(2014) 09 P&H CK 0112

In the Punjab And Haryana At Chandigarh

Case No : I.T.A. Nos. 609 to 613 and 615 of 2009 (O & M)

Commissioner of Income Tax APPELLANT

Vs

Nuchem Ltd. RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 145, 154, 155, 2(24)(x)

Citation : (2015) 371 ITR 164

Hon'ble Judges : Fateh Deep Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Tejinder K. Joshi, Advocates for the Appellant

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of I.T.A. Nos. 609 to 613 and 615 of 2009 as, according to the learned counsel for the appellant-Revenue, all the appeals arise out of one consolidated order dated March 27, 2009, passed by the Income-tax Appellate Tribunal, Delhi Bench "I", New Delhi (in short, "the Tribunal") relating to the assessment years from 1994-95 to 1999-2000. In all, five substantial questions of law arise for consideration in I.T.A. No. 609 of 2009. I.T.A. Nos. 611 to 613 of 2009 would be covered by the decision in I.T.A. No. 609 of 2009 as the question(s) claimed therein are similar. However, one additional question regarding the addition of Rs. 47,32,919 made by the Assessing Officer on account of the late deposit of the employees'' contribution to ESI and PF has been claimed in I.T.A. No. 615 of 2009 and in I.T.A. No. 610 of 2009, an additional question relating to the disallowance of Rs. 40,000 on account of survey report has been raised. The facts are being extracted from I.T.A. No. 609 of 2009. I.T.A. No. 609 of 2009 has been preferred by the Revenue under section 260A of the Income-tax Act, 1961 (in short, "the Act") against the order dated March 27, 2009, annexure A. III passed by the Tribunal in I.T.A. No. 3756/ Del./2000 for the assessment year 1994-95. All the appeals were admitted on January 22, 2010, to consider the following substantial questions of law:

"A. Whether, on the facts and in the circumstances of the case, the Income-tax

Appellate Tribunal was right in law in confirming the order of the Commissioner of Income-tax (Appeals) in deleting the addition of Rs. 2,97,924 made by the Assessing Officer on account of the expenses incurred on raising the share capital even though the expenditure to raise the share capital do not fall within the ambit of the provisions of section 35D of the Income-tax Act, 1961?

B. Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in confirming the order of the Commissioner of Income-tax (Appeals) in deleting the addition of Rs. 3,60,000 made by the Assessing Officer on account of commitment charges/guarantee commission paid to M/s. Nuchem Investment (P.) Ltd. for pledging their land as collateral security to bank for loans even though the assessee had failed to file an agreement for payment of guarantee commission and furnished no explanation as to why assets have to be used as collateral security by M/s. Nuchem Investment (P) limited for raising loan for themselves?

C. Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in confirming the order of the Commissioner of Income-tax (Appeals) in upholding the order of the Commissioner of Income-tax (Appeals) in deleting the addition of Rs. 37,667 made by the Assessing Officer on account of maintenance of guest house disregarding the fact that such expenses are not allowable in view of the provisions of section 37(3) of the Income-tax Act, 1961?

D. Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in confirming the order of the Commissioner of Income-tax (Appeals) in deleting the addition of Rs. 3,735 made by the Assessing Officer on account of ''inauguration expenses'' as per the provisions of section 37(2A) of the Income-tax Act, 1961, disregarding the fact that such expenses are not allowable as per the provisions of section 37(2A) of the Income-tax Act, 1961?

E. Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in confirming the order of the Commissioner of Income-tax (Appeals) in deleting the addition of Rs. 30,26,723 made by the Assessing Officer on account of the trading addition without appreciating the magnitude of defects pointed out by the Assessing Officer on this score?"

