IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 553 of 2017 (O&M)
Decided on : 04.10.2018

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

Versus

M/s Haryana State Agricultural Marketing Board, Panchkula

...... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Denesh Goyal, Senior Standing Counsel
for the appellant.

Mr. Jagmohan Bansal, Advocate
for the respondent.

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AVNEESH JHINGAN, J.

The revenue has filed the present appeal under Section 260A of Income Tax Act, 1961 (for brevity, 'the Act') against the order dated 21.12.2016 of Income Tax Appellate Tribunal, Chandigarh (hereinafter referred to as 'ITAT') passed in ITA No.452/CHD/2010. The assessment year involved is 2003-04.

2. As per the appellant, the following substantial questions of law arise for consideration in the present appeal:-

1) Whether on the facts and circumstances of the case, the learned ITAT has erred in holding that the assessee is eligible for exemption under Section 11 without appreciating the fact that the assessee did not maintain books of account as *stipulated under the Income Tax Act, 1961 which was stated by the auditor itself and the assessee therefore not satisfying the necessary conditions?*

2) Whether on the facts and circumstances of the case, the ITAT, in para 49 of its order, has erred in observing that no appeal against the CIT (Appeal)'s order upholding the exemption claimed by the assessee has been filed by the Revenue ignoring the fact that the Department had filed appeal before the Hon'ble High Court on the issue?

3. The brief facts of the case are that the assessee filed the Income Tax Return declaring nil income, claiming exemption for entire income under Section 11(1) of the Act. The assessment was completed under Section 143 (3) of the Act on 16.03.2006. The Assessing Officer (AO) denied the exemption under Section 11(1) and made the following additions:-

i) Contribution to Pension Fund and Provident Fund Rs.28415626/-

ii) On account of Krishak Uphar Yojna Rs.79664/-

iii) On account of Revenue Income shown as capital income Rs.3211750/-.

4. Aggrieved of the assessment order, the assessee filed an appeal before Commissioner of Income Tax (Appeals), Panchkula (for short, 'CIT(A)'). Vide order dated 02.09.2006 the appeal was dismissed. Further, the appeal was preferred before the Tribunal. The Tribunal vide order dated 22.01.2008 remanded the matter back to the AO with regard to the issue of exemption. In pursuance to the remand, AO passed afresh order dated 24.12.2008. The only relief of ₹ 79,664/- was given on account of Krishak

Uphar Yojna and the addition made on account of contribution to the Pension Fund and Provident Fund was upheld.

5. Aggrieved of the order passed by the AO, the assessee preferred an appeal before CIT(A) on the ground of denial of exemption under Sections 11 and 12 of the Act and challenging the addition on account of contribution to the Pension Fund and Provident Fund. The CIT(A) vide order dated 01.03.2010 allowed the exemption under Section 11 of the Act but confirmed the addition on account of contribution to the Pension Fund and Provident Fund .

6. Both the department as well as the assessee filed appeals before the Tribunal against the order of CIT(A). The appeal of the assessee was allowed. Hence the present appeal.

7. Learned counsel for the appellant argued that the matter with regard to the exemption in the subsequent year had already been remanded by this Court in ITA No. 126 of 2009 dated 20.02.2017 to the Tribunal. He further produced the order of the Tribunal dated 22.05.2018, whereby while dealing with the remanded matters the Tribunal had further remanded the issue to the AO. He contended that since the matter of exemption is pending before the AO, the Tribunal erred in deleting the addition on the ground that the entire income of the assessee has been held to be exempted especially when appeal of revenue against order of CIT(A) has not been decided.

8. Learned counsel for the assessee was not in a position to dispute the factual position.

9. From the perusal of the order of CIT(A), it is evident that exemption under Section 11 of the Act was allowed by relying upon the decision for assessment years 2005-06, 2006-07. The revenue being

aggrieved of this part of the decision had also preferred an appeal before the Tribunal.

9. This Court while dealing with the appeals filed by the revenue for subsequent years remanded the matter back to the Tribunal. The extract of the order is reproduced below :-

> *"Learned counsel for the revenue very emphatically submitted that the finding recorded regarding maintenance of books of account by the assessee are perverse and more so when inspite of taking several opportunities before this court as well, the learned counsel for the assessee was unable to substantiate these findings by producing the record in the High Court. Thus, the finding recorded by the Tribunal is required to be verified and since the respondent-assessee has not been able to produce the books of account and the audit report, it is appropriate to set aside the impugned orders and remand the matter back to the Tribunal for fresh decision in accordance with law after hearing both the parties. As regards the additional substantial question of law raised in ITA No. 588 of 2010, though no serious error was raised, since the matter is being remanded, the Tribunal shall look into this fact also."*

10. The Tribunal while dealing with the remand matters further remanded the matter back to the AO. The relevant portion of the order of Tribunal dated 22.05.2018 is extracted below:-

> *"Having heard the arguments of both the parties and since the assessee categorically submits that books of accounts have been duly maintained and can be produced for verification along with the audit reports and also the arguments of the Ld.*

> *DR that if the books are maintained, they are required to be examined by the primary authority i.e. the Assessing Officer for the limited purpose of passing an order denovo with regard to this ground only and with directions to the assessee to produce books of accounts promptly before the Assessing Officer."*

11. Without going further into the issue, it would be appropriate to remit the matter back to the AO to decide the same afresh.

12. The appeal is disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

October 04, 2018
anju

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No