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

110 **Income Tax Appeal No.17 of 2017 (O&M)**
Date of decision: February 20, 2017

Pr. Commissioner of Income Tax, Panchkula ....Appellant

versus

M/s Haryana Warehousing Corporation ....Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

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

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AJAY KUMAR MITTAL, J. (Oral)

The appellant-Revenue has approached this Court under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 24.05.2016 (**Annexure A-7**) passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short, 'the Tribunal') in ITA No.176/CHD/2016 for the assessment year 2009-10, claimed the following substantial questions of law:-

> "(i) Whether on the facts and in the circumstances of the case, the Ld. ITAT is right in law in dismissing the Appeal of the Revenue in view of acceptance of Appeal of the Assessee against order dated 06.03.2014 passed by the Commissioner of Income Tax under Section 263 of the Income Tax Act, 1961 ignoring the aspect that the invocation of provision of Section 263 of the Income Tax

Act, 1961 has been held to be valid by the Ld. ITAT itself in its earlier order dated 21.10.2015 and the issue is pending adjudication before the Hon'ble High Court?

(ii) Whether on the facts and in the circumstances of the case, the Ld. ITAT has erred in dismissing the Appeal of the Revenue on the issue of Revision of Pay Scales amounting to Rs.9,48,15,000/- claimed as prior period expenses and are not allowable under Section 37 of the Income Tax Act, 1961 in view of quashing of order under Section 263 of the Income Tax Act, 1961 on this issue?

(iii) Whether on the facts and in the circumstances of the case, the Ld. ITAT has erred in dismissing the Appeal of the Revenue on the issue of Misc. Expenses amounting to Rs.15,16,675 claimed as Capital in nature in view of quashing of order under Section 263 of the Income Tax Act, 1961 on this issue?

2. At the outset, learned counsel for the Revenue very fairly accepted that the identical substantial question as claimed in the present appeal was dealt by the Division Bench of this Court in, **'Pr. Commissioner of Income Tax, Panchkula vs. M/s Haryana Warehousing Corporation'** in **ITA No.103 of 2016,** decided on 11.11.2016 for the assessment year 2009-10. It was admitted that this Court on merits of the deduction which was sought to be disallowed under Section 263 of the Act, had adjudicated the issue in favour of the assessee and dismissed the appeal. In other words, it was not controverted that the issue has been adjudicated in favour of the assessee on merits on both the counts i.e. 'the provision of revision of pay scales and the unabsorbed overhead on capital work under miscellaneous expense' which are the questions in the present

case. However, it was urged that the exercise of the powers of the Commissioner of Income Tax under Section 263 of the Act had been rightly invoked.

3. In view of the above, we do not find that the additions which were sought to be made by revising the order of the Assessing Officer relating to two issues, namely, 'the provision of revision of pay scales and the unabsorbed overhead on capital work under miscellaneous expenses' can be legally sustained and accordingly, the Tribunal's order does not require any intervention by this Court. Accordingly, the appeal is dismissed. However, it is clarified that the issue regarding the validity of initiation of proceedings under Section 263 of the Act is not being opined as the issue on merits has been pronounced against the revenue.

(AJAY KUMAR MITTAL)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 20, 2017
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Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No