2. A few facts relevant for the decision of the controversy involved as narrated in I.T.A. No. 609 of 2009 may be noticed. The return declaring the net loss of Rs. 4,71,39,320 was filed on November 30, 1994. The first revised return was filed on December 12, 1994, declaring the net loss of Rs. 4,71,98,910. The second revised return was filed on February 22, 1996, declaring the net loss of Rs. 4,75,57,488. The assessment was completed under section 143(3) of the Act, vide order dated January 28, 1997, annexure I at an income of Rs. 4,84,38,074 in which many additions/disallowances were made as per the assessment order. The assessee filed an appeal against the order before the Commissioner of

Income-tax (Appeals) ("the CIT(A)"). Vide order dated June 8, 2000, annexure II, the Commissioner of Income-tax (Appeals) partly allowed the appeal. Not satisfied with the order, the Revenue filed an appeal before the Tribunal. With regard to first issue regarding the expenses incurred on raising the share capital, the Assessing Officer made disallowance of Rs. 2,97,924 claimed under section 35D of the Act in respect of capital raising expenses being one-tenth of Rs. 29,79,237 on the ground that these were not covered under section 35D of the Act. On appeal, the Commissioner of Income-tax (Appeals) deleted the addition of Rs. 2,97,924 observing that the expenditure on debentures was raised for expansion of business and the same fell under the provisions of section 35D of the Act. On appeal by the Revenue, the Tribunal confirmed the order passed by the Commissioner of Income-tax (Appeals). As regards the commitment charges/ guarantee commission paid to the asses-see for pledging them land as collateral security, the Assessing Officer made an addition of Rs. 3,60,000. On appeal, the Commissioner of Income-tax (Appeals) deleted the guarantee commission paid to the sister concern for pledging them 321 acres of land as collateral security by following the decision of the Delhi High Court in Commissioner of Income Tax Vs. Indian Aluminium Cables Ltd. (No. 1), . The Tribunal upheld the order passed by the Commissioner of Income-tax (Appeals). Similarly, the addition made by the Assessing officer on account of the maintenance of guest house on the ground that such expenses were not allowable under section 37(3) of the Act was deleted by the Commissioner of Income-tax (Appeals) which was upheld by the Tribunal on the ground that the expenditure had been incurred for accommodation of employees. With regard to the disallowance of Rs. 3,735 under section 37(2A) of the Act on account of inauguration, expenses of Nuwud Corner was deleted by the Commissioner of Income-tax (Appeals) which was upheld by the Tribunal. Lastly, the addition of Rs. 30,26,723 made by the Assessing Officer on account of trading addition by applying the gross profit rate of 52 per cent instead of 51.7 per cent shown by the assessee after rejecting the book results declared in the MDF division was deleted by the Commissioner of Income-tax (Appeals) which order was affirmed by the Tribunal. Hence, the instant appeals by the Revenue.

3. We have heard the learned counsel for the appellant-Revenue and perused the record.

4. In order to effectively adjudicate the appeals, it would be essential to notice the relevant findings given by the authorities below on each issue separately.

A. Share capital expenses

5. The Assessing Officer made disallowance of Rs. 2,97,924 claimed under section 35D of the Act in respect of capital raising expenses being one-tenth of Rs. 29,79,237 on the ground that these were not covered under the said provision. It was recorded thus:

"14. In the fourth revised statement of computation of income/loss filed on

November 18, 1996, the assessee has claimed the deduction under section 35D with the remarks that without prejudice to their claim of expenditure in the respective assessment year pending before the Income-tax Appellate Tribunal and the Commissioner of Income-tax (Appeals) for adjudication. The claim was at Rs. 7,84,424 out of which Rs. 2,97,924 had been claimed as one-tenth of expenses incurred during the period relevant to the assessment year 1994-95 amounting to Rs. 29,79,237 being capital raising expenses. The balance amount pertained to the assessment years 1991-92 and 1992-93. The claim for the assessment years 1991-92 and 1992-93 is not being allowed as the matter is pending in the respective assessment years before the Income-tax Appellate Tribunal and the Commissioner of Income-tax (Appeals) for adjudication. Necessary rectification will be carried out under sections 154/155 of the Income-tax Act, 1961, as and when the matter is finally adjudicated by the hon''ble Income-tax Appellate Tribunal and the Commissioner of Income-tax (Appeals).

