

2024:PHHC:004741-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

204

2024:PHHC:004741-DB

**ITA No.244 of 2011 and
ITA No.512 of 2017**

Date of Decision: 18.01.2024

Market Committee, Gohana

.....Appellant(s)

Versus

Assistant Commissioner of Income Tax, Sonipat Circle, Sonipat

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Rajesh Garg, Sr. Advocate,
with Ms. Neha Matharoo, Advocate,
and Mr. Mandeep Singh, Advocate,
for the appellant (in ITA-244-2011).

Ms. Gauri Neo Rampal Opal, Sr. Standing Counsel,
for the appellant (in ITA-512-2014),
for the respondent-Department (in ITA-244-2011).

Mr. S.K. Mahajan, Advocate,
for the respondent-M.C., Gohana (in ITA-512-2017).

G.S.SANDHAWALIA, J.

1. The present judgment shall dispose of two appeals i.e. ITA No. 244 of 2011 and ITA No. 512 of 2017.

Facts of ITA No.244 of 2011

2. ITA No.244 of 2011 has been filed under Section 260A of the Income Tax Act, 1961 (in short 'the Act') against the order passed by the Income Tax Appellate Tribunal, Delhi Bench in ITA No.1831/Del/2010 dated 31.08.2010 (Annexure A/3) wherein the Tribunal has allowed the appeal of

2024:PHHC:004741-DB

wherein the deletion of Rs.2,81,33,700/- was made for the assessment year 2007-08 and restored the order of the Assessing Officer dated 30.11.2009 (Annexure A-I) for the assessment year 2007-08.

3. The reasoning which prevailed with the Tribunal was that it was a payment of loan taken from the Haryana State Agricultural Marketing Board (in short 'the Board') and had been used for spending on repair work of *Mandi* construction and repairs of various rural roads and development of *Mandis* and, therefore, the expenses incurred were not out of the own funds but out of borrowed funds. Resultantly, the Tribunal was of the opinion that making repayment of such borrowed funds and claiming deduction as application of income was claiming double deduction for the same expenditure and, therefore, the appellant (Committee herein) was not eligible for double deduction on account of the same expenditure incurred based on the construction of rural roads and development of *Mandis*.

4.. The appeal was admitted on 07.05.2012 on the following substantial question of law:-

“(i) Whether the learned Income Tax Tribunal has gravely erred in law in maintaining the disallowance of Rs.2,81,33,700/- on the ground that it is a repayment of loan to Haryana Mandi Board whereas from the record it is lucid that the payment was made for achievement of objects prescribed under the Act.”

5. A perusal of the paper book would go on to show that return of income under the Act was filed on 29.10.2007 claiming exemption under Section 11 of the Act which was duly processed under Section 143 on 27.02.2008. The case was selected for compulsory scrutiny under the

2024:PHHC:004741-DB

Act and under Section 142(1) dated 21.05.2009 were issued and served and the authorized representatives accordingly attended the proceedings and produced the books of accounts. The assessment was then framed under Section 143(3) of the Act on 30.11.2009 and the assessee claimed the repayment of liabilities of Rs.2,81,33,700/- as application of income which was construed as repayment of loan taken from the Marketing Board for construction of rural roads and development of *Mandis*. The Assessing Officer came to the conclusion that the assessee had not shown increase in the amount of loan taken from the Board while calculating its income in relevant years and, therefore, discharge of liability of loan was not allowable for application of fund to the assessee. Reliance was placed upon the judgment of the Apex Court in *Escorts Ltd. and another vs. UOI and others, 199 ITR 43* that double deduction for an item should not be inferred and, therefore, the payment of liability of old loan was not allowed as application of income and penalty proceedings under Section 271(1)(c) of the Act were also initiated for claiming inaccurate expenditure and concealment of income of Rs.2,81,33,700/-.

