

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 59 of 2016 (O&M)

Date of Decision: 5.5.2016

Pr. Commissioner of Income Tax-I, Chandigarh

....Appellant.

Versus

M/s Punjab State Federation of Coop. Sugar Mills Limited, Chandigarh

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE SHEKHER DHAWAN.**

PRESENT: Ms. Urvashi Dhugga, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 26.10.2015 (Annexure A-4) passed by the Income Tax Appellate Tribunal, Chandigarh Benches, Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 838/CHD/2014, for the assessment year 2010-11, claiming the following substantial questions of law:-

- i) Whether on the facts and in the circumstances of the case, the ITAT was right in law in deleting the penalty when the assessee had claimed

expenses in express violations of Section 40(a) (ii) of the I.T. Act, 1961 especially in view of decision of Hon'ble Delhi High Court in CIT v. Zoom Communication Service Pvt. Ltd.?

- ii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in deleting the penalty holding that there was no intention to conceal income whereas mens rea was not held as essential ingredient by the Apex Court in Dharmendra Textiles Processors for levy of penalty u/s 271(1)(c)?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is a Cooperative Society and is engaged in providing assistance to the various member sugar mills in the State of Punjab and is receiving cess on the production of sugar. It e-filed its return of income for the assessment year 2010-11 on 28.9.2010 declaring total income at ₹ 9,77,46,340/-. The said return was processed under Section 143(1) of the Act on 7.5.2011. The case was taken up for scrutiny and notice under Section 143(2) of the Act was issued on 1.9.2011. Subsequently, questionnaire along with notice under Section 142(1) of the Act was issued on 19.4.2012. During the course of assessment proceedings, the assessee claimed expenses for capital gain tax of ₹ 2,65,03,000/- and property tax amounting to ₹ 9588/- in the profit and loss account and had not added them back in the computation of total income. Accordingly, the Assessing Officer vide order dated 28.1.2013 (Annexure A-1) framed the assessment at a total income of ₹ 12,42,58,928/- by making

additions of ₹ 2,65,03,000/- on account of capital gain tax and ₹ 9588/- on account of property tax. On both the additions, penalty proceedings under Section 271(1)(c) of the Act were also initiated for furnishing inaccurate particulars of income. The Assessing Officer vide order dated 19.7.2013 (Annexure A-2) levied penalty amounting to ₹ 61,13,801/- under Section 271(1)(c) of the Act. Feeling aggrieved by the order, Annexure A-2, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 16.7.2014 (Annexure A-3) allowed the appeal and deleted the penalty under Section 271(1)(c) of the Act levied by the Assessing Officer. Against the order, Annexure A-3, the revenue filed an appeal before the Tribunal. The Tribunal vide order dated 26.10.2015 (Annexure A-4) upheld the order of the CIT(A) and dismissed the appeal. Hence, the present appeal by the revenue.

3. We have heard learned counsel for the revenue.

4. The primary issue that arises for consideration in this appeal is whether the CIT(A) had rightly deleted the penalty under Section 271(1)(c) of the Act which has been upheld by the Tribunal. The penalty had been levied for furnishing inaccurate particulars of income.

5. It would be apposite to refer to the findings recorded by the CIT(A) while cancelling the penalty under Section 271(1)(c) of the Act which are as under:-

"5.2. The Ld. Counsel has explained that the income tax return of the appellant was filed by the Advocate, who had not added back the advance tax paid on capital gains and property tax, in the statement of income. From the documents filed by the Ld.

Counsel, it is evident that the Counsel had filed the income tax return and had not added back the impugned amounts debited to the profit & loss account, which were inadmissible deductions. Thus, the mistake of not adding back the impugned amounts in the statement of income was of the then Counsel and moreover, it cannot be said that anyone had benefitted by not adding back the impugned amounts, since the appellant cooperative society is an undertaking of Government of Punjab. The explanation furnished by the appellant is bonafide and so the impugned penalty levied is cancelled.”

6. On appeal by the revenue, the Tribunal had affirmed the said findings of the CIT(A) by holding that the assessee had submitted revised computation during the course of assessment proceedings and there was no intention to conceal the income. Further, the Tribunal held that the assessee had duly paid tax on the amounts of capital gains tax and property tax suo motu and due to inadvertent mistake on the part of the counsel of the assessee, the amount of capital gains tax and property tax paid were not added back resulting into refund. The Tribunal had observed that by not adding back the amount, no one had been benefitted as the assessee is an undertaking of Government of Punjab. The relevant findings recorded by the Tribunal read thus:-

“4. We have heard Shri Vivek Mongia Ld. DR and have also perused the materials available on record. However, none appeared on behalf of the assessee. It is observed that the assessee is a Cooperative

Society and an undertaking to Government of Punjab. It is claimed that the assessee had engaged a professional for preparing and filing of the income tax return. It is stated that assessee has submitted revised computation during the course of assessment proceedings and there was no intention to conceal the income. Furthermore, the assessee had duly paid tax on the impugned amounts of capital gains tax and property tax suo motu, but due to inadvertent mistake on the part of the counsel, this amount of capital gains tax and property tax paid were not added back resulting into refund. In our view, the Ld. CIT(A) has correctly observed that the mistake of not adding back the impugned amounts in the statement of income was of the then counsel and moreover it cannot be said that anyone had been benefited by not adding back the impugned amount, since the assessee is an undertaking of Government of Punjab. In our opinion, the order of CIT(A) is based on appreciation of facts and, therefore, we decline to interfere with the order of CIT(A). Consequently, the appeal of the Revenue is dismissed.”

7. No illegality or perversity could be demonstrated by learned counsel for the revenue that the findings of the CIT(A) and the Tribunal were erroneous or perverse in any manner.

8. In view of the above, no scope for interference by this Court is made out so as to take a different view expressed by the CIT(A) and

affirmed by the Tribunal. Thus, no substantial question of law arises.

The appeal stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 5, 2016
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(SHEKHER DHAWAN)
JUDGE