IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 18 of 2015 (O&M)

Date of Decision: 2.9.2015

M/s Talson Mill Store, Jalandhar

....Appellant.

Versus

The State of Punjab

...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. Avneesh Jhingan, Advocate for the appellant.

Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

**AJAY KUMAR MITTAL, J.**

1. This appeal has been preferred by the assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the order dated 12.3.2015 (Annexure A-5) passed by the Value Added Tax Tribunal, Punjab, Chandigarh (hereinafter referred to as "the Tribunal"), claiming the following substantial questions of law:-

(i) Whether in the facts and circumstances of the case, the assessment order passed beyond three years for A.Y. 2005-06 is sustainable in law?

(ii) Whether in the facts and circumstances of the case, the order of the Tribunal is illegal as it failed to follow the binding decision of jurisdictional High Court?

(iii) Whether in the facts and circumstances of the case, the principle of merger is applicable in the present case?

(iv) Whether in the facts and circumstances of the case, the appeal raising the question of limitation becomes infructuous merely because in pursuance of impugned order remanding on merit, the order has been passed by the assessing authority?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant filed returns for the assessment year 2005-06 and also filed annual statement. The assessing authority vide order dated 30.3.2011 (Annexure A-1) finalized the assessment by creating demand of ₹ 22,08,112/-. Feeling aggrieved, the assessee filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals) [for brevity "the DETC (A)"] challenging the assessment order on merits as well as being time barred, who vide order dated 31.10.2012 (Annexure A-2) remanded the case with regard to the merits only to the assessing authority for passing a speaking order after verifying the invoices and returns filed by the dealer. The issue of limitation was not adjudicated by the DETC (A). Feeling aggrieved, the appellant filed an appeal before the Tribunal. During the pendency of the appeal, the assessing authority passed the assessment order dated 5.2.2014 (Annexure A-3) in pursuance to the order (Annexure A-2) by creating a demand of ₹ 28,10,325/-. Against the order, Annexure A-3, the appellant filed an appeal before the appellate

authority without pre-deposit of 25% as a condition precedent for hearing of the appeal. The appellate authority vide order dated 27.11.2014 (Annexure A-4) dismissed the appeal in limine for non-deposit of 25%. Feeling aggrieved, the appellant filed CWP No. 1813 of 2015 challenging the vires of Section 62(5) of the Act which is pending adjudication. In the meanwhile, the appeal against the order dated 31.10.2012 passed by the DETC (A) came up for hearing before the Tribunal and the Tribunal vide order dated 12.3.2015 (Annexure A-5) has dismissed the appeal having rendered infructuous. Hence, the present appeal.

3. We have heard learned counsel for the parties and perused the record.

4. The parties are agreed that the only issue that arises for consideration in this appeal is regarding the question of limitation in framing the assessment for the year 2005-06 beyond a period of three years?

6. Learned counsel for the parties are *ad idem* that the issue raised in this appeal is no longer *res integra* and stands concluded by the decision of this Court in **State of Punjab and another v. M/s Des Raj Bhim Sain (2012) 43 PHT 1 (P&H)**.

7. In view of the consensus between the learned counsel for the parties, the present appeal is allowed and is disposed of in the same terms as in **M/s Des Raj Bhim Sain's case (supra)**.

**(AJAY KUMAR MITTAL)**
**JUDGE**

**September 2, 2015** **(RAMENDRA JAIN)**
gbs **JUDGE**