As regards the claim of expenses of Rs. 2,97,924, the same is also not allowed on the ground that the expenses incurred for raising capital are not covered by the provisions of section 35D of the Income-tax Act. Therefore, subject to the above findings the claim is disallowed."

6. The Commissioner of Income-tax (Appeals) deleted the addition of Rs. 2,97,924 holding that the expenditure on debentures was raised for expansion of business and the same fell under the provisions of section 35D of the Act. The Commissioner of Income-tax (Appeals) drew support from the judgments of the Rajasthan High Court in Commissioner of Income Tax Vs. Multi Metals Ltd., and the Bombay High Court in Goa Carbon Ltd. Vs. Commissioner of Income Tax, . It was held as under:

"7. Ground No. 5 is with regard to the disallowance of expenditure of Rs. 29,79,237 incurred for raising working capital. The appellant has stated that the expenditure have been incurred for raising working capital and claimed one-tenth of the expenditure, i.e., Rs. 2.97,924. The appellant has relied upon the following cases of Commissioner of Income Tax Vs. Multi Metals Ltd., , Goa Carbon Ltd. Vs. Commissioner of Income Tax, .

7.1. The Assessing Officer has disallowed the expenditure on the basis that the expenditure incurred for raising the working capital are not covered under the proviso to section 35D of the Income-tax Act. There is no dispute as to the expenditure. The assessee has mentioned that whole of the expenditure of Rs. 29,79,237 is allowable under section 37. The full allowability has not been pressed.

7.2. I have carefully considered the written submissions of the appellant and find that the one-tenth of the expenditure is allowable in view of the cases referred to above. Therefore, I delete the disallowance of Rs. 2,97,924 in this regard."

7. The Tribunal upheld the order passed by the Commissioner of Income-tax (Appeals) holding thus:

"17. In regard to the issue of the expenses incurred on the raising of the share capital, which is ground No. 4 in I.T.A. No. 3756 for the assessment year 1994-95, ground No. 11 in I.T.A. No. 2049 for the assessment year 1995-96, it was submitted that the Commissioner of Income-tax (Appeals) erred in directing allowance of one-tenth of the said expenditure by invoicing the provisions of section 35D of the Act. In the reply, learned authorised representative vehemently supported the order of the Commissioner of Income-tax (Appeals).

18. We have considered the rival submissions. We have also perused the orders of the Commissioner of Income-tax (Appeals). It is noticed that this issue is squarely covered by the decision of the Rajasthan High Court in the case of Commissioner of Income Tax Vs. Multi Metals Ltd., as also the decision of the Bombay High Court in the case of Goa Carbon Ltd. Vs. Commissioner of Income Tax, . It is noticed that the expenditure on debentures were raised for the expansion of the business and the same falls under the provisions of section 35D of the Act. In view of this, we are of the view that the finding of the Commissioner of Income-tax (Appeals) in directing one-tenth of the expenditure as allowable by applying the provisions of section 35D is on right footing and calls for no interference. In the circumstances, the finding of the Commissioner of Income-tax (Appeals) on this issue stands confirmed."

In Multi Metals Ltd. and Goa Carbon Ltd.''s cases (supra), it has been held by the Rajasthan and the Bombay High Courts, respectively, that any expenditure incurred by way of fees paid to the Registrar of Companies for enhancement of the authorised capital is deductible over a period of ten years under section 35D(2)(c)(iv) of the Act. We are in agreement with the aforesaid view and do not find any infirmity in the order of the Commissioner of Income-tax (Appeals) or the Tribunal in this behalf.

B. Guarantee charges

8. The Assessing Officer made an addition of Rs. 3,60,000 on account of commitment charges/guarantee commission paid to M/s. Nuchem Investment (P) Ltd., Faridabad, in the following terms:

"6. It has been informed during the assessment proceeding by the assessee in its letter dated January 10, 1997, that the company has paid guarantee commission to M/s. Nuchem Investment (P.) Ltd. of Rs. 3,60,000 for placement of their land as collateral security to banks for loans. A letter dated September 24, 1993, to M/s. Nuchem Investment (P.) Ltd. was filed addressed to the managing director of M/s. Nuchem Ltd. for remitting the guarantee commission at the rate of Rs. 30,000 per month with effect from October 2, 1992, till date.