Facts of ITA No.512 of 2017

6. ITA No. 512 of 2017 has been filed by the Revenue which arises out of the order of the Tribunal dated 28.03.2017 (Annexure A-IV) wherein, it was held that it does not amount to filing of inaccurate particulars and the same were present before the Assessing Officer during the assessment proceedings and it was not a valid reason for passing the penalty order when the same was properly disallowed by the Assessing Officer and after verifying the relevant records. Thus, a finding was recorded that the assessee

2024:PHHC:004741-DB

had not furnished any inaccurate particulars and the Assessing Officer as well as the Commissioner of Income Tax were incorrect in holding to that effect and resultantly, the appeal of the assessee had been allowed and the penalty of Rs.1,19,26,437/- was deleted which had been imposed vide order dated 28.03.2011 (Annexure A-II) and upheld by the Commissioner on 31.10.2011 (Annexure A-III). The Revenue is, thus, in appeal against the said reasoning of the Tribunal which had been ordered to be heard with the appeal filed by the Market Committee.

Our Findings

7. The Commissioner had come to the conclusion vide order dated 05.02.2010 (Annexure A/2 in ITA No. 244 of 2011) that the sources of income of the Market Committee were specified and the items on which the income is to be applied are also mentioned in the Act. The amount had been paid to the Board for the expenditure which the Board had incurred on behalf of the Market Committee and the same was allowable as application of income and, therefore, the addition made by the Assessing Officer had been deleted. The same was done by accepting the argument that the source of income of the Committee is from license fee, market fees and sale of plots and the expenditure is made on the items mentioned under Section 28 of the Punjab Agricultural Produce Markets Act, 1961 (in short 'the Markets Act'). The Board was carrying on the activity in the notified area of the Market Committee and had incurred an expenditure which otherwise the Market Committee would have incurred and the same is shown as liability in the accounts of the Market Committee and when the amount is returned to the Board by the Market Committee, the liability is reduced to that extent in the

2024:PHHC:004741-DB

books. The money had been spent to achieve the objects of the Act and the action of the Assessing Officer was, thus, not held to be in order which has been apparently wrongly as such set aside by the Tribunal.

8. It is not disputed that the assessee-Market Committee is applying its funds as per the statutory provisions provided under the Markets Act.

Section 28 of the said Act reads thus:-

“28. Purposes for which the market committee funds may be expended.- Subject to the provisions of [Section 27](#), the Market Committee funds shall be expended for the following purposes:

(i) acquisition of sites for the market;

(ii) maintenance and improvement of the market;

(iii) construction and repair of buildings which are necessary for the purposes of the market and for the health, convenience and safety of the persons using it;

(iv) provision and maintenance of Standard weights and measures ;

(v) pay, leave allowances, gratuities, compassionate allowances and contributions towards leave allowances, compensation for injuries and death resulting from accidents while on duty, medical aid, pension or provident fund of the persons employed by the committee ;

(vi) payment of interest on loans that may be raised for purposes of the market and the provisions of a sinking fund in respect of such loans ;

(vii) collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of the agricultural produce concerned ;

2024:PHHC:004741-DB

(viii) providing comforts and facilities, such as shelter, shade, parking accommodation and water for the persons, drought cattle, vehicles and pack animals coming or being brought to the market or on construction and repair of link roads, approach roads, culverts, bridges and other such purposes ;

(ix) expenses incurred in the maintenance of the offices and in auditing the accounts of the committees ;

(x) propaganda in favour of agricultural improvements and thrift ;

(xi) production and betterment of agricultural produce ;

(xii) meeting any legal expenses incurred by the Committee ;

(xiii) imparting education in marketing or agricultural ;

(xiv) payments of travelling and other allowances to the members and employees of the committee, as prescribed;

(xv) loans and advances to the employees ;

(xvi) expenses of and incidental to elections ; and

(xvii) with the previous sanction of the Board, any other purpose which is calculated to promote the general interest of the committee or the notified market area or with the previous sanction of the State Government, any purpose calculated to promote the national or public interest.”

