

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

**ITA No.53 of 2016 (O&M)  
Date of decision: 26.4.2016**

**Principal Commissioner of Income Tax, Panchkula**

**.....Appellant**

**Vs.**

**M/s Haryana Agro Industries Corporation Limited**

**.....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? **YES**
3. Whether the judgment should be reported in the Digest?

Present: Mr. Yogesh Putney, 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 10.9.2015, Annexure A.3 passed by the Income Tax Appellate Tribunal, Division bench, Chandigarh in ITA No.157/CHD/2014, for the assessment year 2010-11, claiming following substantial question of law:-

“ Whether on the facts and in the circumstances of the case, the learned ITAT has erred by upholding the order of CIT(A) and deleting the additions made on account of provision for arrears of salary of ₹ 2,04,52,413/- being as prior period expenses and

contingent liabilities?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The respondent-assessee is a government undertaking engaged in the activities of manufacturing and sale of feed, pesticides, storage of agriculture produce and trading of agricultural implements and agriculture related activities. It filed its return of income on 13.10.2010 by declaring income of ₹ 2,11,71,693/- which was revised on 28.2.2011 at ₹ 8,48,13,167/-. Subsequently, the case was selected under compulsory scrutiny. Notice under Section 143(2) of the Act was issued to the assessee. The representative of the assessee attended the assessment proceedings. It was noticed by the Assessing Officer that as per page No.48 of point Nos.(ix) and (x) of Notes to Accounts, the State Government vide its notification dated 7.1.2009 had revised the pay scales of its employees with effect from 1.1.2006. As per the instructions of the State Government, 40% arrears of the revised pay scales amounting to ₹ 106.37 lacs were released during the year 2009-10, provision for which was made during 2008-09. The remaining provision for 60% arrears of the revised pay scales amounting to ₹ 204.52 lacs was made during the year 2009-10. Vide order sheet entry dated 29.1.2013, the assessee was asked to explain why these provisions created during the year may not be disallowed as these expenses were eligible in the year of payment. The assessee in its reply dated 30.1.2013 stated that its Board of Directors held a meeting on 18.3.2009 wherein a resolution was passed to pay arrears of pay scales at the rate of 60% of the total arrears during the year under consideration as per which a provision was made for ₹ 2,04,52,413/- on accrual basis as the accounts of the assessee were maintained on mercantile system. The

submission made by the assessee was not accepted by the Assessing Officer as the provision made was allowed only in the year of payment irrespective of the accounting method followed by the assessee and further no liability had incurred in the said case. Accordingly, assessment order dated 4.2.2013, Annexure A.1 was passed by the Assessing Officer. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 27.12.2013, Annexure A.2, the CIT(A) partly allowed the appeal deleting the addition made by the Assessing Officer on account of provision of arrears of salary amounting to ₹ 2,04,52,413/-. Not satisfied with the order, the revenue filed appeal before the Tribunal. Vide order dated 10.9.2015, Annexure A.3, the Tribunal dismissed the appeal. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the appellant-revenue.

4. It has been categorically recorded by the Tribunal after examining the matter that as per notification dated 7.1.2009 issued by the State Government, the arrears of pay revision were to be paid by the assessee in two instalments i.e. 40% during the financial year 2008-09 and 60% in the next financial year. The liability was thus not in the nature of any contingent liability. Since the method adopted by the assessee was mercantile system of accounting and the provision on account of arrears for salary payment was made in the accounts on accrual basis, the disallowance made by the Assessing Officer was not held to be justified. While concurring with the findings recorded by the CIT(A), it was recorded by the Tribunal as under:-

“9. We have heard the rival contentions and perused the material available on record. We are in total agreement with the findings given by the learned CIT(Appeals). The provision of

the pay revision was made by the assessee as per notification dated 7.1.2009 in view of the minutes of Board meeting held on 18.3.2009. A copy of the extract of the minutes of the Board held on 18.3.2009 was also filed before us. It was very clear from the perusal of this that the arrears of pay revision were to be paid by the assessee in two instalments i.e. first instalment being 40% of the aggregate arrears during the financial year 2008-09 i.e. relevant assessment year 2009-10 and second instalment of 60% of the aggregate arrears in the financial year 2009-10 i.e. 2010-11. It is quite clear that the liability of payment of 60% of arrears of salary has arisen during the assessment year under consideration and the liability was also discharged at a future date. In this view, the liability is not in the nature of any contingent liability. From these facts, it can be very easily inferred that there was an ascertained liability in the form of payment of arrears of revised pay scales, which partly was booked in an earlier year and the remaining in the present year. Since the assessee is following the mercantile system of accounting and the provision on account of arrears for salary payment was made in the accounts on the accrual basis, the disallowance made by the Assessing Officer was not justified. This way, we do not find any infirmity in the order of the learned CIT(Appeals).”

5. The findings recorded by the Tribunal are pure findings of fact which have not been shown to be illegal or perverse by the learned counsel for the appellant-revenue. Thus, no substantial question of law arises. The appeal stands dismissed.

**(Ajay Kumar Mittal)**  
**Judge**

**April 26, 2016**

**(Raj Rahul Garg)**  
**Judge**

**'gs'**