

Punjab-Haryana High Court

The Commissioner Of Income Tax vs The Shahabad Coop. Sugar Mills ... on 12 October, 2009
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

ITA No.19of 2007(0&M)

Date of decision: 12.10.2009

The Commissioner of Income Tax, Karnal

-----Appellant

Vs.

The Shahabad Coop. Sugar Mills Limited.

---Respondent

CORAM: - HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE GURDEV SINGH

Present:- Mr. Yogesh Putney, Sr.Standing Counsel for the
Appellant-revenue.

Mr. S.K.Mukhi, Advocate for the respondent.

Adarsh Kumar Goel,J.

1. The revenue has preferred this appeal under section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal (Chandigarh Bench 'A') passed in ITA No.1041/Chandi/2005 dated 7.6.2006, for the assessment year 1995-96, proposing to raise following substantial questions of law:-

"i) Whether on the facts and in the circumstances of the case, the ld. ITAT was right in law in deleting the penalty of Rs.2,62,41,380/- imposed under section 271(1)(c) of the Income Tax Act, totally ignoring the fact that the assessee had furnished inaccurate particulars of income by furnishing inaccurate particulars and making wrong claim of deduction under section 80(P)(2)

(a)(iii)?

ii) Whether on the facts and in the circumstances of the case, the ld. ITAT was right in law in deleting the penalty in respect of wrong claim of deduction under section 80(2) (d) and wrong claim of depreciation on guest house when the ld. ITAT in its order has not given any reasons for deleting the penalty on these counts?"

2. The assessee is an agricultural society engaged in marketing of sugar by its members. The said claim was rejected on the ground that the claim was available only on marketing of agricultural produce and not on manufactured article. While disallowing the said claim, penalty was also levied for making wrongful claim and thereby avoiding tax. The said view was upheld by the CIT (A) but the Tribunal even while holding that the claim of the assessee was not tenable, set aside the levy of penalty on the ground that there was no conscious breach of law which was required for levy of penalty, as held by the Hon'ble Supreme Court in Hindustan Steel Limited v. State of Orissa (1972) 83 ITR 26. There was no concealment or deliberate withholding of information or furnishing of incorrect particulars.

3. This appeal was deferred in view of pendency of quantum appeal filed by the assessee being ITA No.165 of 2005 (M/s Shahabad Coop. Sugar Mills Limited, Shahabad v. Deputy Commissioner of Income Tax, Spl. Range, Karnal), which has been allowed by a separate order passed today, in view of full Bench judgment of this Court in Budhewal Coop. Sugar Mills Limited v. CIT, (2009) 315 ITR 351, holding that claim of the assessee was valid. This being the position, there could be no scope for levy of penalty. However, learned counsel for the revenue submits that wrong claim of the assessee was not only under section 80P of the Act but also under section 80(2) of the Act, in respect of depreciation on guest house.

4. From the order of the Tribunal, we do not find any such point having been raised by the Revenue. In any case, reasoning which has been applied for setting aside penalty in respect of wrong claim under section 80P of the Act will also apply to wrong claim under the head of depreciation. Making of wrong claim is not at par with concealment or giving of inaccurate information, which may call for levy of penalty under section 271(1) (c) of the Act.

5. No substantial question of law arises.

6. The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

October 12, 2009
'gs'

(Gurdev Singh)
Judge