

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘B’, CHANDIGARH

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

आयकर अपील सं./ ITA No.1083/Chd/2018

निर्धारण वर्ष / Assessment Year : 2014-15

M/s Punjab State Warehousing Corporation, SCO 74-75, Sector 17B, Chandigarh.	बनाम	The A.C.I.T., Circle-2(1) Chandigarh.
स्थायी लेखा सं./PAN NO: AABCP7825J		

निर्धारिती की ओर से/Assessee by: Shri T.N. Singla, CA.

राजस्व की ओर से/ Revenue by : Shri Manjit Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 20.02.2019

उदघोषणा की तारीख/Date of Pronouncement:29.03.2019

आदेश/ORDER

Per Annapurna Gupta, Accountant Member

The present appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-4, Ludhiana (in short ‘CIT(A)’ dated 28.6.2018 passed u/s 250(6) of the Income Tax Act, 1961 (hereinafter referred to as ‘Act’).

2. The assessee has raised the following grounds of appeal:

“1. That the order of Learned CIT(A) is bad, against the facts & Law.

2. That the Learned CIT(A) has wrongly upheld additions of Rs. 2,55,38,208/- u/s 36(l)(va) on account of late

payment of Employees provident fund.

3. *That the Learned CIT(A) has wrongly upheld disallowance of claim of losses written off amounting to Rs. 3,47,026/-.*
4. *That the Learned CIT(A) has wrongly upheld disallowance of interest u/s 36(l)(iii) amounting to Rs.1,04,288/-.*
5. *That the appellant craves leave to add, alter, amend or withdraw any ground of appeal before final hearing.”*

3. Ground Nos.1 and 5 raised by the assessee are general in nature and need no adjudication.

4. Ground No.4 raised by the assessee was not pressed before us. The same is treated as dismissed.

5. Ground No.2 relates to disallowance of amount of Rs.2,55,38,208/- being employees' contribution to PF deposited late under the provisions of section 36(1)(va) of the Act. Before us the Ld. counsel for assessee pointed out that the Hon'ble Jurisdictional High Court in a number of decisions has held that the employees' contribution to PF deposited before the due date of filing of return of income u/s 139(1) is allowable as deduction. Our attention was drawn to following case laws:

1. CIT Vs. Rai Agro Industries Ltd.
(2011) 334 ITR 122
2. CIT Vs. Hema Embroidery Mills P. Ltd.
(2014) 366 ITR 167 (P&H)
3. CIT Vs. Mark Auto Industries Ltd.
(2013) 358 ITR 43 (P&H)

6. The Ld. counsel for assessee pointed out that it is not disputed in the facts of the present case that the

employees' contribution were paid before the due date of filing of return of income but since the same was delayed for deposit as per the provisions of PF Act, they were disallowed. The Ld. counsel for assessee contended that in view of the decision of the Hon'ble Jurisdictional High Court, the Ld.CIT(A) had erred in disallowing the said amount. It was further pointed out that the Ld.CIT(A) had relied upon the decision of the Hon'ble Gujarat High Court in the case of CIT Vs. Gujrat State Road Transport Corpn., 366 ITR 170 while upholding the disallowance ignoring the decision of the Hon'ble Jurisdictional High Court which were cited before him also and by which he was bound.

7. The Ld. DR, on the other hand, relied upon the order of the CIT(A).

8. We have heard the rival contentions. In view of the admitted fact that the employees' contribution, ESI though delayed were deposited before the due date of filing of return of income u/s 139(1) and the undisputed position of law in favour of the assessee in view of the repeated decisions of the Hon'ble Jurisdictional High Court in the case of Rai Agro Industries Ltd. (supra), Hema Embroidery Mills P. Ltd. (supra) and Mark Auto Industries Ltd. (supra), as stated above, we hold that there was no case for making any disallowance in the present case. In view

of the above ground of appeal No.2 raised by the assessee is allowed.

9. Ground No.3 raised by the assessee relates to disallowance of claim of losses written off amounting to Rs.3,47,026/-. The facts relating to the case are that the assessee had claimed losses written off on account of advances given to employees which had become irrecoverable. The A.O. added back the same holding that the assessee had not fulfilled/satisfied the condition of section 36(2) and 36(1)(vii) of the Act having claimed the same as bad debts. The Ld.CIT(A) upheld the findings of the AO and further noted that the claim is not allowable as per the provisions of section 37(1) of the Act, as business losses since the assessee had not substantiated its claim that the advances had become irrecoverable with evidence and also because the writing off advances given to an employee was an expenditure of capital nature.

10. Before us, the Ld. counsel for assessee contended that the impugned amount being losses irrecoverable from the deceased employees which were required to be waived off on account of State Government Notification in this regard, the losses incurred by the assessee related to the business activity of the assessee corporation and was, therefore, allowable u/s 37(1) of the Act as business losses. Ld.Counsel further pointed out that the relevant Notification had been

submitted to the AO during assessment proceedings vide letter dated 28-11-16, which he pointed out was reproduced at para 4.2 of the A.O's order. Drawing our attention to the same it was pointed out that the letter clearly mentioned the fact of enclosing the copy of the aforestated notification. Ld.Counsel therefore contended that the Ld.CIT(A) had erred in not allowing this claim of the assessee.

11. The Ld. DR, on the other hand, relied upon the orders of the authorities below.

12. We have heard both the parties. We find merit in the contention of the Ld. counsel for assessee. The fact that the amount written off pertained to loans recoverable from deceased employees and which were required to be waived off as per the Government Notification, has remained uncontroverted before us. Considering the same we agree that the Ld. counsel for assessee that the impugned loss was incurred in relation to the business of the assessee and was, therefore, allowable as revenue expenditure u/s 37(1) of the Act.

13. In view of the above, we hold that the assessee's claim of losses incurred on account of advances written off amounting to Rs.3,47,026/- is allowable as revenue expenditure. The ground of appeal No.3 is also allowed.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court.

Sd/-

संजय गर्ग
(SANJAY GARG)

न्यायकि सदस्य/Judicial Member

Sd/-

अन्नपूर्णा गुप्ता
(ANNAPURNA GUPTA)

लेखा सदस्य/Accountant Member

दिनांक /Dated: 29th March, 2019

रती

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