9. A perusal of the above said provision would go on to show that the purposes for which the funds are available are for the maintenance and improvement of the Market Committees which are necessary for the purposes of the existing market and for the health, convenience and safety of the

persons using it. The Market Committee is vested with the responsibility of

2024:PHHC:004741-DB

effecting improvements besides ensuring that there is repair and maintenance of the existing infrastructure and the whole purpose as such is to provide better facilities in the rural areas and for the safety, health and convenience of persons who visit the market area for the sale of agricultural produce and for the general interest of the persons associated with the activities connected therewith. Section 26 of the Markets Act further provides the purpose for which the market development fund may be expended by the Marketing Board whereas Section 27 provides that part of the funds earned by a Market Committee has to pay to Marketing Board as contribution and the same can be utilized by the Marketing Board for the purposes enumerated in the Statute. The said Sections reads thus:-

“26. Purpose for which the market development fund may be expended. The marketing development fund shall be utilised out of following purposes:

- (i) better marketing of agricultural produce ;*
- (ii) marketing of agricultural produce on co-operative lines ;*
- (iii) collection and dissemination of market rates and news ;*
- (iv) grading and standardisation of agricultural produce;*
- (v) general improvements in the markets or their respective notified market areas;*
- (vi) maintenance of the office of the Board and construction and repair of its office buildings, rest-house and staff quarters ;*
- (vii) giving aid to financially weak committees in the shape of loans and grants ;*

2024:PHHC:004741-DB

(viiia) repayment of loans and payment of interest thereon.

(viii) payment of salary, leave allowance, gratuity, compassionate allowance, compensation for injuries or death resulting from accidents while on duty, medical aid, pension or provident fund to the persons employed by the Board and leave and pension contribution to Government servants on deputation ;

(ix) travelling and other allowances to the employees of the Board, its members and members of advisory committees ;

(x) propaganda, demonstration and publicity in favour of agricultural improvements;

(xi) production and betterment of agricultural produce;

(xii) meeting any legal expenses incurred by the Board;

(xiii) imparting education in marketing or agriculture directly by the Board or through Punjab Agricultural University, Ludhiana or other body as may be specified by the State Government by notification.

(xiv) construction of godowns and construction or repair of link roads, approach roads, culverts, bridges and other such purposes,

(xv) loans and advances to the employees;

(xvi) expenses incurred in auditing the accounts of the Board;

(xvii) with the previous sanction of the State Government, any other purposes which is calculated to promote the general interests of the Board and the committee or the national or public interest:

Provided that if the Board decides to give aid of more than five thousands rupees to a financially weak

2024:PHHC:004741-DB

committees under Clause (vii), the prior approval of the State Government to such payment shall be obtained.

27. Market Committee Fund

(1) All moneys received by a Committee shall be paid into a fund to be called the Market Committee Fund and all expenditure incurred by the Committee under or for the purposes of this Act shall be defrayed out of such fund, and any surplus remaining after such expenditure has been met shall be invested in such manner as may be prescribed.

(2)(a) Every Committee shall, out of its funds pay to the Board as contribution such percentage of its income derived from licence fee, market fee and fines levied by the Courts as is specified below to defray expenses of the office establishment of the Board and such other expenses incurred by it in the interest of the Committees generally and also pay to the State Government the cost of any special or additional staff employed by the State Government in consultation with the Committee for giving effect to the provisions of this Act.

1 [(i) if the annual income of a Committee does not exceed Rs. 20,00,000;

(ii) if the annual income of a Committee exceeds Rs. 20,00,000;

(a) on the first of Rs. 20,00,000/- Twenty per centum

(b) on the next Rs. 20,00,000/- Forty per centum and

(c) on the remaining income Fifty per centum].

(b) The State Government shall determine the cost of such special or additional staff and shall, where the

2024:PHHC:004741-DB

staff is employed for the purposes of more Committees than one, apportion such cost among the Committees concerned in such manner as it thinks fit. The decision of the State Government determining the amount payable by any committee shall be final.”

