(2010) 09 P&H CK 0387

High Court Of Punjab And Haryana At Chandigarh

Case No: Income Tax A. No. 432 of 2010

Commissioner of Income Tax		APPELLANT
	Vs	
Market Committee		RESPONDENT

Date of Decision: Sept. 13, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 11, 12, 13, 2(15), 206A
- Punjab Agricultural Produce Markets Act, 1961 - Section 27

Hon'ble Judges: Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Adarsh Kumar Goel, J.
This appeal has been preferred by the revenue u/s 206A of the Income Tax Act, 1961 (in short "the Act") against the order of the Income Tax Appellate Tribunal, Delhi Bench "C", New Delhi (hereinafter referred to as "the Tribunal") dated 9.10.2009 passed in ITA No. 2983/Del/09, for the assessment year 2006-07, proposing following questions of law:

i) Whether on the facts and in the circumstances of the case, the learned ITAT was justified in holding that the depreciation on fixed asset is allowable in the case of charitable trust/institution particularly when the income is computed as per provisions of Section 11 to 13 of the Income Tax Act, 1961 and question of depreciation does not arise when capital expenditure is also considered as application of income of the assessee and there remains no assets/WDV for claim of depreciation. The strength is drawn from the order of the Hon''ble Supreme Court of India passed in the case of Escorts Limited and Others Vs. Union of India and others, wherein it has been held that when deduction u/s 35(2)(iv) is allowed in respect of capital expenditure on scientific research, no depreciation is allowed u/s 32 on the same asset. There is a fundamental axiom that double deduction is not intended unless there is a clear statutory indication to the

contrary?

(ii) Whether on the facts and in the circumstances of the case, the learned ITAT was justified in holding that the expenditure of Rs. 21,73,121/- claimed to have been contributed to HSAM Board under statutory obligation by virtue of Section 27 of the Punjab Agricultural Produce Market Act, 1961 is allowable without appreciating that no evidence could be produced by the assessee to prove that such expenditure was actually incurred and whether such contribution can be treated to fall within the ambit of application of income for charitable purposes and defined in Section 2(15) of the Income Tax Act?

2. The assessee is a statutory body under the provisions of the Punjab Agricultural Produce Market Act, 1961, to regulate the marketing of agricultural produce. It has also been registered as a Trust under the Act. While assessing the application of its income u/s 11, the Assessing Officer disallowed the claim of depreciation and contribution made to the Marketing Board. The CIT (A) upheld the plea of the assessee for deduction of depreciation which view has been affirmed by the Tribunal.

3. We have heard learned Counsel for the revenue.

4. It is not disputed that question No. (i) is covered against the revenue by the judgment of this Court dated 5.7.2010 in ITA No. 535 of 2009 (The Commissioner of Income Tax, Karnal v. Market Committee, Pipli) and question No. (ii) is also covered against the revenue by the order of this Court dated 5.7.2010 in ITA No. 151 of 2010 (Commissioner of Income Tax, Hisar v. Market Committee, Narwana).

5. Accordingly, the appeal is dismissed.