

In the High Court of Punjab and Haryana, at Chandigarh

Income Tax Appeal No. 183 of 2014

Reserved On: 20.7.2015

Date of Decision: 5.8.2015

The Commissioner of Income Tax-III, Ludhiana

... Appellant(s)

Versus

Bharat Bhushan, Proprietor M/s Khubi Ram Johri Lal

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.**

Present: Mr. Rajesh Katoch, Advocate
for the appellant(s).

Mr. Rohit Jain, Advocate
for the respondent(s).

G.S.Sandhawalia, J.

1. The present appeal, filed by the Revenue, is against the order of the Income Tax Appellate Tribunal, Amritsar vide which the assessee has been granted the benefit by deleting the additions made of a sum of ₹ 2,64,95,897/-. The Tribunal came to the finding that the sugar purchased had been duly recorded in the books of accounts, which are duly audited; there is nothing on record to show that the purchases had been made outside the regular books of accounts; in the absence rejection of account books and of any adverse material, the addition of the income was held not to be justified.

2. The substantial questions of law are sought to be raised by the Revenue for consideration of this Court are as under:-

*“i) Whether on the facts and in the circumstances of ;
the case the ITAT is right in law in not considering*

that credit purchases and sales stated to be recorded in the books of account are sham transactions and an afterthought after the seizure of goods by Food & Civil Supplies Department.

- ii) Whether on the facts and in the circumstances of the case the ITAT is right in law in not considering the ratio of the decision of the Hon'ble Supreme Court in the case of Durga Dass More, 82 ITR 540 and in the case of Sumati Dayal, 214 ITR 801 which were relied upon by AO and CIT(A).*
- iii) Whether on the facts and in the circumstances of the case the ITAT is right in law in not considering the basic fact that the entire subject matter arose only after the seizure of sugar by Food & Civil Supplies Department and motive was to wriggle out of the situation.*
- iv) Whether on the facts and in the circumstances of the case the ITAT is right in law in ignoring the fact that the assessee himself stated before Department of Food and Civil Supplies on 17.9.2009 that he is the owner of entire quantity of 97500 qtls. of sugar and further stated that he had no knowledge about storage of more than 2000 qtl. of sugar and later changed stand of ownership of 53 parties to cover the matter of storage of not more than 2000 qtls. as well as source of funds for investment of 97500 qtls. of sugar.*
- v) Whether on the facts and in the circumstances of the case the ITAT is right in law in not considering the statements given by the assessee before Department of Food and Civil Supplies that have direct bearing to decide issue particularly in view of judgment of Supreme Court in the case of Sumati*

Dayal, 214 ITR 801 that held that AO can look into surrounding circumstances.

- vi) *Whether on the facts and in the circumstances of the case the ITAT is right in law in ignoring the fact that all the parties who purchased and sold sugar have done transactions without making actual payments and such kind of transactions i.e. as is where is basis were never done in their business and thus afterthought.*
- vii) *Whether on the facts and in the circumstances of the case the ITAT is right in law in ignoring the facts that purchases shown by the assessee are nothing but accommodation by various parties as these were mere bills without the transactions of payments.*
- viii) *Whether on the facts and in the circumstances of the case the ITAT is right in law in giving a finding that the Department has accepted the books of account whereas the AO in para 1.9 summarized the entire matter and gave its finding in para 2.1 and 3 and thus did not accept the books of account.”*

3. The respondent-assessee, proprietor of M/s Khubi Ram Johri Lal was doing the business of trading sugar, ghee and other items at old Grain Market, Moga. The assessee filed his return of income for the assessment year 2010-11 on 13.10.2010 declaring the taxable income of ₹ 1,36,79,960/-, which was processed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”). During the assessment year 2010-11, a raid was conducted on its godown at Ludhiana on 17.9.2009. The sugar weighing approximately 97500 quintals was found and the godown was sealed by the Food & Civil Supplies Department under Section 7 of the Essential Commodities Act,

1955. A criminal case was also registered at Jodhewal Basti Police Station, Ludhiana against the assessee and the investigation was conducted by the Revenue. In view of the information received, the notice under Section 143(2) was issued on 5.9.2011.

