IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 266 of 2015

Date of Decision: 1.3.2016

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 MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: Mr. Denesh Goyal, Advocate for the appellant.

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 19.2.2015 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as “the Tribunal”) in ITA No. 474(ASR)/2014, for the assessment year 2010-11, claiming the following substantial questions of law:-

i) Whether on the facts and law the Hon'ble ITAT, Amritsar Bench, Amritsar is right in deleting addition of ₹ 27,81,468/- as the same payment was in nature of fine/penalty for infraction of law?

ii) Whether on the facts and law the Hon'ble ITAT, Amritsar Bench, Amritsar is right in deleting addition of ₹ 68,18,000/- on the ground that the Rural Development Fund is not covered u/s 43B of the Income Tax Act, 1961?

iii) Whether on the facts and law the Hon'ble ITAT, Amritsar Bench, Amritsar is right in deleting addition of ₹ 3,93,343/- cess payable to parent body. However, the fact is that the said parent body levies cess which is based on purchase/ production of the member society. This amount is payable to sugarfed which is a Government Body?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return of income on 30.9.2010 in the status of Cooperative Society (AOP) at nil income after adjusting the profit of ₹ 2,95,67,923/- with brought forward loss. The said return was processed on 17.4.2011 under Section 143(1) of the Act. The Assessing Officer framed the assessment under Section 143(3) of the Act vide order dated 19.3.2013 (Annexure A-1) at an income of ₹ 1,63,05,901/- by making an addition of ₹ 1,05,42,387/- on various accounts i.e., ₹ 5,29,890/- on account of disallowance of contribution to share redemption fund; ₹ 27,81,468/- on account of damages of Provident Fund; ₹ 68,18,000/- on account of disallowance of expenditure; ₹ 3,93,343/- on account of production cess under Section 43B of the Act and ₹ 19,686/- on account of depreciation

on agriculture implements. 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 5.5.2014 (Annexure A-2) partly allowed the appeal of the assessee and deleted some of the additions amounting to ₹ 99,92,811/-, i.e. ₹ 27,81,468/- on account of payment of damages of Provident Fund; ₹ 68,18,000/- on account of interest claimed by the assessee on Government Loan and Rural Development Fund (RDF) Loan given by the Punjab Government to Cooperative Sugar Mills and ₹ 3,93,343/- on account of production cess. Against the order, Annexure A-2, the revenue filed an appeal before the Tribunal who vide order dated 19.2.2015 (Annexure A-3) upheld the order of the CIT(A) and dismissed the appeal. Hence, the present appeal.

3. After hearing learned counsel for the revenue, we do not find any merit in the appeal.

4. The following additions made by the Assessing Officer and deleted by the CIT(A) and upheld by the Tribunal arise for consideration in this appeal:-

(i) addition of ₹ 27,81,468/- being the amount of damages recovered by provident fund department during the year;

(ii) disallowance of ₹ 68,18,000/- on account of interest claimed on RDF loan by invoking Section 43B of the Act;

(iii) disallowance of ₹ 3,93,343/- on account of cess payable in view of Section 43B of the Act.

5. Taking up the first addition of ₹ 27,81,468/-, the CIT(A) had

deleted the said addition by noticing that the assessee had never claimed expenses in the profit and loss account and, therefore, the same could not be disallowed under the Act. The relevant findings recorded are quoted as under:-

> "A sum of ₹ 27,81,468/- has been added back on account of Provident Fund Damages recovered by the Department. It is submitted that this sum of ₹ 27,81,468/- was never claimed by the assessee in P & L A/c. In fact it was shown as claims recoverable in the Balance Sheet. As such there was no occasion for the Assessing Officer to disallow the same. The copy of the Balance Sheet is enclosed to support this contention. The copy of A/c of claims recoverable appearing in Schedule VI is also enclosed. The copy of voucher is also enclosed."

