

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.420 of 2015
Date of decision: 25.5.2016**

Pr. Commissioner of Income Tax, Panchkula

.....Appellant

Vs.

Housing Board Haryana, Panchkula

.....Respondent

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

1. Whether Reporters of 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?

Present: Mr. Yogesh Putney, Advocate for the appellant-revenue.

Ms. Radhika Suri, Sr. Advocate with Ms. Rinku Dahiya,
Advocate with Ms. Rajni Pal, Advocate for the respondent-
assessee.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos.411 and 420 of 2015 as
learned counsel for the parties are agreed that the questions of law involved
in both the appeals are identical. However, the facts are being extracted from

ITA No.420 of 2015.

2. ITA No.420 of 2015 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 5.6.2015, Annexure A.3 passed by the Income Tax Appellate Tribunal, Chandigarh Benches ‘A’ and ‘B’, Chandigarh (in short, “the Tribunal”) in ITA No.246/Chd/2013, for the assessment year 2010-11, claiming following substantial questions of law:-

“i) Whether on the facts and circumstances of the case, the learned ITAT has erred in deleting the addition made on account of disallowance of expenses incurred as maintenance of colonies of ₹ 3,25,96,429/-?

ii) Whether the expenditure to the tune of ₹ 3,25,96,429/- incurred by the respondent assessee-Board towards maintenance of colonies is a capital expenditure and not allowable under Section 37 of the Income Tax Act, 1961?”

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No.420 of 2015 may be noticed. The respondent-assessee Board is engaged in providing housing to the general public in the State of Haryana. It filed its return of income on 5.10.2010 by declaring income at ₹ 69,46,65,250/- which was processed on 20.4.2011 under section 143(1) of the Act. The case of the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued on 29.8.2011

to it. The assessee appeared before the Assessing officer. The Assessing officer asked for the details of maintenance of colonies. The assessee Board submitted its reply on 16.11.2012 and furnished the details of the maintenance of colonies. The assessee Board was called upon on 16.11.2012 to show cause as to why the expenditure claimed towards the maintenance of colonies be not capitalized as expenditure in the nature of capital expenditure. The assessee submitted its reply on 3.12.2012 stating that the expenditure incurred on maintenance of colonies should not be capitalized as the land is procured by it from the government agencies like HUDA, Municipal committees etc. for construction of Housing Board colonies and after construction of houses, these colonies are either handed over to concerned municipal committees or local authorities for future maintenance of estate services. It was also submitted that since Housing Board colonies at Charakpur (Gurgaon) and Narnaul did not fall within the municipal limits, the Board had to maintain these colonies. The Assessing Officer after considering the reply submitted by the assessee found the same to be not tenable and disallowed the expenditure to the tune of ₹ 3,25,96,429/- claimed as revenue expenditure under section 37 of the Act and held the expenditure as capital in nature on the grounds that the expenditure incurred was of enduring nature and will last for longer period; permanent assets were being created by incurring such expenditure and no income was being

received against such expenditure vide order dated 14.1.2013 (Annexure A.1). Aggrieved by the said order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A) allowed the appeal vide order dated 27.12.2013, Annexure A.2 holding that the expenditure on account of maintenance of colonies was revenue in nature and allowable under section 37 of the Act. Not satisfied with the order, the revenue filed appeal before the Tribunal. Vide order dated 5.6.2015, Annexure A.3, the Tribunal dismissed the appeal. Hence the instant appeals by the revenue. It may be noted that a corrigendum dated 2.9.2015, was issued by the Tribunal in the case of ITA No.741/Chd/2014 to the effect that since the appeal i.e. ITA No.741/Chd/2014 relates to assessment year 2011-12, the assessment year in question at the title of the order be read as 2011-12 instead of 2010-11.

4. We have heard learned counsel for the parties.

5. Learned counsel for the appellant-revenue relied upon judgment of the Apex court in *Arvind Mills Limited vs. Commissioner of Income Tax*, (1992) 197 ITR 422 to contend that the amount spent by the assessee for repair of roads was capital in nature. It was urged that in such circumstances, the CIT(A) as well as the Tribunal erred in allowing the same as revenue expenditure in the assessment year in question.

6. Controverting the aforesaid submission, learned counsel for the

assessee placed reliance on judgment of the Apex Court in ***L.H.Sugar Factory and Oil Mills (P) Limited vs. Commissioner of Income Tax, UP,*** (1980) 125 ITR 293 to argue that the amount spent was revenue in nature.

The roads for which repair had been carried out did not belong to the assessee and in such circumstances, the CIT(A) and the Tribunal were justified in deciding the issue in favour of the assessee.

