IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-238-2018 (O&M)

Date of Decision: 25.3.2019

The Principal Commissioner of Income Tax-3, Ludhiana

....Appellant.

Versus

R.B. Knit Export, Ludhiana

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Rajesh Katoch, Sr. Standing Counsel for the appellant.

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of bunch of six appeals bearing ITA Nos.238, 239, 244, 245, 246 and 299 of 2018 as according to learned counsel for the revenue, identical issues are involved therein. For brevity, the facts are being extracted from ITA-238-2018.

2. ITA-238-2018 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 3.11.2017 (Annexure-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 267/CHD/2017, for the assessment year 2012-13, claiming the following substantial questions of law:-

(i) Whether on the facts and in the circumstances of the case, the learned ITAT was correct in law in upholding the erroneous order of CIT(A) on the issue of cash payments to the job workers resulting in deletion of disallowance of ₹ 3,52,14,833/- without taking into consideration the results of inquiries by the Assessing Officer, the surrounding circumstances, preponderance of probabilities and ground realities?

ii) Whether on the facts and in the circumstances of the case, the ITAT was justified in law in upholding the erroneous order of CIT(A) on the issue of cash payments to the job workers by following its own decision in the assessee's case without appreciating the material gathered in respect of A.Y. 2012-13 during the course of survey u/s 133A of the Act carried out at the business premises of the assessee on 06/07.01.2014 and the results of the inquiries carried out by the Assessing Officer based on this material?

3. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return of income on 28.9.2012 declaring the income at ₹ 34,70,914/-. The case was selected for scrutiny and notice under Section 143(2) of the Act was issued to the assessee. The Assessing Officer vide order dated 31.3.2015 (Annexure-1) completed the assessment at ₹ 4,37,21,600/- against the returned income of ₹ 34,70,914/- under Section 143(3) of the Act by making

the following additions:-

Sr. No.	Disallowance	Amount (₹)
1.	Fabrication charges paid in cash without TDS (being amount below ₹ 50,000/-.	3,67,14,833/-
2.	Under Section 14A read with Rule 8D of the Income Tax Act Rules.	28,14,749/-
3.	Disallowance of $1/5^{th}$ of telephone and car expenses etc.	7,21,104/-

4. Feeling aggrieved by the order, Annexure-1, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [in short "the CIT(A)"]. The CIT(A) vide order dated 23.11.2016 (Annexure-2) while partly allowing the appeal, deleted the addition made on account of disallowance under Section 14A read with Rule 8D of the Income Tax Rules, 1962 whereas reduced the disallowance of fabrication charges paid in cash to ₹ 15,00,000/- and affirmed the addition made on account of disallowance of $1/5^{th}$ of telephone and car expenses etc. Against the order, Annexure-2, the revenue as well as the assessee filed appeals before the Tribunal. The Tribunal vide order dated 3.11.2017 (Annexure-3) dismissed the appeal of the revenue and partly allowed the appeal of the assessee. Hence, the present appeals by the revenue.

5. We have heard learned counsel for the revenue.

6. During the course of assessment proceedings, the assessee was asked to file details of fabrication charges party-wise specifying the nature of work, TDS made and deposited in Government account along with complete addresses of the parties. The Assessing Officer observed that out of total list of 1977 persons provided to whom fabrication charges have been paid only 46 parties were such to whom payments had been made after

deducting TDS and out of remaining 1931 persons, payments had been made in cash below ₹ 50,000/- without deducting TDS. On the directions of the Assessing Officer, the Inspector submitted report stating that despite making of all efforts, none of the addresses submitted by the assessee could be located. Thereafter, the assessee was provided opportunity to substantiate the fabrication charges. The assessee produced 66 job workers but failed to substantiate the payment of job charges even in a single case. Accordingly, the Assessing Officer disallowed ₹ 3,67,14,833/- on account of fabrication charges holding that the genuineness of the expenditure could not be proved. On appeal, the CIT(A) restricted the said addition to ₹ 15 lakhs by holding that the Assessing Officer had failed to apply the logic behind the rejection of an entire disallowance of 50% cash paid fabrication charges and had not given any logic as to how the assessee carried out his regular work to meet out such huge turnover demand. Further, the Assessing Officer had not rejected the books of account before making such huge addition. The CIT(A) deleted the addition of ₹ 28,14,749/- levied by the Assessing Officer under Section 14A of the Act read with Rule 8D of the Rules by observing that Section 14A of the Act cannot be invoked if earning of exempt income is based on certain uncertainties and contingencies. Even if the investment has the potential of generating taxable income like short term capital gain, disallowance under Section 14A of the Act could not be enforced. Since the assessee had not earned any exempt income during the year in question, no disallowance could be made and, therefore, the CIT(A) had rightly deleted the said addition. Further, the CIT(A) affirmed the disallowance of ₹ 7,21,104/- made by the Assessing Officer on account of personal use of asset.

7. On appeal by the revenue relating to disallowance under fabrication charges, the Tribunal upheld the order of the CIT(A) and dismissed the appeal. The cross appeal filed by the assessee was also dismissed. While affirming the addition of ₹ 15 lakhs made by the CIT(A), the Tribunal had recorded as under:-

> "24. On perusal of the order of the CIT(A) we found that the order has been dealt in detail about the reasons for non production of parties before the Assessing Officer owing to migration by taking into the wages paid at different months. The Ld. CIT(A) also dealt in detail about the vouchers taking into consideration the survey findings wherein even the survey findings did not lead to any cogent evidence for inflation of fabrication charges. Similarly, the reasons were fall in GP have been examined and found that the fall in GP percentage ranged from 25.56 to 26.07 which is in the average range of fluctuation over the period of seven years period. The GP rate with the addition of the fabrication charges disallowed shoots to 38.3%, 41.75%, 43.35% which is also very high GP even on estimate basis keeping in view the industry averages.
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> 25. The total fabrication charges paid on a turnover of 2279 Lacs for which fabrication charges are to the tune of 799.57 Lacs out of which the TDS was not deducted on ₹ 394.75 Lacs. Out of this 394.65 Lacs, the Assessing Officer disallowed ₹ 197.32 Lacs which is 50% of the fabrication charges paid. Based on the above discussions the reasons for such disallowance are found to be not justified. The Ld. CIT(A) considered the disallowance of ₹ 15 Lacs to take care of the deficiencies worked out after taking into consideration the entire facts and circumstances. Hence, we decline to interfere in the order of the Ld. CIT(A) and the grounds of Revenue and

> Cross Appeal of the assessee are dismissed. Similarly the rationale of the Ld. CIT(A) is also accepted for the AY 2011-12."

8. Further, in the case of the assessee for the assessment year 2009-10, ITA-308-2014 decided on 30.4.2015 filed by the revenue has also been dismissed by this Court claiming identical question of sustaining the disallowance to the extent of only ₹ 15 lakhs on account of fabrication charges.

9. Still further, the Tribunal while upholding the order of the CIT (A) regarding deletion of addition of ₹ 28,14,749/- made under Section 14A of the Act read with Rule 8D of the Rules had held the assessee had not earned any exempt income during the relevant assessment year.

10. No illegality or perversity could be pointed out by the learned counsel for the revenue in the aforesaid findings recorded by the Tribunal in all the three appeals which may warrant interference by this Court. No question of law muchless a substantial of law arises in these appeals. Consequently, finding no merit in the appeals, the same are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

March 25, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**