

Court No. - 35

Case :- INCOME TAX APPEAL No. - 564 of 2007

Appellant :- The Commissioner Of Income Tax And Another

Respondent :- M/S Dhampur Sugar Mills Ltd.

Counsel for Appellant :- A.N.Mahajan/S.S.C.

Counsel for Respondent :- R.R.Agrawal,Suyash Agrawal

**Hon'ble Bharati Sapru,J.**

**Hon'ble Vinod Kumar Misra,J.**

We have heard Sri Krishna Agarwal learned counsel for the department and learned Senior Advocate Sri R.R. Agrawal assisted by Sri Suvash Agrawal learned counsel for the respondent assessee.

This income tax appeal has been filed under section 260A of the Income Tax Act, 1961 filed by the department against the judgment and order dated 29.9.2006 passed by the I.T.A.T. for the assessment year 1993-94.

As many as 14 questions have been referred to are the questions which have been answered by the decision of this court in Income Tax Appeal no.461 of 2007 except the question no.3 which reads as hereinunder:

"3. Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in deleting a sum of Rs.9,79,228/- and Rs.8,81,669/- being employees' and employers contribution of PF which was disallowed by A.O. and confirmed by CIT (A) in view of legal provisions of section 2 (24) (x) read with section 36 (1) (va) of the Income Tax Act?"

This question has also been answered by the Apex Court in the case of Commissioner of Income Tax Versus Alom Extrusions Ltd. reported in 2009 (319) ITR 306 (SC) wherein the Apex Court took a view that the amendment made in the Act, 2003 was to be read as having retrospective effect from 1.4.1988 and therefore the benefit of making payment of the Provident Fund before filing of the return was allowed to the assessee.

This decision of the Apex Court has also been followed by the Punjab and Haryana High Court in the case of Commissioner of Income Tax versus Mark Auto Industries Ltd. reported in (2013) 358 ITR 43 (P&H) wherein the Punjab and Haryana High Court has also taken a view that the assessee would be entitled to deductions in respect of employers and employees contributions towards the Employees State Insurance and Provident Fund deposited prior to the filing of return under section 139(1) of the Income Tax Act, 1961.

The tribunal in the present case has also taken a view

that the deduction was to be allowed to the assessee because the contribution to the provident fund was deposited by the assessee before the due date and before filing of the return.

Such being the circumstances on facts and in law, the question no.3 is decided in favour of the assessee and against the department.

So far as the remaining questions referred to in the appeal are concerned, Sri Krishna Agarwal learned counsel for the department has submitted that questions i.e. 1, 2, and 4 to 14 are answered by various appeals decided by this court. He states that whereas the question nos.1, 4, 7, 8, 9, 10 and, 14, referred in the present appeal have already been answered in I.T.A. no.461 of 2007 decided on 16.12.2013 in question no.4, 6, 2, 3, 7, 1 and 2 respectively.

He also states that the question nos.2, 11 and 12 in the appeal are answered while answering question no.3 referred to in I.T.A. no.334 of 2008 decided on 16.12.2013.

He further submits that the question no.5 referred to in the appeal is answered in I.T.A no.612 of 2007 decided on 16.12.2013 in question no.3 and the question no.6 in the appeal is answered in I.T.A no.220 of 2014 decided on 5.11.2014 in question no.2.

He further states that the question no.13 referred to in the appeal is answered in I.T.A no.334 of 2008 decided on 16.12.2013 in question no.6.

The Court is also provided with a chart in respect of the remaining questions which have been decided by this court in previous appeals. They will abide by the decision of this court passed in the appeal filed on behalf of the department and of the same assessee respectively.

The appeal is disposed of as above. No costs. The questions referred to are answered accordingly.

Order Date :- 18.11.2016

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