7. The CIT(A) after examining the matter has recorded a categorical finding that the assessee is providing housing to the general public in the State of Haryana after development of housing colonies. Thereafter, the maintenance of colonies is undertaken by the respective municipal committees or local authorities. Since colonies at South Vihar and Narnaul were not falling in any municipal committee or local authority, the assessee had to take up the maintenance work also as per the decision of the Housing Board, Haryana. The expenses incurred by the assessee Board were in the nature of repair and maintenance. There was no creation of any new asset. Thus, the expenditure on account of maintenance of colonies was held to be revenue in nature. The relevant findings recorded by the CIT(A) read thus:-

“6.1. In the present case, the appellant is engaged in providing housing to the general public in the State of Haryana after development of housing colonies. After construction of housing colonies they are allotted to the individual allottee

and once the colonies are sold off, thereafter, the maintenance of colonies is undertaken by the respective Municipal committees or local authorities. As the appellant has submitted that colonies at South Vihar and Narnaul were not falling within any municipal committee or local authority so the appellant had to take up the maintenance work also. The appellant has also submitted copy of minutes of meeting of Housing Board where the amount was approved for maintenance of housing colonies. In the agenda to the meeting it was brought up that there was constant pressure from allottees of these colonies for upgradation of estate services as the condition of the same was deteriorated with the passage of time. The State services needed replacement/upgradation of roads, park, water supply, sewerage, street light, boundary wall etc.

- 6.2. In view of above facts, it is noted that the colonies were in existence which were basically in the nature of stock in trade as after development of these colonies these were not in possession of appellant. The expenses incurred on the existing infrastructure were in the nature of repair and maintenance which shows that there was no creation of any new asset and it was incurred for maintaining the business of appellant by providing better estate services. Even if, such expenditure gives enduring benefit, the benefit does not accrue to the appellant rather the benefit goes to the allottee. The AO's other reasoning that no income is being received against the expenditure does not have any relevance on the nature of expenditure and it is not a valid criteria to treat the

expenditure as capital in nature. Further, no value addition by incurring such expenditure has accrued on any assets belonging to and/or held by the appellant. Considering the reasons discussed in above paras and judicial pronouncements cited by the appellant, I am of the view that the expenditure on account of maintenance of colonies is revenue in nature. Hence, the AO is directed to delete the addition of ₹ 3,21,25,745/-.”

8. While concurring with the findings recorded by the CIT(A), the Tribunal noticed that the expenses were incurred by the assessee for maintenance of colonies. The assets i.e. the colonies did not belong to the assessee. Thus, it could not be concluded that the assessee had derived enduring benefit from such expenses. The findings recorded by the Tribunal read thus:-

“7. We have considered the rival submission carefully and find that identical issue came up for consideration before the Tribunal in the case of *Punjab Urban Development Authority, Mohali vs. ACIT, Chandigarh* in ITA No.759/Chd/2008. This issue was decided vide paras 110 to 115 which reads as under:-

“110. Ground No.4 – After hearing both the parties we find that during assessment proceedings the AO noticed that the assessee authority was in the business of acquiring land and developing it and after development of the land, the same was sold in auction. It was maintaining various sectors even after completion, for different time period ranging from 5-13

years depending on the same. That means that maintenance and development in respect of developed sectors and undeveloped sectors was being done by PUDA staff and infrastructure available with the PUDA was jointly shared by the developed and underdeveloped sectors. The assessee had debited entire cost in respect of this expenditure and claimed the same as revenue expenditure. The assessee was asked to bifurcate these expenses into two parts i.e. the expenditure on developed and developing sector. It was submitted that as per accounting standard AS7, general administration cost and finance cost were to be allowed as revenue expenditure. The Assessing Officer noted that if the assessee was following cash system of accounting whereas AS7 provides that accounting for such contract has to be on accrual system, therefore, according to him the expenses in relation to developing the sectors were to be capitalized. He further observed that the total administrative expenses were ₹ 30,40,02,391/-. Since a separate addition on account of CPF contribution was made and this amount was reduced from total, was disallowed being of capital nature.

111. On appeal before the learned CIT(A), it was mainly submitted that addition made by the Assessing Officer was not in accordance with AS7 as well as general accounting principles. It was submitted that administrative expenses which could not be identified were required to be shown in the profit and loss account and should not be made as part of the contract.

112. The learned CIT(A) after considering the submissions

observed that as per the decision of Hon'ble Supreme Court in case of *Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT*, 227 ITR 172 (SC), Accounting Standards were made for general guidelines and accounting purposes and the same cannot be used for determining tax liability. He further observed that no project can be completed without general administration expenses and accordingly confirmed the addition.

113. Before us, the learned counsel for the assessee reiterated the submissions made before the learned CIT(A). He further submitted that the assessee was following cash system of accounting and the Assessing Officer has himself held that instalments received in cash on account of sale of houses and flats under hire purchase agreement were taxable which means he has totally followed cash system of accounting and therefore, he cannot take a "U" turn and deny the deduction on account of administrative expenses which have been incurred in cash. Alternatively, it was submitted that if these expenses are held to be on capital account then value of the opening stock and closing stock should be adjusted accordingly.
114. On the other hand, the learned DR for the revenue submitted that administrative expenses were incurred jointly for developed and developing sectors. The Assessing Officer has asked for bifurcation of the same which was not given. She further submitted that even if the assessee was following cash system of accounting and when the assessee was not showing receipt from a particular project then the expenses against the

same could not be allowed.

115. We have heard the rival submissions carefully. We have already discussed the implications of cash system of accounting while adjudicating ground No.5 of revenue's appeal in ITA No.762/Chd/2008. Basically once the cash system of accounting is followed then all receipts which relate to the revenue field, have to be taxed. Similarly all cash outgoings which are in the revenue field, had to be allowed as expenditure. Since the assessee is in the business of purchase and developing the land and selling the same after the development of the same and therefore, administrative expenses incurred are clearly in the field of revenue. Further, the assessee was following cash system of accounting, therefore, once cash has been spent or outgone from the assessee, same has to be treated as expenditure. Therefore, we set aside the order of the learned CIT(A) and delete the addition.”

8. Though in that case the issue was mainly decided on the basis that assessee has followed cash system of accounting, therefore, all expenses are to be allowed. There is further an observation that expenses involved are of revenue nature. In the present case also the nature of expenses is upliftment of street lighting, development and laying of roads, underground tanks etc. These assets would never belong to the assessee but would belong to the community living in the colony and therefore, it cannot be said that assessee has derived enduring benefit from such expenses, therefore, in our opinion, the assessee was under obligation to maintain this colony for which such expense is a necessity.

Therefore, we find nothing wrong with the order of learned CIT(A) and confirm the same.”

9. In *L.H.Sugar Factory and Oil Mills (P:) Limited*'s case relied upon by the learned counsel for the respondent-assessee, the assessee therein was carrying on business in manufacture and sale of sugar. The assessee contributed ₹ 50,000/- to the State of UP towards meeting the cost of construction of roads in the area around its factory under a sugarcane development scheme. After considering the matter, the Apex Court held that the construction of roads no doubt facilitated the business operations of the assessee and enabled the management and conduct of the assessee's business to be carried on more efficiently and profitably but it was not an advantage in the capital field because no tangible or intangible asset was acquired by the assessee nor was there any addition to or expansion of the profit making apparatus of the assessee. The relevant observations made by the Apex Court read thus:-

“Now it is clear on the facts of the present case that by spending the amount of ₹ 50,000, the assessee did not acquire any asset of an enduring nature. The roads which were constructed around the factory with the help of the amount of ₹ 50,000 contributed by the assessee belonged to the Government of Uttar Pradesh and not to the assessee. Moreover, it was only a part of the cost of construction of these roads that was contributed by the assessee, since under the

Sugarcane Development Scheme, one third of the cost of construction was to be borne by the Central Government, one third by the State Government and only the remaining one third was to be divided between the sugarcane factories and sugarcane growers. These roads were undoubtedly advantageous to the business of the assessee as they facilitated the transport of sugarcane to the factory and the outflow of manufactured of sugar from the factory to the market centres. There can be no doubt that the construction of these roads facilitated the business operations of the assessee and enabled the management and conduct of the assessee's business to be carried on more efficiently and profitably. It is no doubt true that the advantage secured for the business of the assessee was of a long duration in as much as it would last so long as the roads continued to be in motorable condition, but it was not an advantage in the capital field, because no tangible or intangible asset was acquired by the assessee nor was there any addition to or expansion of the profit making apparatus of the assessee. The amount of ₹ 50,000 was contributed by the assessee for the purpose of facilitating the conduct of the business of the assessee and making it more efficient and profitable and it was clearly an expenditure on revenue account.”

10. Learned counsel for the appellant-revenue has not been able to show any illegality or perversity in the findings recorded by the CIT(A) as well as the Tribunal.

11. Adverting to the judgment relied upon by the learned counsel

for the appellant revenue, it may be noticed that in *Arvind Mills Limited's* case (supra), the assessee company was running a textile mill and had to pay certain amount called betterment charge towards the Bombay Town Planning Scheme under Section 66 of the Bombay Town Planning Act, 1954. Under the scheme, the lands of different owners including the land of the assessee therein were treated as included in a common pool and various improvements such as laying roads and making provision for drainage were effected for the better enjoyment of the lands under the scheme. Consequently, the owner got betterment of the land and the value of the land increased providing better facilities for carrying on the business of the assessee. The question that arose for consideration was regarding the nature of expenditure being capital or revenue relating to payment for the betterment charge required to be paid by the assessee. The Apex Court held that since the payment had no direct nexus with the day to day running of the business and as a result of the payment of the betterment charge, the value of the assessee's land had increased, the betterment charge was capital expenditure.

12. The position in the present case is different. Herein, the assessee's business was to provide housing to the general public in the State of Haryana after development of housing colonies. The maintenance work was to be carried out by the respective municipal committees or local

authorities. With regard to particular colonies at South Vihar and Narnaul, as per decision of the Board, the assessee had to carry out the maintenance work like upgradation of roads, park, street light, boundary wall etc. The enduring benefit did not accrue to the appellant but to the allottee. Further, the assets did not belong to the assessee. Thus, the expenditure incurred by the assessee on maintenance work was held to be revenue in nature and, therefore, the judgment relied upon by the learned counsel for the appellant-revenue in *Arvind Mills Limited's* case (supra) is distinguishable.

13. In view of the above, no substantial question of law arises. The appeals stand dismissed.

(Ajay Kumar Mittal)
Judge

May 25, 2016
'gs'

(Raj Rahul Garg)
Judge