The assessee was asked to furnish the copy of the agreement for M/s. Nuchem Investment (P.) Ltd. for payments of guarantee commission, vide note-sheet dated January 10, 1997. It was also asked as to why the asset has not been used as collateral security by M/s. Nuchem Investment (P.) Ltd. and why guarantee commission may not be disallowed. Moreover, part of the guarantee commission pertains to the period relevant to the assessment year 1993-94 also. On the next date of hearing, i.e., January 17, 1997, the assessee has not filed any document regarding the guarantee commission as per the note-sheet dated January 17, 1997. On January 27, 1997, the assessee has stated that the photo copy of the letter dated September 24, 1993, received from the party has been submitted, vide letter dated January 10, 1997, but no agreement for payment of guarantee commission has been filed. Without any agreement for the payment of guarantee commission the same could not be allowed as a business expenses. There is no explanation as to why the asset have not been used as collateral security by M/s. Nuchem Investment (P.) Ltd. for raising loan for themselves. Part of the payment period is not relevant to this assessment year. In view of these facts, the guarantee commission paid to M/s. Nuchem Investment (P.) Ltd. of Rs. 3,60,000 is disallowed. Moreover, the payment is also covered by the provisions of section 40A(2)(b) of the Income-tax Act as M/s. Nuchem Investment (P.) Ltd. is the sister concern of this group."

9. The Commissioner of Income-tax (Appeals) deleted the guarantee commission paid to the sister concern for pledging them 321 acres of land as collateral security by following the decision of the Allahabad High Court in L.H. Sugar Factories and L.H. Sugar Factories and Oil Mills P. Ltd. Vs. Commissioner of Income Tax, and the Delhi High Court in the case of Commissioner of Income Tax Vs. Indian Aluminium Cables Ltd. (No. 1), . It was recorded thus:

"8. Group No. 6 is with regard to the disallowance of Rs. 3,60,000 being the commitment charges/guarantee commission paid to Nuchem Investment Pvt. Ltd. for pledging their land as collateral security with Canbank Mutual Fund. The appellant has submitted that the amount has been paid for pledging the title deeds for release of the bridge loan by Canbank Mutual Fund. The appellant further stated that the guarantee commission even when paid to the directors was allowed as deductible expenditure as decided in the case of L.H. Sugar Factories and Oil Mills P. Ltd. Vs. Commissioner of Income Tax, and Commissioner of Income Tax Vs. Indian Aluminium Cables Ltd. (No. 1), .

8.1 I have considered the written submissions and arguments of the learned counsel for the assessee and find that the commitment charges/guarantee commission have been paid for business purposes. Therefore, the disallowance made in this respect is deleted. The appellant gets relief of Rs. 3,60,000."

10. The Tribunal upheld the order of the Commissioner of Income-tax (Appeals) holding as under:

"19. In regard to the issue of the commitment charges/guarantee commission paid to M/s. Nuchem Investment Pvt. Ltd. for pledging their land as collateral security, which is ground No. 5 in I.T.A. No. 3756 for the assessment year 1994-95, ground No. 1 in I.T.A. No. 2049 for the assessment year 1995-96, ground No. 1 in I.T.A. No. 2828 for the assessment year 1996-97, ground No. 4 in I.T.A. No. 2827 for the assessment year 1997-98, ground No. 6 in I.T.A. No.