4. The assessee took the plea that he had purchased the sugar on 9.8.2009 from 45 unrelated parties and had sold the major portion thereof to 53 other parties before the date of the raid. However, the sugar had not been yet lifted and no payment had been made by any of the parties to the assessee. The details of the parties was given to the Assessing Officer. The statement of one Vishal Gupta, who was Manager with M/s Gitansh International Limited, who was owner of the godowns which had been let out, was also taken into consideration by the Assessing Officer. The persons, who had purchased the sugar and sold on as is where is basis were also examined. The Assessing Officer disbelieved the assessee that the sugar had been purchased on credit though noticing that the parties had issued bills and accordingly added a sum of ₹ 26,64,68,073/- in the assessment order dated 30.12.2011.

5. The assessee took the matter in appeal, which was dismissed on the ground that Bharat Bhushan, the proprietor, before the Food & Supplies Department, had admitted that he owned the sugar which had been purchased from different sources but never stated that he had sold the same. It was only on afterthought in the form of sale invoices before the date of seizure which had been structured with an intention to escape the rigors of law with reference to hoarding of sugar. The

godown owner having stated that the godowns had been let out on 1.8.2009 in vacant position and the claim that the sales had been cancelled leading to the rejection of the profits and addition of the said amount was also upheld while upholding the finding that the investment for the purchase of sugar was an unexplained investment.

6. The Tribunal allowed the said appeal as noticed above by taking into consideration the factors that there was no dispute that there was a purchase from the 45 parties from whom the appellant had purchased the sugar. The same had already been purchased from one M/s S.M.Edible Private Limited and the sugar was already lying in the godowns which had been taken on rent from M/s Gitansh International Limited. The parties were the traders duly registered with the Sales Tax Authorities whose TIN numbers are also mentioned in the bills issued. The VAT returns had been accepted by the authorities of the purchases declared by the appellant. The parties having sold the sugar to the appellant had also been confirmed by recording the statement of the said parties by the department itself apart from the fact that the documents showing its sale. The copy of the account books were also taken into consideration. The factum of rent receipts issued by M/s Gitansh International Limited to the said vendor and the confirmations and the ledger accounts of the appellant in the books of the said vendors were also noticed. Merely because the bills were not shown to the raiding party which is the Department of Food & Civil Supplies and the statement given to the said department would not have any applicability for deciding the issue in hand. The question involved before

the said authority was whether that much amount of sugar was permissible to be kept.

7. Once the delivery of the sugar was taken over on as is where is basis at the godowns itself by taking the same on rent with the consent of the landlord and it has been noticed that the Manager's statement was recorded twice and he got confused as to the factum whether the same was lying vacant or in possession for the purpose other than specified which was wrongly interpreted by the Assessing Officer. It was rightly noticed that a letter had been written on 22.9.2009 by the assessee that the sugar had already been sold to various parties and a complete list of the parties had been given to the Deputy Commissioner/Deputy Magistrate on 1.10.2009. Once the said parties had confirmed the purchase which had been duly supported by the bills and they were regular traders and were unrelated to each other, therefore, the allegation made was held to be without any basis.

8. The said findings pertaining to the goods lying at the spot and whether the purchases had been made on credit basis and thereafter sold are all questions of facts which are now being raised, which have been extensively dealt with in detail by the Tribunal. The findings have been recorded that the sellers and purchasers are all dealing in sugar and the purchases had been accounted for in the regular books of accounts maintained, duly audited and thus, there is nothing to show that the quantity of sugar had been purchased and sold outside the books. Merely because the assessee was being prosecuted for keeping the sugar beyond the permissible limit and was trading in the same by

sale and purchase on as is where is basis and as per his own case on credit could not entitle the Assessing Officer to add the value of the sugar to his undisclosed income which was done on the basis of conjectures. The said finding has been rightly reversed by the Tribunal after going into the factual matrix of the case which in the facts and circumstances cannot be held to be perverse and no substantial question of law arises for consideration in our opinion.

9. In the circumstances, the appeal is dismissed by holding that no substantial questions of law arise for consideration.

(S.J. Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
Judge

August 5, 2015
“DK”