

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

**ITA No.8522 of 2018 (O&M)
Date of Decision: 27.01.2020**

Pr. Commissioner of Income Tax-2, Chandigarh

Appellant

Versus

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

Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Ms. Urvashi Dhugga, Sr. Standing Counsel
for the Revenue.

AJAY TEWARI, J (Oral):

[1] This appeal has been filed under Section 260A of the Income Tax Act, 1961 against the order dated 18.05.2018 passed by the Income Tax Appellate Tribunal, Chandigarh [hereinafter referred to as 'the Tribunal'] in M.A. No.46/Chd/2017 in ITA No.710/ Chd/2013, rejecting an application for modification and rectification.

[2] The brief facts are that the assessee was claiming some deduction. The matter had earlier gone to the Tribunal which had remitted it back to the Commissioner of Income Tax [CIT]. The CIT allowed the appeal of the assessee. Thereafter, the Revenue went up to the Tribunal which dismissed its appeal and the same was

carried to this court by way of Income Tax Appeal bearing ITA No.26 of 2017 wherein following questions were raised:-

“(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?”

[3] However, the appeal was ultimately dismissed holding as follows:

“5. The findings recorded by the Tribunal are pure findings of the 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.”

[4] It was, thereafter, that the application for rectification was made before the Tribunal on the ground that question No.(iii) (supra) had not been addressed and vide impugned order, the Tribunal has dismissed the same holding as follows:-

“In view of this, the application filed by the Department requires dismissal being barred by limitation. We find that even otherwise, the Department in its application has not pointed out any mistake apparent on record, rather, the Department wants to re-agitate the issue of allowability of deduction of the amount paid to the government has Infrastructure Development Cess, which is a debatable issue on which a finding had already been arrived at by the Tribunal and further the Department had also filed the appeal before the Hon'ble Punjab & Haryana High Court and the High Court has also dismissed the appeal of the Department vide its order dated 21.2.2017.

In view of this, we do not find any merit in the Misc. Application and the same is accordingly dismissed”.

[5] In our considered opinion, the application has been rightly rejected. The question No.(iii) (supra) may have been raised in the ground of appeal as urged by learned counsel for the Revenue but it was not argued and that is why this Court has dismissed the appeal.

[6] If as is now being argued, the Tribunal had not addressed the question while deciding the appeal, this argument should have been taken before this Court while arguing ITA No.26 of

2017 but once this court has dismissed the appeal, it is not open to the appellant to go back to the Tribunal with that argument.

[7] In the circumstances, we find no reason to interfere with the order of the Tribunal.

[8] The appeal stands dismissed.

**[AJAY TEWARI]
JUDGE**

**[AVNEESH JHINGAN]
JUDGE**

January 27, 2020

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |