IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 212 of 2015 (O&M)
Date of decision: 10.5.2017

Commissioner of Income Tax, Faridabad

……Appellant

Vs.

M/s Haryana Environment Management Society

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Tejinder K. Joshi, Senior Standing counsel for the appellant- revenue.

Mr. Aman Bansal, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. The delay in refiling the appeal is condoned.

2. The appellant-revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 06.07.2012, Annexure A.III, passed by the Income Tax Appellate Tribunal, Delhi Bench, 'C', New Delhi (in short, "the Tribunal") in I.T.A. No.4228/DEL/2009 for the assessment year 2006-07, claiming following substantial questions of law:-

> "(a)Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in deleting the addition of ₹ 2 crore made on account of subsidy received from the ASIDE Scheme from Government of India as a revenue receipt as the same has been received from a non-member?"

(b)Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in deleting the addition of ₹ 2,47,113/- and ₹ 23,506/- on account of interest income received from the banks?"

3. A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The assessment was framed by the Assessing Officer at an income of ₹ 2,30,57,715/- vide order dated 26.12.2008, Annexure A.1 under Section 144 of the Act. During the course of assessment proceedings, the Assessing Officer made the additions of ₹ 2,00,00,000/- on account of grant received from ASIDE Scheme of Government of India, ₹ 2,47,113/- on account of interest received from Corporation Bank and ₹ 23,506/- on account of interest received from OBC. The assessee is a society registered under the Societies Registration Act, 1860. During the course of assessment proceedings, the assessee neither attended the proceedings nor furnished any information with regard to its business activities conducted. It did not furnish its memorandum of association and copy of aims and objects. The Assessing Officer observed that in the return, it had not been mentioned that the assessee society was being run on the concept of mutuality. It was further observed that in case of a mutual society or concern, there must be complete identity between the class of contributors and class of participants and thus the arrangement and relationship between the society and its members should be of non trading character. The Assessing Officer relied upon the decision of the Apex Court in ***CIT Vs. Bankipur Club Limited*** (1997) 226 ITR 97. In the case of the assessee, no such relationship had been established as no information with regard to the Constitution of the society and its aims and objects for which it

was being formed and run, had been brought on record. Since, there was lack of complete identity between the class of contributors and class of participants, it was held by the Assessing Officer that the assessee society was not a mutual concern and was not covered by doctrine of mutuality. The Assessing Officer observed that the assessee had received income by way of member's subscription, interest, miscellaneous income and grants under ASIDE Scheme of Government of India and these incomes were held as non member contribution but derived from other agencies/sources. The income so received by the assessee was held to be as a result of business activity in which profit motive was involved. The Assessing Officer concluded that the assessee society was not covered under concept of mutuality and thus not entitled to avail exemption under Section 11 of the Act and the income/receipts were chargeable to tax. The Assessing Officer made certain additions as detailed above. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) CIT(A) against the order passed by the Assessing Officer. Vide order dated 16.09.2009, Annexure II, the CIT(A) sustained the additions made by the Assessing Officer amounting to ₹ 2,47,113/- being interest received from Corporation bank and ₹ 23,506/- as interest from OBC. The other additions made by the Assessing Officer were deleted by the CIT(A) with the observation that the Assessing Officer denied the benefit of concept of mutuality to the assessee on the ground that the claim of application of this concept had nowhere been mentioned in the return of income though the auditors had advised the assessee that the principle of mutuality applied to it. Not satisfied with the order passed by the CIT(A), the assessee filed an appeal before the Tribunal. The Tribunal following the view taken by the CIT(A) with regard to mutuality of the concern observed that the assessee was a cooperative society with a common purpose and for the benefit of its members only. The concept of principle of mutuality squarely applied to the assessee society. The Tribunal further held the treatment of interest income by the CIT(A) was contradictory. The action of CIT(A) in upholding the addition of interest of ₹ 2,47,113/- and ₹ 23,506/- was held to be not correct in view of existence of concept of mutuality. The Tribunal deleted the addition of ₹ 2,00,00,000/- holding that the amount was a capital receipt and was not liable to tax. Hence, the instant appeal by the appellant-revenue.

4. We have heard learned counsel for the parties.

5. A perusal of the assessment order passed by the Assessing Officer shows that inspite of notice issued to the assesssee, it did not attend the proceedings nor any written reply was filed. The case was fixed for 22.12.2008, the assessee was asked vide letter dated 19.12.2008 to show cause as to why the assessment proceedings be not completed as an ex-parte best judgment assessment under Section 144 of the Act on the basis of information available on record. The assessee again did not attend the proceedings nor any reply was filed. Thus, the Assessing Officer passed the best judgment assessment under Section 144 of the Act and made the additions on the basis of the information available on record. The assessee filed an appeal before the CIT(A) which was partly allowed and certain additions were deleted. Both the assessee and revenue filed appeals before the Tribunal against the order passed by the Tribunal. The appeal filed by the assessee was allowed whereas the appeal filed by the revenue was partly allowed.

6. In the present case, the assessee could not appear before the Assessing Officer and furnish details of the books of account. The assessee had furnished plausible explanation for its non-appearance before the Assessing Officer as is discernible from the perusal of para 3 of the order of CIT(A). Further, on the issues raised by the assessee before the CIT(A) and the Tribunal, the findings are required to be recorded by examining the books of account in detail. Therefore, in the facts and circumstances of the case in hand, it would be appropriate to remand the matter back to the Assessing Officer to decide it afresh after affording an opportunity to produce the books of account who shall thereupon after examining them record his findings afresh thereon. Consequently, the impugned order dated 06.07.2012, Annexure A.III, passed by the Tribunal is set aside and the matter is remanded to the Assessing Officer to decide it afresh, after hearing the assessee in accordance with law. The appeal stands disposed of accordingly. It is clarified that anything observed hereinabove or in the order of the CIT(A) or the Tribunal shall not be taken as expression of opinion in the facts and circumstances of the present case.

(Ajay Kumar Mittal)
Judge

May 10, 2017 **(Harinder Singh Sidhu)**
'gs' **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**