

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

ITA No. 26 of 2017 (O&M)
Date of decision: 21.02.2017

Pr. Commissioner of Income Tax-2, Chandigarh

.....Appellant

Vs.

M/s Punjab State Cooperative Supply and Marketing Federation Ltd.

.....Respondent

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

Present: Ms. Urvashi Dhugga, Advocate for the appellant.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-revenue under Section 260A of the Income Tax Act, 1961 which (in short, “the Act”) against the order dated 07.06.2016, Annexure A.5, passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short, “the Tribunal”) in ITA No. 710/CHD/2015, claiming following substantial questions of law for the assessment year 2002-03:-

(i) “Whether on the facts and circumstances of the case and in law, the Hon’ble ITAT was right in dismissing the appeal of the revenue by ignoring the fact that the said amount of ₹ 39,33,16,443/- was originally offered by the assessee for taxation and later the same was reduced from taxable income?

(ii) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was right in dismissing the appeal of the revenue despite the fact that the assessee had reflected the said amount of ₹ 39,33,16,443/- as receivable from FCI in a writ petition filed by it before the Hon'ble High Court?

(iii) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was right in dismissing the appeal of the revenue by ignoring the fact that the assessee had also claimed deduction of the amount of cess actually paid to Punjab Govt., claiming it to be paid on behalf of FCI?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee is engaged in the procurement of food grains on behalf of the Food Corporation of India (FCI). It had paid an amount of ₹ 39,33,16,443/- to the State Government as cess according to the relevant provisions of law. The assessee claimed the said amount from the FCI. The FCI challenged the validity of the claim before this Court. The matter was decided against the FCI and SLP was filed in the Apex Court. The assessee also challenged before this Court recovery of the amount paid on behalf of the FCI to the Government. The writ petition was disposed of with the observation that the matter should be settled administratively. Accordingly, a decision was taken that the assessee was not entitled to recover the impugned sum of ₹ 39,33,16,443/- from the FCI. The assessee claimed that the impugned sum had never accrued to it as its income and was not liable to be taxed. Assessment was completed under Section 143(3) of the Act on 28.02.2005, Annexure A.1 at an assessed income of ₹ 30,56,18,450/- against the returned income of Nil. Against the order passed by the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Chandigarh [CIT(A)]. Vide order dated 11.08.2005, Annexure A.2, the CIT(A) partly allowed the appeal of

the assessee. Still the assessee filed an appeal before the Tribunal. Vide order dated 11.01.2012, Annexure A.3, the Tribunal sent the matter to the file of the CIT(A). Vide order dated 01.03.2013, Annexure A.4, the CIT(A) allowed the appeal filed by the assessee. Aggrieved by the order, the revenue filed an appeal before the Tribunal. Vide order dated 07.06.2016, Annexure A.5, the Tribunal dismissed the appeal of the revenue. Hence, the instant appeal by the revenue.

3. Admittedly, the respondent-assessee paid an amount of ₹ 39,33,16,443/- to the State Government as cess. The assessee sought to claim the said amount from the FCI. However, the FCI challenged the validity of law by which the cess was levied, before this Court. This Court decided the matter against the FCI. SLP was filed against the said order before the Apex Court. The assessee also filed a writ petition before this Court for recovery of the amount paid on behalf of the FCI to the Punjab Government. The said writ petition was disposed of by this Court observing that the matter should be resolved administratively. Accordingly, a meeting was held on 01.04.2002. It was decided that the assessee was not entitled to recover the impugned sum of ₹ 39,33,16,443/- from the FCI. Therefore, the matter was not agitated further. In appeal before the Tribunal, it was contented by the assessee that the impugned sum never accrued to the assessee as its income and therefore was not liable to be taxed. After considering the submissions of the assessee, the Tribunal sent the matter back to the CIT(A) for fresh decision in conformity with law, after giving reasonable opportunity of hearing to both the parties. The CIT(A) decided the matter in favour of assessee holding that the assessee had made book entry in its books of account only for the purpose that it could claim amount from FCI and contest the same before the authority. It was further held that

the amount could not be assessed as income of the assessee since it was a hypothetical income.

4. Aggrieved by the order passed by CIT(A), the department filed an appeal before the Tribunal. The matter was considered by the Tribunal after perusing the findings recorded by the authorities below and the material available on record. It has been categorically recorded by the Tribunal that in pursuance of the order dated 22.04.2004 passed by this Court in CWP No.9688 of 2002, on 04.03.2004, this Court had directed both the parties to convene a meeting with respect to their claim and to consider the same without prejudice to the final order of this Court. Accordingly, a meeting was held on 04.03.2004 wherein it was decided that the FCI shall release payments on account of infrastructural development fee to the State agency and make payment of the same with effect from 01.04.2002. Thus, it was concluded that the impugned sum of ₹ 39,33,16,443/- related to the period before 01.04.2002. Since the said amount was not recoverable by the assessee, it was recorded by the Tribunal that the same could not be treated as income in the hands of the assessee. The relevant findings recorded by the Tribunal read thus:-

7.“We have heard the learned representatives of both the parties, perused the findings of the authorities below and considered the material available on record. On perusal of the order of the High Court in writ petition No. 9688 of 2002 dated 22.04.2004 it becomes quite clear to us that on an earlier occasion as on 04.03.2004, the Hon’ble High Court had directed both the parties to convene meeting with respect to their claim and to consider the same without prejudice to the final order of the Court. In pursuance of the same, the meeting was called as on 04.03.2004, whereby it was decided that the FCI will release payments on account of infrastructural development fee to the State agency and make payment of the

same w.e.f. 01.04.2002. Further, by the final order of the Hon'ble High Court, it has been stated that the matter in issue stands resolved in terms of the minutes of meeting recorded as stated here-in-above. In view of the same, it has become final that the FCI will make the payment to the assessee only on 01.04.2002 and not before that. The impugned sum of ₹ 39,33,16,443/- relates to the period before this date. Since as per the order of the Hon'ble Court, the said amount is now not recoverable to the assessee, we are of the view that the same cannot be treated as income in the hands of the assessee. In view of this, we do not intend to interfere in the order of the 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 appellant-revenue. Consequently, no substantial question of law arises and the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

February 21, 2017
'gs'

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes