



\$~1&3.

*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA Nos. 138/2012 & 144/2012

CIT Appellant
Through Mr. Sanjeev Sabharwal, Sr.
Standing Counsel.

versus

FOOD CORPORATION OF INDIA Respondent
Through Mr. Manoj & Ms. Aparna Sinha,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V.EASWAR

% **ORDER**
07.03.2012

Revenue by these appeals under Section 260A of the Income Tax Act, 1961 (Act, for short) impugns the order dated 13th April, 2011 passed by the Income Tax Appellate Tribunal (tribunal, for short) in the case of Food Corporation of India. The appeals pertain to the assessment year 2003-04.

2. The respondent-assessee, a Government of India undertaking, had filed its return for the assessment year in question on 28th November, 2003 declaring 'nil' income. Subsequently, the return was revised on 17th March, 2005 to loss of Rs.96,06,000/-. The return was taken up for scrutiny and



an assessment order dated 16th January, 2006 was passed.

The Assessing Officer made two additions of Rs.2,93,000/- and Rs.23,53,00,000/- on account of prior period expenses and penal interest, respectively. However, the total income was assessed at 'nil' after adjusting brought forward/unabsorbed depreciation.

3. Thereafter, notice under Section 148 of the Act was issued on 11th October, 2007. Reasons for re-opening the assessment read as under:-

“The assessment u/s 143(3) of the IT Act, 1961 (the Act) was completed on 16.01.06 at an income of Rs. NIL Examination of the Profit & Loss Account revealed that the assessee has claimed prior period expenses of Rs.1349.99 lakhs during the year which are not to be allowed as the assessee is following Mercantile System of Accounting.

In view of this I, therefore, have reasons to believe that the above sum have escaped assessment within the meaning of sec. 147 and the case is reopened to re-assess the income of the assessee for the assessment year 2003-04 by issue of notice u/s 148 of the IT Act, 1961.”

4. The tribunal has rightly recorded in the impugned order that the question of prior period expenses was originally examined during the course of the assessment proceedings before original assessment order dated 16th January, 2006 was



passed. During the course of the said proceedings, the assessee had filed reply dated 4th January, 2006, in response to the questionnaire issued by the Assessing Officer on 7th December, 2005 in which he had specifically asked for details of prior period expenses, if any, claimed during the year. The assessee thereafter submitted the entire details and also justified the prior period expenses. The reply has been quoted by the tribunal in the impugned order. After examining the entire aspect, the Assessing Officer made an addition of Rs.2,93,000/- on account of prior period expenses relating to missing and unconnected wagons and he allowed the balance prior period expenses. It may be noticed that the details of income/expenses relating to previous years were duly reflected in the balance sheet in Schedule V with full details. These were in the knowledge and examined on merits by the Assessing Officer before the original assessment order dated 16th January, 2006 was passed.

5. We may also record the justification given by the assessee with regard to prior period expenses:

“9. Thus, on merits it was pleaded that income relating to previous years amounting to 2272.18 lakhs was credited and expenses relating to previous years amounting to Rs.928.08 lakh was debited and net income



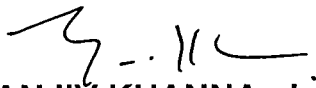
in respect of previous years was shown at Rs.1,346.13 lakhs. It was submitted that assessee has been following this practice from year to year as at the point of time when either income or expenditure is crystallized with regard to issued relating to earlier years, the income or expenditure is credited or debited in the accounts of the current financial years. It was submitted that in this manner, the assessee has not claimed any expenditure relating to prior year except in the manner regularly and consistently followed on the basis of crystallized liability. The assessee in respect of each and every item under the broad heads as described in schedule V had filed before AO to contend that how the liability with respect to each item of such expenditure or income had crystallized during the financial year and these details have been filed by the assessee at pages 85 to 98 of the paper book and the broad heads divided are purchases, repair and maintenance, handling charges, electricity and power, Railway sliding charges, miscellaneous expenditure, board clearance charges and retailer margin. Thus, details regarding each of the item was placed on record to contend and to show that these entries were made during the current financial year only on the basis of crystallization of the items and thus, it was pleaded that no income was escaped from assessment. However, the AO made a addition and has added a sum of Rs.1349.99 lakhs on account of prior period expenses and after giving set off of loss returned and set off of unabsorbed depreciation brought forward from earlier year the income has been assessed at NIL.”


6. On the basis of the aforesaid material the tribunal has



rightly come to the conclusion that the present case is one of change of opinion, as the issue of prior period expenses was specifically examined and gone into by the Assessing Officer at the time of the original assessment. The Assessing Officer does not have power to "review" his decision in proceedings under Section 147/148 of the Act.

The appeal is accordingly dismissed. No order as to costs.


SANJIV KHANNA, J.


R.V. EASWAR, J.

MARCH 07, 2012
VKR 