IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

ITR No.11 of 1994.

Judgment reserved on: 16.5.2007

Date of Decision: 15.6.2007

M/s Nathu Ram and Co. ….Petitioner.

Versus.

The Commissioner of Income Tax. …Respondent.

Coram:

Hon'ble Mr. Justice Deepak Gupta, Acting Chief Justice.

Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Petitioner(s): None for the petitioner.

For the Respondent(s): Ms. Vandana Kuthiala, Advocate, vice Mr. Vinay Kuthiala, Advocate, for the respondent.

Deepak Gupta, ACJ.

The following question has been referred for the opinion of this Court under Section 256 of the Income Tax Act:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the order dated 20.12.1985 of the first CIT(A) had become final and precluded the assessee's right of challenging the fresh assessment on merits after setting aside of the assessment?"

The brief facts of the case are that the assessee-firm filed its return for the assessment year 1983-84. A fire had occurred in one of the forests taken on lease by the assessee and the assess lodged a claim of Rs. 2,50,800/- with the Insurance Company. The Insurance Company only paid an amount of

Rs. 1,87,000/-. The assessee claimed that an amount of Rs.63,800/- which was the difference between the amount of loss suffered by it and claimed from the Insurance Company should be treated as its loss. The Assessing Officer came to the conclusion that since the assessee had debited all the expenses in connection with exploitation of the forest lot and preparation of the timber scants in its profit and loss account and did not show the value of closing stock of the scants which were burnt in the fire, the assessee was not entitled to claim the loss of Rs. 63,800/-.

The assessee filed an appeal before the Commissioner of Income Tax (Appeals), for short: CIT(A) . The CIT(A) disposed of the appeal in the following terms:-

> "Considering the facts and circumstances of the case for the year under appeal, the receipt from insurance Company straight away has been taken by IYTO as income. However, in view that the details of profit and losses of each of the lot, has to be correctly drawn in, the loss if any, and stock has to be entered and correctly brought out and is to be adjusted against the receipt of the insurance claim. The ITO is directed to quantify the loss, damage done by fire verify correctly the stock position and arrive at the correct amount of profit or loss, as the case may be and the amount of receipt from Insurance Company be adjusted accordingly. The matter after going through the details as furnished by Shri Vasudeva, learned Advocate General and considering the explanations and clarifications filed by him, the matter is set aside to the file of the Income Tax Officer. He will also look into the other grounds of appeal also."

The Assessing Officer thereafter took up the proceedings in terms of the order of the Commissioner of Income Tax. During the course of these proceedings filed a petition under Section 144 A of the Income Tax Act before the Inspecting Assistant Commissioner of Income Tax, Chandigarh in which he sought issuance of directions to the Income Tax Officer, Palampur,

that the loss of Rs. 63,800/- claimed by the assessee against which the ITO, Palampur was proposing to make addition of Rs. 1,87,178/- in respect of exploitation of assessee's forest lot. The case of the assessee was that an amount of Rs. 1,87,178/- should be added to his income for the assessment year 1983-84 and it be allowed further loss of Rs. 63,800/-. The Inspecting Assistant Commissioner of Income Tax disposed of this petition with the following directions:-

> " I have carefully considered the matter and find no merit in the assessee's contention. There is no doubt that there are two aspects of the point at issue. One is to what exact loss was suffered by the assessee in the fire i.e. whether it was as much as was claimed by the assessee in its books of account/return of income (by excluding the burnt scants from the stock in hand). The second issue is whether the insurance claim received by the assessee shortly after the close of the accounting year is to be adjusted against the fire loss or the same is to be assessed as assessee's income in the year in which the amount of insurance claim was actually received, namely in the immediately subsequent year. The CIT(A) has also desired that the loss should be ascertained and the insurance claim should be adjusted against the loss. As far as the loss arising to the assessee as a result of the fire is concerned the ITO all along has not doubted the assessee's claim and has accepted the assessee's book/returned version wherein the assessee has excluded the burnt scants from the stock in hand. In the assessment order dated 29.11.1984, the ITO not make any addition n a/c of excessive loss claimed by the assessee by exclusion of burnt scants from the stock in hand. Since the assessee's book/returned version in this regard has not been doubted, the loss as claimed by the assessee in its book/return of income by excluding the burnt scants from the stock in hand is accepted. Regarding the insurance claimed received by the assessee, the same is

> clearly assessable in the year under consideration as the assessee maintains accounts on mercantile basis and the insurance claim became due on the date of fire/lodging of claim with the Insurance company. The same is therefore to be adjusted against the loss which already stands claimed by the assessee (by excluding burnt scants from the stock in hand). The same has desired by the CIT(A) also in his order dt. 20.12.1985 setting aside the ITO's order dt. 29.11.1984. It is accordingly held that amount of Rs.1,87,178/- being the insurance claimed received by the assessee is assessable in the year under consideration. There is no question of allowing any loss of Rs. 63,800/- as claimed by the assessee because the loss from fire has also all expenses relating to the exploitation of forest lot No.1 already stand claimed by the assessee, as mentioned above and had been allowed by the ITO in the Asstt. Order dt. 29.11.1984."

Thereafter the Assessing Officer finalized the return and added the amount of Rs. 1,87,000/- to the income of the assessee for the assessment year 1983-84 and disallowed the loss of Rs. 63,800/- claimed by the assessee. The appeals filed by the assessee before the CIT(A) and Tribunal were rejected. The Appellate Tribunal rejected the appeal mainly on the ground that since the assessee accepted the earlier order of the CIT(A) and that of the Inspecting Assistant Commissioner of Income Tax, while giving directions under Section 144 A of the Income Tax Act, this question had already become final and could not be re-opened in the fresh assessment made.

After going through the entire orders, we are of the view that as far as CIT(A) is concerned, he had only remanded the case back with liberty reserved to raise all points before the Assessing Officer. However, the assessee chose to approach the Inspecting Assistant Commissioner of Income Tax under Section 144 A of the Income Tax and sought certain directions. In the course of deciding this application of the assessee, the Inspecting Assistant

Commissioner of Income Tax made observations which have been quoted above. These observations were clearly against the assessee. He did not choose to challenge the said order and, therefore, it attained finality. The Assessing Officer was bound by the order of the Inspecting Assistant Commissioner of Income Tax and in our opinion, there is no error in the order passed by him or in the order of the learned Appellate Tribunal that the assessee was bound by the directions issued by the Inspecting Assistant Commissioner of Income Tax since he had not challenged the order of the Inspecting Commissioner of Income Tax in appeal.

In view of the aforesaid discussion, we answer the reference against the assessee and in favour of the petitioner. The learned Registrar General of this Court is directed to send a copy of this order to the Income Tax Appellate Tribunal, K. No.41, Sector 2-A, Chandigarh, for necessary action.

(Deepak Gupta), ACJ.

June 15, 2007. (Surinder Singh), J.

s.