IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VAT Appeal No.15/2019(O&M)
Date of decision:09.07.2019

M/s New India Construction Co., Panchkula
..............Appellant

v.

State of Haryana and others
..............Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh
Hon'ble Mr.Justice Lalit Batra

Present:- Mr. Malkiat Singh, Advocate
for the appellant.

Jaswant Singh,J.

The appellant, a proprietorship concern, is engaged in the business of works contract and is registered under the Haryana Value Added Tax Act, 2003 and Central Sales Tax Act, 1956. Prior to the enactment of Haryana VAT Act, 2003, it was registered under the Haryana General Sales Tax Act, 1973. The appellant has withdrawn a lump sum scheme under the Haryana General Sales Tax Act, 1973 before commencement of Haryana VAT Act, 2003. It was assessed and opted a lump sum scheme upto the assessment year 2002-03 and withdrawn lump sum scheme w.e.f. 01.04.2003 under the Haryana VAT Act, 2003 as works contractor. The request of the appellant to withdraw the option of lump sum scheme was accepted by the Revenue and converted into a regular works contractor w.e.f. 01.04.2003. The Assessing Authority finalized the assessment proceedings of the appellant vide order dated 16.03.2007 (A-1) with the directions that the case was filed with Nil demand and refund voucher for Rs. 18,94,602/- was ordered to be issued on proper application. Thereafter, in revision proceedings, the refund amount was reduced from Rs. 18,94,602/- to Rs. 13,41,775/- vide order dated 15.06.2009 (A-2). Aggrieved against the same, the appellant filed an appeal before the Haryana Tax Tribunal, Chandigarh. The said appeal was disposed of vide order dated 09.09.2011 (A-3), remanding the matter back to the Revisional Authority with the direction to examine dis-allowing of deduction in respect of depreciation and cost of repair and maintenance of machinery and to pass a speaking order afresh. In compliance thereof, the Revisional Authority vide order dated 24.09.2012 (A-4) allowed refund amounting to Rs. 6,71,597/-. Aggrieved from the same, State of Haryana filed an appeal before the Haryana Tax Tribunal, Chandigarh. The learned Tribunal vide order dated 09.07.2018 (A-5) allowed the appeal. Hence, the present appeal involving the following substantial questions of law:-

(i) Whether in facts and circumstances of the present case, impugned order passed by the Haryana Tax Tribunal is erroneous, unjust, incorrect and unsustainable in law and fact?

(ii) Whether the appellant is entitled to raise fresh points before respondent No. 4 (acting as Assessing Authority on the directions Tax Tribunal for fresh assessment) in the remand case and whether the Revisional Authority, as above, can consider such points raised at the time of finalization of fresh assessment?

(iii) Whether Haryana Tax Tribunal is justified in ignoring the benefit already allowed by the Revisional Authority acting as an Assessing Authority in favour of the appellant?

(iv) Whether the order of the Haryana Tax Tribunal is legal by ignoring the principle of law enunciated by the Hon'ble Supreme Court as well as by this Hon'ble Court?

Heard learned counsel for the appellant.

The learned Tribunal vide impugned order dated 09.07.2018 (A-5) has rightly held that the matter was remanded back only regarding deduction in respect of depreciation of machinery and cost of repair and maintenance thereof. It has further rightly been held that it was not an open remand nor remand of the entire case and that no new points could either be raised before the Revisional Authority nor the Revisional Authority could adjudicate on any other point except the point relating to machinery.

Learned counsel for the appellant-assessee has not been able to point out any error or illegality in the findings recorded by the Tribunal warranting interference by this Court. Consequently, the appeal stands dismissed.

(Jaswant Singh)
Judge

09.7.2019. **(Lalit Batra)**
joshi **Judge**

Whether Speaking/reasoned	**Yes/No**
Whether Reportable	**Yes/No**