

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 216/CHD/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Haryana Agro Industries Corporation, Bay No.15-20, Sector 4, Panchkula	बनाम	The DCIT, Panchkula Circle, Panchkula
स्थायी लेखा सं./PAN NO: AAACH4686C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Sh. Atul Goyal
राजस्व की ओर से/ Revenue by : Sh. Ashish Gupta, CIT DR

सुनवाई की तारीख/Date of Hearing : 5.11.2018
उदघोषणा की तारीख/Date of Pronouncement : 16.11.2018

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 06.01.2016 of the Commissioner of Income Tax (Appeals), Panchkula [hereinafter referred to as CIT(A)].

2. The assessee has taken following grounds of appeal :-

1. *That on the facts and circumstances of the case the Learned CIT(Appeals) has erred in law as well as on facts by sustaining the addition of Rs. 11,17,000/- on account of Financial Assistance to the family of the deceased employee.*

(ii) *That the Assessing Officer as well as CIT(A) has erred in considering the Financial Assistance as Provision while the liability for the same has arisen*

during the year, though payable in future period.

(iii) That the CIT(A) has erred in law and on facts by holding that the provisions of section 43B are applicable to Financial Assistance and allowable on payment basis.

2. That on the facts and circumstances of the case the Learned CIT(Appeals) has erred in law and facts by restricting the claim of assessee on account of Performance Award to its employees to Rs.50,00,000/-.

(ii) That the Assessing Officer as well as CIT (A) has erred in considering the Performance Award as Provision while the liability for the same has arisen during the year

(iii) That the Honble CIT (A) has erred in law and on facts by holding that the provisions of section 36 (1) (ii) and section 43-B of the Act are applicable to performance award and hence allowable on payment basis.

3. That the Learned CIT(Appeals) has erred in law and facts in upholding the addition of Rs. 72,03,620/- on account of 1% departmental charges on purchase of Gunny Bags (Bardana), considering the same as provision.

4. That the Learned CIT (Appeals) has erred in treating the wooden crates and poly-covers as Capital Assets and allowing the depreciation @ 10%.

5. That Honble CIT(Appeals) has erred in law and facts to uphold the addition of Rs. 56,60,760/- under proviso to section 36 (1) (iii) of the Act, when the Corporation has sufficient amount of Interest Free Funds available for making such expenditure. That the assessee reserves the right to add, amend or delete any ground of appeal before the disposal of the appeal.

3. Ground No.1: The assessee vide Ground No.1 has agitated the action of the CIT(A) in sustaining the addition on account of Financial Assistance to the family of the deceased employee. Admittedly, no such

type of financial liability was ascertained for the year under consideration. The assessee has booked the liability which was payable in future. However, the Ld. Counsel for the assessee has stated that out of the above liability certain payments have been made during the year.

4. After hearing the Ld. Representatives of the parties, we are of the view, that any liability which is neither paid nor payable for the year under consideration cannot be allowed as an expenditure. However, if any amount has been paid during the year in respect of the above said liability, that is to be allowed as expenditure. Hence, this issue is restored to the file of the Assessing officer for limited purpose to verify as to whether any amount out of the aforesaid liability booked by the assessee has been paid during the year, that is to be allowed and out of the remaining liability, the amount of expenditure will be allowable as and when the same become paid or payable in the relevant assessment year.

5. Ground No.2 : Vide ground No.2, the assessee has agitated the action of the CIT(A) in restricting the claim of the assessee on account of claim of expenditure in relation to payment to employees on account of Performance Award. The Ld. Counsel has stated that the aforesaid Performance Award is not a bonus and, hence, is not subjected to the provisions of section 43B of the Act. He has further pointed out that even Ld. CIT(A) has held so, however, the Ld. CIT(A) directed the Assessing officer to verify if the aforesaid payment was made by the assessee to its employees before the due date as provided u/s 43B of the Act. The contention of the Ld. Counsel for the assessee has been that the Ld. CIT(A) having held that provisions of section 434B are not applicable then there

was no question of adhering to the time limit of payment / due date as per the provisions of section 43B of the Act.

6. After hearing the Ld. Representatives of the parties, we find force in the contention of the Ld. Counsel for the assessee. Since the liability was booked during the year, hence, it is directed that the Assessing officer will verify if the expenditure booked during the year had actually been paid by the assessee either during the year or in the subsequent year and if found so, then to allow the aforesaid claim of the assessee as an expenditure.

7. **Ground No.3:** Vide this ground, the assessee has agitated the addition of Rs. 72,03,620/- on account of disallowance of expenditure @ 1% departmental charges on purchase of Gunny bags.

The Ld. counsel for the assessee has submitted that the aforesaid expenditure has been disallowed by the lower authorities considering the same as a provision, whereas, the assessee had actually incurred the aforesaid expenditure during the year. He, in this respect has moved an application for admission of additional evidence to prove the above fact of incurring of expenditure during the year. In view of the above submission of the Ld. counsel of the assessee, the issue is restored to the file of the Assessing officer to verify if the aforesaid expenditure had actually been incurred during the year, and if found so, then to allow the claim of the same to the assessee.

8. Ground No.4: Vide ground No.4, the assessee has agitated the treatment of expenditure incurred on wooden crates and poly-covers as capital expenditure as against the claim of the assessee as Revenue expenditure.

9. We find force in the contention of the Ld. Counsel for the assessee that the wooden crates and poly-covers are perishable things which have short life and are not of enduring benefit to the assessee. Even the assessee has claimed only 25% of the said expenditure during the year and has been spread over the remaining of 75% into four years claiming 25% during each of the year.

Considering the above facts, we don't find any justification on the part of the lower authorities to treat it as a long term capital expenditure of enduring benefit. This ground of the appeal of the assessee is hereby allowed .

10. Ground No.5 : Vide ground No. 5, the assessee has agitated the disallowance of interest expenditure u/s 36(i)(iii) of the Act. The Ld. Counsel for the assessee has submitted that though the loan in question was taken for specific purpose to construct the Godowns, however, the loan amount was used during the year and the assets were put to use i.e. godowns were made functional. The Ld. counsel for the assessee has further submitted that though the assessee had constructed certain other Godowns, some of which were under construction during the year also, however, the expenditure in relation to those other Godowns was borne by the assessee out of his own surplus funds. So far as the loan taken by the assessee for construction of the Godowns was concerned, that was for

specific Godowns and those Godowns (assets) were put to use during the year. That since from the date from which the assets were put to use, the assessee was entitled to claim of interest expenditure. In view of the above contentions, the issue is restored to the file of the Assessing officer to verify the same after examining the facts and by giving opportunity to the counsel of the assessee to present his case and then decide this issue afresh.

In view of above discussion, the appeal of the assessee is treated as partly allowed.

Order pronounced in the Open Court.

Sd/-
(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य/ Judicial Member

Dated : 16.11. 2018

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar