

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 68 of 2013 (O&M)

Date of Decision: 28.1.2016

The Commissioner of Income Tax-II, Chandigarh

....Appellant.

Versus

M/s Punjab Agro Food Grains Corporation Ltd., Chandigarh

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Ms. Urvashi Dhugga, Advocate for the appellant.

None for the respondent.

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 30.10.2012 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 800/Chd/2012, for the assessment year 2009-10, claiming the following substantial question of law:-

Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in upholding the decision of Ld. CIT(A) in deleting an addition of ₹ 81,90,000/- made by the Assessing Officer by treating the Land Development Expenditure as Capital in nature?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee-Corporation has been set up by the Punjab Government to carry on the business of land development, contract farming, procurement of foodgrains, marketing and export etc. The assessee filed the original return on 29.9.2009 for the assessment year 2009-10 declaring the income at ₹ 98,00,000/- which was revised on 01.3.2011 at an income of ₹ 70,80,854/-. The said return was processed under Section 143(1) of the Act and subsequently notice under Section 143(2) of the Act was issued on 26.8.2010. Notice under Section 142(1) of the Act along with questionnaire was also issued to the assessee. The Assessing Officer vide order dated 22.11.2012 (Annexure A-1) framed the assessment at an income of ₹ 1,52,70,854/- by making additions of ₹ 81,90,000/-. The said amount was disallowed considering the same as capital expenses incurred for the purposes of development of the land. 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 18.5.2012 (Annexure A-2) allowed the appeal and deleted the addition of ₹ 81,90,000/- made by the Assessing Officer by following the order dated 16.11.2009 passed by his predecessor in the case of assessee itself for the assessment year 2006-07. Against the order, Annexure A-2, the revenue filed an appeal before the Tribunal who vide order dated 30.10.2012 (Annexure A-3) upheld the order of the CIT(A) and dismissed the appeal following its own orders dated 9.7.2010 passed in ITA No. 202/Chd/2010 in the case of the assessee for the assessment year 2006-07 and dated 30.11.2011 in ITA No. 754/Chd/2011 for the assessment year 2008-09. Hence, the present appeal by the revenue.

3. We have heard learned counsel for the revenue.

4. The primary issue that arises for consideration in this appeal is whether the expenditure incurred by the assessee for reclaiming and development of land was capital expenditure or revenue expenditure.

5. It was not disputed by the learned counsel for the revenue that the similar issue in the case of the assessee for the assessment year 2005-06 had come up for consideration before this Court in **ITA No. 163 of 2009 (Commissioner of Income Tax-II, Chandigarh v. M/s Punjab Agro Foodgrains Corporation)** decided on 18.9.2014, wherein under similar circumstances, the deduction was held to be admissible under Section 37 of the Act being revenue in nature. The relevant part thereof reads thus:-

“10. An expenditure would qualify for deduction under section 37 of the Act if it is incurred wholly and exclusively for the purpose of the business. It should be revenue in nature as distinguished from capital expenditure. There is no standard formula providing for determination of an expenditure to be capital or revenue. Every case is to be adjudicated on its own facts and the expenditure is to be looked from commercial point of view. The Supreme Court in **Abdul Kayoom (KTMKM) vs. CIT (1962) 44 ITR 689 (SC)** noticed that there can be no rule of thumb for determining as to whether a particular expenditure is capital or revenue and that each case has to be decided on its own facts and circumstances. The majority view was expressed as under:-

“None of the tests is either exhaustive or universal. Each case depends on its own facts, and a close similarity between one case and another is not enough, because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, its broad resemblance to another case is not at all decisive. What is decisive is the nature of the business, the nature of the expenditure, the nature of the right acquired and their relation inter se and this is the only key to resolve the issue in the light of the general principles, which are followed in such cases.”

11 to 13 XX XX XX

14. Examining the factual matrix in the present appeals, the Tribunal after examining the file noting of the Punjab Government dated 28.7.2005 which had been annexed to the assessment order recorded a clear finding that the land was lying fallow and was not barren though it was not being put to alternative use. The Tribunal on appreciation of evidence on record had come to the conclusion as under:-

“7. A bare perusal of the above notings of the

Punjab Government would show that the land leased to the appellant was not a barren land though it is said to be lying fallow and not being put to alternative use. The entire case of the CIT(A) is based on the aspect that the assessee has converted a barren land into a fertile land and thus it results in benefit of enduring nature in capital field. There is nothing on record to suggest that the land was barren, hence the order of the CIT(A) is unsustainable. The land not being put to alternative use may require a special effort on the part of assessee initially but all such activities are to be viewed having been carried out in the course of farming activity. During the year under consideration, the total land cultivated by the appellant out of the land leased was to the extent of 94 acres in Kharif season and 499 acres in rabi season.”

15. Further, the expenditure which was incurred by the assessee and claimed to be revenue were tractor hiring charges; jeep vehicle expenditure; staff welfare; HSD; preparation and renewal of seeds and electricity charges. The expenses incurred were for the furtherance of the business objectives. The Tribunal on examination of the entire matter, keeping in view the main objects of the assessee, the activities of the assessee, the nature of expenses incurred and also

the legal principles noticed hereinbefore, had concluded that the expenditure was revenue in nature.”

6. The Tribunal had relied upon the said orders passed for the earlier years including the assessment year 2005-06 which has been upheld by this Court.

7. In view of the above, the substantial question of law is answered against the revenue. Consequently, the appeal being devoid of merit, is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 28, 2016
gbs

(RAJ RAHUL GARG)
JUDGE