house rent and interest income from FDR amounting to ₹ 3,23,13,262/-. As per the auditor's note mentioned in Column Nos. 21 and 32 of Form No.3CD, the business stands closed on 30.7.2002. The Assessing Officer vide order dated 23.10.2006 (Annexure A-1) disallowed the expenses holding that they were not incidental to the running of the business as the business stands closed and assessed the income at ₹ 3,23,13,262/- by making the applicability of Section 115JB of the Act. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [in short "the CIT(A)"]. The CIT(A) vide order dated 5.2.2014 (Annexure A-2) upheld the order of the Assessing Officer and dismissed the appeal. Still dissatisfied, the assessee filed an appeal before the Tribunal who vide order dated 6.2.2015 (Annexure A-3) dismissed the appeal regarding disallowance of expenditure by relying on the order of the Tribunal in the case of M/s Haryana State Small Industries & Export Corporation Ltd., Chandigarh v. The Additional CIT in ITA No. 898/Chd/2009. The Tribunal, however, directed the Assessing Officer to assess house property income under the head "income from house property" and to allow corresponding deduction. Hence, the present appeal.

3. We have heard learned counsel for the appellant.

4. Learned counsel for the appellant-assessee did not dispute that similar issue was decided by this Court in ITA No. 79 of 2012 (M/s Haryana State Small Industries & Export Corporation Ltd. v. The CIT, Panchkula) on 1.8.2012 for the assessment year 2007-08 and ITA No. 90 of 2013 (M/s Haryana State Small Industries & Export Corpn. Ltd. v.

Commissioner of Income Tax, Panchkula) decided on 10.7.2013 for the assessment year 2008-09, wherein this Court vide order dated 1.8.2012 adjudicated the same against the assessee and dismissed the appeals.

5. In view of the above, the present appeal is dismissed in terms of order dated 1.8.2012 passed in ITA No. 79 of 2012 (M/s Haryana State Small Industries & Export Corporation Ltd. v. The CIT, Panchkula).

(AJAY KUMAR MITTAL)
JUDGE

October 30, 2015 **(SHEKHER DHAWAN)**
gbs **JUDGE**