IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 14.03.2013

ITC No.77 of 1999

The Commissioner of Income Tax, Chandigarh ..Appellant

Versus

Punjab Agro Industries Corporation Ltd. ..Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MS. JUSTICE RITU BAHRI

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

M/s Akshay Bhan & Alok Mittal, Advocates,
for the respondent.

Hemant Gupta, J. (Oral)

Present petition is under Section 256(2) of the Income Tax Act, 1961 (for short 'the Act') for directing the Income Tax Appellate Tribunal (for short 'the Tribunal') to refer the following substantial question of law in respect of assessment year 1988-89:

> "Whether on the facts and in circumstances of the case, the ITAT was right in law in set aside order of CIT(A), who restored the matter to the file of Assessing Officer for passing fresh orders under Section 154 after allowing opportunity of being heard to the assessee?"

The Assessing Officer finalized assessment of the respondent-assessee for the assessment year 1988-89 on 31.12.1990. The Assessing Officer disallowed many expenditures including expenditure of Rs.40,29,208/-, which is evident from para 5 of the order, which reads as under:

> "5. Expenditure of Earlier years

> The assessee has debited a sum of Rs.6,66,056/- for the Ist period and Rs.40,29,208/- for the IInd period as adjustments relating to earlier years. The assessee has claimed certain expenses relating to the earlier years. The liability to pay arose in that relevant year. The payments made are not allowed as business expenditure in this year as the assessee had control over the disposal of funds and the liability to meet that expenditure arose in the earlier years in which the transactions took place. Moreover, in the IInd period ending on 31.03.1988 the assessee has claimed write off of diminution of shares of subsidiary companies to the extent of Rs.33,76,052/- under this head. No further details in this regard has been furnished. Also this is a capital loss and is not allowable. Similarly, for the IInd period the assessee has claimed loss of Rs.4,04,433/- on account of unclaimed balances, provision, liabilities no longer required. The nature and details of this expenditure have not been furnished. In the absence of the same these are not allowed. The total expenditure of Rs.46,95,264/- is not taken towards computation of income for this relevant year."

However, while computing the additions on account of the disallowances in the final calculations, the disallowance of Rs.40,29,208/- was left from the calculations. Soon after the assessment order was passed, the Assessing Officer realize the omission and passed an order under Section 154 of the Act so as to add amount of Rs.40,29,208/-.

Aggrieved against the correction of the order passed by the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). Such appeal was accepted for the reason that opportunity of hearing has not been granted to the assessee. However, in further appeal, the Tribunal set aside the order of the Commissioner of Income Tax (Appeals) and held that the order made by the Assessing Officer under Section 154 is null & void. The Revenue sought reference under Section 256 (1) of the Act, which was declined by the Tribunal vide order dated 04.01.1999. Still aggrieved, the Revenue has invoked the jurisdiction of this Court under Section 256(2) of the Act.

Since the issue is short and purely legal in nature, we proceed to decide the question of law at this stage with the consent of the parties.

Section 154 of the Act empowers the Income Tax Authority to rectify any mistake apparent on the record and permits amendment of any order passed by it under the provisions of the Act. Section 154 of the Act during the relevant assessment year reads as under:

> "154. (1) With a view to rectifying any mistake apparent from the record, an income-tax authority referred to in section 116 may amend any order passed by it under the provisions of this Act.
>
> (1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.
>
> (2) Subject to the other provisions of this section, the authority concerned–
>
> (a) may make an amendment under sub-section (1) of its own motion, and
>
> (b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and where the authority concerned is the Deputy Commissioner (Appeals) or the Commissioner (Appeals), by the Assessing Officer also.
>
> xxx xxx xxx"

The order passed by the Assessing Officer on 31.12.1990 leaves no manner of doubt that an amount of Rs.40,29,208/- was disallowed by the Assessing Officer by detailed discussion, as reproduced above. It was only while computing the total disallowances, an amount of Rs.40,29,208/- was left from the final calculations. Such mistake could very well be corrected by the Assessing Officer in exercise of the powers conferred under Section 154 of the Act. The only procedural irregularity can be said to be of not granting any

opportunity of hearing to the parties. Though, we have doubt that any opportunity was required for correction of such inadvertent and clerical mistake, but since the Commissioner of Income Tax (Appeals) has granted such opportunity, we restrain ourselves to opine any further on the issue.

Therefore, the learned Tribunal is not right in setting aside the order passed by the Commissioner of Income Tax (Appeals), which only contemplated that an opportunity of hearing should be provided to the assessee.

Consequently, the substantial question of law is answered in favour of the Revenue and against the Revenue.

(HEMANT GUPTA)
JUDGE

14.03.2013 **(RITU BAHRI)**
Vimal **JUDGE**