

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

**ITA No.54 of 2016 (O&M)
Date of decision: 26.4.2016**

Haryana Agro Industries Corporation Limited

.....Appellant

Vs.

Commissioner of Income Tax, Panchkula Circle, 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? **YES**

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

Present: Mr. H.N.Mehtani, Advocate for the appellant.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-assessee under section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 29.9.2015, Annexure A.3 passed by the Income Tax Appellate Tribunal, Chandigarh in ITA No.118/Chd/2015, for the assessment year

2008-09, claiming following substantial questions of law:-

- “A. Whether in the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal and learned Commissioner of Income tax (Appeals) Panchkula have not erred in law in not quashing the action of the Assessing Officer regarding reopening of assessment under the provisions of section 148 of the Income Tax Act, 1961 without appreciating the fact that at the time of reopening of assessment, the proceedings under section 154 were pending and no evidence of the service or the disposal of the proceedings initiated under section 154 were provided to the appellant?
- B. Whether in the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal and learned Commissioner of Income Tax (Appeals), Panchkula, have not erred in law in not quashing the action of the Assessing Officer regarding reopening of assessment under the provisions of section 148 of the Income Tax Act, 1961 without appreciating the fact that reopening of assessment was made on the basis of audit objections only?
- C. Whether in the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal and learned Commissioner of Income Tax (Appeals), Panchkula, are not justified in not quashing the action of the Assessing Officer regarding reopening of assessment under the provisions of section 148 of the Income tax Act, 1961 which was reopened without complying with the provisions of section 147 of the Income Tax Act, 1961?
- D. Whether in the facts and circumstances of the case, the Hon'ble Income tax Appellate Tribunal and learned Commissioner of Income Tax (Appeals), Panchkula, were justified in confirming the addition of ₹ 17,55,845/- made by the Assessing Officer on account of prior period expenses without considering the fact

that liability to pay these prior period expenses arose and crystalized during the year under question (assessment year 2008-09)?

E. Whether the impugned order passed by the Hon'ble Income Tax Appellate Tribunal is erroneous, suffers from error of law perverse and deserves to be set aside?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee is a company registered under the Companies Act, 1956. The return of income was e-filed by the assessee on 1.10.2008 declaring income of ₹ 2,70,18,880/- for the assessment year 2008-09 which was assessed under section 143(3) of the Act vide order dated 24.12.2010 at an income of ₹ 5,35,46,930/-. Later on, after recording reasons, a notice was issued under section 148 of the Act by the Assessing Officer to the assessee on 14.2.2013. It was noticed that the assessee had claimed expenses of ₹ 17,55,845/- for the financial year 2006-07 on account of service charges payable on procurement of gunny bags. It was observed by the Assessing Officer that since the assessee company was following mercantile system of accounting, the said expenditure could not be allowed in the subsequent assessment year 2008-09 and thereby the income had escaped assessment within the meaning of section 147 of the Act. The appellant filed a return of income in response to the notice under section 148 of the Act. The assessee also filed preliminary objections to the reopening of the assessment which were disposed of by the Assessing Officer vide interim order dated 15.1.2014. After rejecting the submissions made by the assessee, the Assessing Officer completed the assessment at an income of ₹ 4,79,66,220/- after making an addition of ₹ 17,55,845/- on account of prior period

expenses vide order dated 6.2.2014, Annexure A.1. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 28.11.2014, Annexure A.2, the CIT(A) partly allowed the appeal. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated 29.9.2015, Annexure A.3, the Tribunal dismissed the appeal. Hence the instant appeal by the appellant-assessee.

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

4. The primary issue raised in the present case was whether the notice under section 148 of the Act on the basis of audit objection was valid or not. On appreciation of evidence on record and relevant case law on the point, it has been categorically recorded by the Tribunal that the audit party had raised an objection that certain expenses which pertained to earlier years had been claimed in the current assessment year. Reliance was placed on the judgment of the Apex Court in **CIT vs. P.V.S. Beedies Pvt. Limited**, (1999) 237 ITR 13 holding that reopening on the basis of audit objection could be done if some factual error was pointed out by the audit party which had been overlooked by the Assessing Officer but no reopening on the basis of audit objection could be done if the objection pertained to some interpretation of law. The error pointed out by the audit party in the present case was held to be factual. Detailed reasons had been recorded by the CIT(A) justifying reopening on the basis of the audit objection. While concurring with the findings recorded by the CIT(A), it was concluded by the Tribunal as under:-

“8. From the reading of the above, it is quite clear that reopening made by the Assessing Officer on the basis of audit objection is as per law. The case of **Locus T.V.S. Limited** (supra) relied upon by the assessee is not applicable to the present case as in

an earlier decision of the Hon'ble Supreme Court in the case of ***Indian & Eastern Newspaper Society*** (supra), it was held that no reopening can be made on the basis of audit objection which is on some interpretation of law. This judgment of the Hon'ble Supreme Court has been followed by the Hon'ble Punjab and Haryana High Court in the case of ***Sant Ram Mangat Ram*** (supra). In the judgment of ***P.V.S. Beedies Pvt. Limited*** (supra), it was held that reopening of the assessment on the basis of error pointed out by the audit party is valid. From the conjoint reading of all these judgments given by the Hon'ble Supreme Court, it infers that reopening on the basis of an audit objection can be done if some error is pointed out by the audit party, however, no reopening on the basis of audit objection can be done if the objection pertains to some interpretation of law. In this background, we now analyze the facts of the present case. It is noted that the audit party has raised an objection that certain expenses which pertained to earlier years have been claimed in the current assessment year, which are not so allowable as per law. This information in the form of objection raised by the audit party to the Assessing Officer, only provides the background for forming a belief that the income had escaped assessment. This is not an interpretation of law made by the audit party. This is just a factual error pointed out by the audit party. In this background, we hold that reopening on the basis of audit objection is as per law in the given facts and circumstances of the case and the learned CIT(Appeals) has very aptly analyzed the validity of notice under section 148 of the Act and we do not find any infirmity in the findings recorded by the learned CIT(Appeals). Therefore, we uphold the order of the learned CIT(Appeals) on this account.

9. On the merits of the case, the learned counsel for the assessee submitted that the assessee is paying service charges for the purchase of gunny bags to the Food & Supply Department of Government of Haryana, who buys the gunny bags for use of State of Haryana at lower rates and charges at 1% of the

purchase. It is submitted that it is not a tax, by whatever name called. Since the expenditure has been accepted by the assessee during the year under consideration and accordingly, risen during the year under consideration, in this view, it was prayed that the same may be allowed in the year under consideration. In the alternative, it was submitted that same expenses may be allowed in the year in which they have arisen.

11. We have heard the learned representatives of both the parties, perused the findings of the authorities below and considered the material available on record. We see that the learned CIT(Appeals) has given very detailed findings on this issue, which are recorded at page 13, paras 6.2 and 6.3 of his order which read as under:-

“6.2 I have gone through the facts of the case, written submissions filed by the appellant and the assessment record. It is noted that the AO has disallowed the amount considering it as prior period expenses as per annual report after issue of show cause notice and consideration of appellant's reply. Though, the appellant has submitted that the service charge liability on account of purchase of gunny bags arose during the year but the appellant has not provided any evidence in support of its claim except the copy of ledger account. The AO has given its finding in the assessment order. Therefore, I am not in agreement with the submissions made by the appellant and the payment made on account of prior period expenses as quantified by its auditors is disallowable as per provisions of section 37(1) of the Act.

6.3 Regarding the non disputed nature of expenditure it is noted that the expenses on account of service charge payable on purchase of gunny bags have been disallowed on account of being prior period expenses. However, any expense incurred by the appellant during the year on this account is allowable. The AO is directed to verify and grant relief to the extent the expense on this account for which the expenses were incurred during the year under consideration and

provide relief to that extent of expenditure. This ground of appeal is partly allowed.”

5. Learned counsel for the appellant-assessee has not been able to show any error in the findings recorded by the Tribunal on appreciation of evidence and relevant case law on the point, warranting interference by this Court. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

April 26, 2016
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(Raj Rahul Garg)
Judge