299 for the assessment year 1998-99, ground No. 4 in I.T.A. No. 2236 for the assessment year 1999-2000, it was submitted by the learned Departmental representative that the Commissioner of Income-tax (Appeals) erred in deleting the guarantee commission paid to its sister concerns for pledging their 321 acres of land as collateral security to M/s. Canbank Mutual Funds for the loan taken by the assessee. In reply, the learned authorised representative submitted that the assessee had taken a loan for which the assessee''s sister concern, M/s. Nuchem Pvt. Ltd. had pledged their land as collateral security. For this, the assessee had given a guarantee commission/commitment charges. It was also his submission that this issue had been allowed for the assessment year 1993-94 in the assessee''s own case in the security assessment passed under section 143(3) of the Act. He vehemently supported the order of the Commissioner of Income-tax (Appeals).

20. We have considered the rival submissions. It is noticed that the Commissioner of Income-tax (Appeals) has considered the issue and has also followed the decision of the hon''ble jurisdictional High Court in the case of Indian Aluminium Cables Ltd. (No. 1) Commissioner of Income Tax Vs. Indian Aluminium Cables Ltd. (No. 1), . It is further noticed that the fact that the loan was taken for which the immovable property of the sister concern of the assessee has been pledged was for the purpose of the business of the assessee is not in dispute. Obviously, if the property of the sister concern of the assessee is pledged for the business purpose of the assessee, the sister concern is entitled to be given a guarantee commission/commission charges. In the circumstances, we are of the view that the finding of the Commissioner of Income-tax (Appeals) by respectfully following the decision of the hon''ble jurisdictional High Court in the case of Indian Aluminium Cables Ltd., referred to supra is on a right footing and the same is upheld."

The order of the Commissioner of Income-tax (Appeals) and the Tribunal being based on the judgments, of the Allahabad and the Delhi High Courts in L.H. Sugar Factories and Oil Mills Pvt. Ltd. and Indian Aluminium Cables Ltd.''s cases (supra) do not call for any interference.

C. Maintenance of guest house expenses

11. The Assessing Officer made an addition of Rs. 37,667 on account of the maintenance of guest house on the ground that such expenses were not allowable under section 37(3) of the Act. It was observed as under:

"9. A sum of Rs. 37,716 was incurred for the maintenance and running of guest house. The assessee was asked as to why these expenses may not be disallowed? The assessee has furnished an explanation stating that the guest house is being used for the persons attending marketing division meeting and no charges are being charged from these employees. Neither they are being paid any boarding and lodging expenses. The explanation has been considered and as per the provisions of Income-tax Act, any expenditure on the maintenance and running of guest house is disallowable. Hence, the guest house expenses of Rs. 37,767 are disallowed."

12. The Commissioner of Income-tax (Appeals) deleted the addition holding that the expenditure had been incurred for accommodation of employees. It was noticed as under:

"12. Ground No. 9 is with regard to the disallowance of Rs. 37,767 amount spent in maintaining the accommodation for guest house. The appellant has stated that the expenditure has been incurred in maintaining accommodation for the employees of the company and not on any guests. The expenditure was incurred on the following heads:

The Assessing Officer has not denied that the expenditure is only for employees and that the expenditure has been incurred for maintenance of place, which has been used for the purpose of staying of employees of the company, who has visited the factory for official business purposes. The addition made for the expenditure incurred for the accommodation for employees for business purposes is, therefore, deleted. The assessee gets relief of Rs. 37,767."

13. The Tribunal upheld the deletion in the following terms:

"25. In regard to the issue of the disallowance of the maintenance expenses of the guest house, which is ground No. 9 in I.T.A. No. 3756 for the assessment year 1994-95, it was submitted by the learned Departmental representative that the Commissioner of Income-tax (Appeals) erred in deleting the said addition. In reply, the learned authorised representative submitted that the addition had been made on the ground that the expenditure had been incurred for the maintenance of the place for the staying of the company''s employees for the business of the assessee-company. It was his submission that the Commissioner of Income-tax (Appeals) had rightly deleted the addition.

26. We have considered the rival submissions. It is noticed that the Revenue has not disputed the fact that the expenditure is only for the employees and that the expenditure has been incurred for maintaining the place which has been used for the purpose of staying by the employees of the company who had visited the factory for official purposes. It is further noticed that the Commissioner of Income-tax (Appeals) has deleted the addition on the ground that the expenditure had been incurred for the accommodation of the employees, for the business purpose of the assessee. We are of the view that the finding of the Commissioner of Income-tax (Appeals) on this issue is on a right footing and calls for no interference. In the circumstances, the finding of the Commissioner of Income-tax (Appeals) on this issue stands upheld."

The Commissioner of Income-tax (Appeals) and the Tribunal concurrently concluded that the expenditure was incurred for maintenance of the place for the employees who visited the factory for official purposes for the purpose of business. In the light of the aforesaid findings, no infirmity is found in the order of the Commissioner of Income-tax (Appeals) and the Tribunal deleting this disallowance.

D. Inauguration expenses

14. The Assessing Officer disallowed the expenses of Rs. 3,735 under section 37(2A) of the Act on account of inauguration of Nuwud Corner. The Commissioner of Income-tax (Appeals) following the decision in the case of the assessee for the assessment year 1993-94 in Appeal No. 48/96-97 deleted the addition. The finding recorded by the Commissioner of Income-tax (Appeals) reads thus:

"18. Ground No. 14(b) is with regard to the inauguration expenses amounting to Rs. 7,470. The appellant has stated that the Assessing Officer has disallowed 50 per cent of the expenses of Rs. 7,470 incurred by the assessee at Lord Banguet at Rajkot in respect of ''Nuwud Corner'', the shop of M/s. Capital Enterprises. Since the amount pertains to inauguration expenses of the corner at Rajkot is an allowable expense. Following the decision in the appellant''s own case for the assessment year 1993-94 in Appeal No. 48/96-97, the addition made in this respect is deleted."

15. The Tribunal affirmed the finding recorded by the Commissioner of Income-tax (Appeals) holding:

"31. In regard to the issue of the disallowance of the inauguration expenses which is ground No. 14 in I.T.A. No. 3756 for the assessment year 1994-95, it was fairly agreed by both the sides that the issue was squarely covered by the decision of this Tribunal in the assessee''s own case for the assessment year 1993-94, referred to paragraph, wherein paragraph 92 of the said order, the issue has been held against the Revenue. Respectfully following the decision of this Tribunal in the assessee''s own case for the assessment year 1993-94, the finding of the Commissioner of Income-tax (Appeals) on this issue stands upheld."

In view of the finding of fact recorded by the Commissioner of Income-tax (Appeals) and, the Tribunal deleting the addition, no error is noticed in the approach adopted by them which may require intervention of this court.

E. Trading additions

16. The Assessing Officer made an addition of Rs. 30,26,723 on account of trading addition by applying the gross profit rate of 52 per cent instead of 51.7 per cent shown by the assessee after rejecting book results declared in the MDF division. The Commissioner of Income-tax (Appeals) deleted the said addition holding that the gross profit rate declared by the assessee was quite reasonable and also followed his own order for the assessment year 1993-94 in Appeal No. 48/96-97. The finding recorded by the Commissioner of Income-tax (Appeals) reads thus:

"21. Ground No. 16 is with regard to the trading addition of Rs. 30,26,723. The Assessing Officer has made and addition by increasing the sale from Rs. 49,75,88,677 to Rs. 50,06,15,400 by rejecting the books of account under section 145 pointing out certain deficiencies and applied the gross profit rate of 52 per cent as against 51.7 per cent declared by the assessee as per the audited books of account. The gross profit rate has increased from 46.88 per cent to 51.7 per cent during the year under consideration. The similar addition has also been made by the Assessing Officer on the similar facts and pointed out similar deficiencies in the assessment year 1993-94, wherein the issue has been examined in length by me. After considering the written submissions and arguments of the learned counsel and reply of the Assessing Officer, I am of the considered opinion that there is no need to make an arbitrary addition during the year under consideration also. The addition in the sale made by the Assessing Officer is not correct, when all the records of the sales have been maintained and are produced for examination. The Assessing Officer has also not detected any mistake in the books of account of the assessee and not detected any sales which have not been recorded in the books of account. In the circumstances, the sales made by the assessee and recorded in the books of account are to be accepted. The Assessing Officer has not been able to establish that the assessee has shown the lower gross profit rate by suppressing the sales/stock or increasing the manufacturing expenses. In fact, the gross profit rate declared by the assessee seems to be quite reasonable. Following my order for the assessment year 1993-94 in Appeal No. 48/96-97, rejection of the books of account is not in order and the addition of Rs. 30,26,723 is deleted."

