IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 64 of 2011 (O&M)

Date of Decision: 02.05.2016

Commissioner of Income Tax-I, Ludhiana

.......Appellant

Versus

M/s Cremica Agro Foods Ltd.

......Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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

Mr. Alok Mittal, Advocate and
Mr. Abhishek Sanghi, Advocate
for the respondent.

RAJESH BINDAL,J.

This appeal has been filed under Section 260 A of the Income Tax Act, 1961 (for short 'the Act'), against the order dated 30.4.2010 passed by the Income Tax Appellate Tribunal, Chandigarh Bench (B), in ITA No. 879/CHD/2008, for the assessment year 2005-06, raising the following substantial question of law:

(1) Whether on the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is justified in law in holding that the proper enquiries were made by the AO for verification of claim of deduction u/s 80IB when the CIT has clearly brought out in order u/s 263 that the assessee had only filed CA's certificate and has not submitted any other supporting documents to support their claim and hence, in the absence of proper enquiry and in the

absence of verification of details of fixed assets and details of machinery taken on lease, it is not possible for the AO to decide if the original value of the machinery taken on lease is less than 20% of the total machinery installed in the unit for deciding allowability of claim u/s 80IB?

(2) Whether on the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is justified in law in holding that since the issue the proper enquiries were made during the course of assessment for AY 2003-04 and AY 2006-07 and that there is nothing to infer anything adverse therefrom, following the principle of consistency, the order for the AY 2005-06 cannot be considered as erroneous and prejudicial to the interest of revenue ignoring the fact the each year is the independent unit of assessment and that principle of res-judicata is not applicable to the assessment proceedings?

Learned counsel for the appellant-revenue submitted that in view of circular No.21/2015 dated 10.12.2015 read with circular No.279/Misc/M-142/2007-ITJ (Part) dated 8.3.2016, issued by Central Board of Direct Taxes, he does not wish to press the present appeal, as the tax effect involved is less than ₹ 20 lacs. However, he prays that liberty be granted to the revenue to file an application for revival of the appeal in case something survives therein.

Dismissed as not pressed with liberty as prayed for. It is however, clarified that withdrawal of the appeal by the revenue shall not be taken as affirmation of order of the Tribunal on merits. The legal issue as claimed by the revenue is left open to be adjudicated in an appropriate case.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

02.05.2016
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