6. The Tribunal affirmed it with the following observations:-

> ""9. We have heard the rival contentions and perused the facts of the case. As regards ground No.1 with regard to the deletion of addition of Rs.27,81,468/- on account of Provident Fund damages recovered by the Provident Fund Department during the year, the Assessing Officer made the assumption that the amount must have passed through the Profit & Loss account and, therefore, the said amount was disallowed by the AO. On perusal of the balance sheet and profit & loss account on record, the said amount has never been

claimed by the assessee in the P&L account. Thus, the AO is not justified in disallowing the same under the Act. Accordingly, we find no infirmity in the order of the ld. CIT(A), who has rightly deleted the addition made by the AO. Thus, ground No.1 of the Revenue is dismissed.

7. Learned counsel for the revenue was unable to demonstrate that the conclusion of the CIT(A) and the Tribunal was erroneous or perverse in any manner.

8. Further, while deleting the addition of ₹ 68,18,000/- on account of interest claimed by the assessee on Government Loan and RDF Loan given by the Punjab Government to the Cooperative Sugar Mills, the CIT(A) held that the Assessing Officer had not proved anywhere as to how RDF is a Public Financial Institution covered under Section 43B(a) or 43B(e) of the Act and in view of the clear list published by the Government of Public Financial Institutions, RDF loan received from the Punjab Government could not be considered as Public Financial Institution. That being so, Section 43B of the Act was not applicable. It was upheld by the Tribunal as under:-

> "9.1. As regards ground No.2 with regard to deletion of addition of Rs.68,18,000/- on account of interest claimed by the assessee on Govt. Loan and RDF loan given by the Punjab Government to Co-operative Sugar Mills, it was submitted before the Ld. CIT(A) that such loan does not fall under Section 43B(d) or section 43B(e). The provision of section 43B(d) applies to Public Financial Institutions or State

> Financial Corporation or State Industrial Development Corporation. Such Public Financial Institutions are held by the Government and with regard to section 43B(e), the same covers loan taken from Scheduled Banks. Therefore, in view of the findings given by the AO himself that RDF is a Govt. body, constituted under Punjab Rural Development Act, 1987, and in the absence of anything on record by the AO that how RDF is a Public Financial Institutions, we find no infirmity in the order of the ld. CIT(A) that the said RDF cannot be considered as a Public Financial Institution and accordingly section 43B(d) & section 43B(e) are not applicable. Therefore, in the facts and circumstances of the case, we find no infirmity in the order of the Ld. CIT(A), who has rightly deleted the addition so made by the AO. Thus, ground No.2 of the Revenue is dismissed."

9. No infirmity or illegality could be pointed out by the learned counsel for the revenue so as to call for interference by this Court.

10. Adverting to deletion of addition of ₹ 3,93,343/- on account of cess, the CIT(A) observed that the production cess collected by M/s Sugarfed was utilized for the benefit of Cooperative Sugar Mills and, therefore, could not be disallowed under Section 43B of the Act being not covered under Section 43B(a) of the Act. Accordingly, the CIT(A) deleted the aforesaid additions made by the department which on appeal were affirmed by the Tribunal by recording as under:-

> "9.2. As regards ground No.3 of the Revenue with

regard to deletion of addition of Rs.3,93,343/- on account of 'Cess' collected by M/s Sugarfed by applying provision of section 43B, it was submitted before the Id.CIT(A) and before us that M/s Sugarfed is a parent body which collects 'cess' from all Sugar Mills and cess is not a tax or a levy but it is a contribution to its parent body. It is utilised for the use of Co-operative Bodies. Accordingly, we do not find any infirmity in the order of the Id. CIT(A), deleting said addition, since the same is not covered u/s 43B of the Act. Accordingly, ground No.3 of the Revenue is dismissed."

11. The CIT(A) and the Tribunal on appreciation of material on record have deleted the aforesaid additions made by the Assessing Officer. Learned counsel for the revenue was not able to establish that the approach of the CIT(A) and the Tribunal was erroneous or perverse or that the findings of fact recorded were based on misreading or misappreciation of evidence on record. The view of the CIT(A) and the Tribunal is a plausible view and deletion of the aforesaid additions was justified.

12. In view of the above, no substantial question of law arises in this appeal. Accordingly, the instant appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

March 1, 2016
gbs

(RAJ RAHUL GARG)
JUDGE