17. The Tribunal confirmed the findings recorded by the Commissioner of Income-tax (Appeals) as under:

"35. In regard to the issue of the deletion of the trading addition which is ground No. 17 in I.T.A. No. 3756 for the assessment year 1994-95, it was fairly agreed that this issue was covered by the decision of the co-ordinate Bench of this Tribunal in the assessee''s own case for the assessment year 1993-94, referred to supra wherein paragraphs 76-80 of the said order this issue has been decided in favour of the assessee and the finding of the Commissioner of Income-tax (Appeals) on this issue has been upheld. Respectfully following the decision of this Tribunal in the assessee''s own case for the assessment year 1993-94, the finding of the Commissioner of Income-tax (Appeals) on this issue stands upheld."

The Commissioner of Income-tax (Appeals) and the Tribunal have followed the earlier decision in the case of the assessee for the assessment year 1993-94 which was not shown to have been upset by any higher court. Thus, the approach of the Commissioner of Income-tax (Appeals) and the Tribunal cannot be faulted on this deletion.

18. The findings recorded by the Commissioner of Income-tax (Appeals) and upheld by the Tribunal on all the issues are based on appreciation of evidence on

record which have not been shown to be illegal or perverse in any manner. Only an effort has been made to reappraise and reappreciate the evidence which is not permissible within the domain of section 260A of the Act.

19. With regard to the issue regarding deleting the addition of Rs. 47,32,919 made by the Assessing Officer in I.T.A. No. 615 of 2009 on account of late deposit of employees'' contribution to PF and ESI disregarding the fact that the payments were made beyond the due dates and were, therefore, not allowable under section 36(1)(va) and were to be treated as income under section 2(24)(x) of the Act, the Tribunal, while upholding the finding recorded by the Commissioner of Income-tax (Appeals), observed that the amounts had been paid before the due date of filing the return arid, therefore, the same is allowable. The issue raised herein is covered by the decision of this court in the case of the assessee in Nuchem Ltd. v. ITO (I.T.A. No. 116 of 2008 decided on August 13, 2012) wherein it has been so held.

20. Taking up the claim of the assessee regarding the addition of Rs. 40,000 made by the Assessing Officer on account of the amount paid for market survey in I.T.A. No. 610 of 2009, the Assessing Officer had disallowed the same on the premise that the assessee had not utilised the survey report in its business activities as the activity of powder quoting for which the report was obtained had not been carried out. The Commissioner of Income-tax (Appeals) had allowed the said expenditure holding that the survey was carried out to determine the potential of powder coatings as the company was manufacturing UF/MF powders. The expenditure was held to be for business purposes as it was carried out during the course of business activities of the assessee. Support was drawn from the decision of the Gauhati High Court judgment in Commissioner of Income Tax Vs. India Carbon Ltd. (No. 2), . It was upheld by the Tribunal. We do not find any error or fault in the approach of the Commissioner of Income-tax (Appeals) or the Tribunal. It was not mandatory that the survey report should have essentially resulted in enhancement of the profits of the company by taking action thereupon except that it was required to be in the course of the business activity. It was not in dispute that the survey report was obtained during the course of business activities of the assessee for exploring the feasibility of powder coatings as the company was manufacturing UF/MF powder. The plea of the Revenue is, thus, rejected. In view of the above, all the substantial questions of law are answered against the Revenue and the appeals being devoid of any merit stand dismissed.