10. Thus, the role as such of the Market Committee is to utilize its funds for allied purposes and it is inter linked with the Marketing Board as such as well and the responsibility of the Marketing Board is also to collect information in connection with agricultural activities besides the function of educating agriculturists so that they can get better yields and higher returns and, therefore, market development fund is also to be used for construction of link roads, approach roads, culverts and bridges, which is part of the welfare activities which is done by the two agencies. The appellant, in order to show that the said action was erroneously taken as a repayment of loan amount, has given the details of the progressive payments given to the Haryana State Agricultural Marketing Board from the year 2006 onwards till the year 2009. The said table reads thus:-

<u>YEAR WISE PROGRESSIVE PAYMENT DETAIL TO H.S.A.M.B.</u>			
<u>2006-07</u>			
		Opening Balance	4,27,78,421
Payments	4,00,00,000	Add payments	4,00,00,000
			8,27,78,421
Less Expenditure	2,49,03,967	Less Expenditure	2,49,03,967
Excess payments	1,50,96,033	Excess payments	5,78,74,454
<u>2007-08</u>			
		Opening Balance	5,78,74,454
Payments	4,50,00,000	Add payments	4,50,00,000

2024:PHHC:004741-DB

			10,28,74,454
Less Expenditure	1,68,66,300	Less Expenditure	1,68,66,300
Excess payments	2,81,33,700	Excess payments	8,60,08,154
<u>2008-09</u>			
		Opening balance	8,60,08,154
Payments	6,59,00,000	Add payments	6,59,00,000
			15,19,08,154
Less Expenditure	1,19,63,478	Less Expenditure	1,19,63,478
Excess payments	5,39,36,522	Excess payments	13,99,44,676

11. It is the case of the assessee that it had a opening balance of Rs.5,78,74,454/- which had been carried forward and a payment of Rs.4,50,00,000/- had been made to the Apex Body on account of development works. The necessary receipts showing the payments made have also been appended as Annexures A-5 to A-8 wherein, the sum of the above said amount was disbursed in four installments on account of development works and the receipts have been issued by the Haryana State Agricultural Marketing Board which are dated 21.06.2006, 22.09.2006, 08.03.2007 and 22.08.2006. The said receipts would go on to show that the said amounts were deposited for development works. It was accordingly pointed out that as per the table, the Board had incurred expenditure of Rs.1,68,66,300/- on development works on account of the assessee. For the assessment year in question, an excess payment of Rs.2,81,33,700/- had been made and, thus, it was the case of the assessee that the excess payment had been made of the said amount leaving a balance of Rs.8,60,08,154/- towards development works which was carried forward to the next financial year

2024:PHHC:004741-DB

2008-09. The balance sheet was also appended in support of the said case which had been appended with the return of income duly attested by the Chartered Accountant wherein, the sum of Rs.8,60,08,154/- was shown as capital works.

12. Thus, it is apparent that the findings recorded by the Commissioner of Income Tax (Appeals) were correct to the extent that the payment was made by the assessee to the Marketing Board towards the statutory functions of application of money for the objects provided in the Statute and it was not for repayment of any loan and, therefore, both the Assessing Authority and the Tribunal wrongly came to the said conclusion regarding this aspect. It is in such circumstances we are of the considered opinion that the Tribunal has wrongly reversed the well reasoned order passed by the Commissioner of Income Tax and the record as such would go on to show that the payment which was made was for the achievement of the objects prescribed under the Act and, therefore, the disallowance could not have been done on the ground that it was a loan to the Marketing Board. Rather, it was the expense as such for the purpose given in the objects of the Act as such and, therefore, the Assessing Officer was wrong in holding that it was a payment of liability of old loan.

Conclusion

13. Resultantly, we allow ITA No. 244 of 2011 filed by the Assessee and restore the order of the Commissioner dated 05.02.2010 (Annexure A/2 in ITA No. 244 of 2011) by answering the substantial question of law in its favour on the basis of the material placed on record that the disallowance made was on a wrong reasoning. Accordingly, as a consequential effect, the

2024:PHHC:004741-DB

appeal filed by the Revenue i.e. ITA No. 512 of 2017 whereby penalty proceedings were initiated is liable to be dismissed and is accordingly ordered as such.

(G.S. SANDHAWALIA)
JUDGE

18.01.2024
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	Yes