IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.146 of 2006
Date of decision 5 .2.2007

Hoshiarpur Roller Flour Mills .. Appellant

Versus

The Income Tax Officer and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. Vinod Aggarwal, Advocate for the appellant
Mr. Sanjiv Bansal, Advocate for the revenue.

M.M.Kumar, J.

The assessee has approached this Court by invoking the provisions of Section 260A of the Income Tax Act,1961 (for brevity 'the Act') and has challenged the order dated 27.6.2005 (Annexure P.1) passed by the Income Tax Appellate Tribunal, Amritsar (for brevity 'the Tribunal') in ITA No. 222 (ASR) 2001 in respect of the assessment year 1997-98. The assessee has sought the admission of the appeal on the following substantial questions of law:

" 1. Whether in the facts and circumstances of the present case Tribunal is justified in sustaining the penalty levied by the Assessing Officer ?

2. Whether the penalty order as sustained in the first and second appeal is void ab-initio being violative of principals of natural justice ?

3. Whether the penalty order based upon one day notice could be legally sustained by the learned Tribunal ?

4. Whether the Tribunal is justified in holding that there is an

admission of the assessee accepting levy of penalty ?

5. Whether the order of the Tribunal is liable to be set aside being perverse ?

Brief facts of the case are that the assessee- firm draws its income from running a roller flour mill. It emerges from the order of the Tribunal that the assessee firm filed its return on 27.10.1997 declaring its income at Rs. 91,870/-. The case was selected for scrutiny. The books of accounts were produced during the course of proceedings and it was found that the assessee has raised false bills of purchase from M/s Surya Enterprises, GT Road, Damtal and M/s Ambika Trading Company, Hoshiarpur. The Assessing Authority noticed detailed facts in respect of those bills which led to the conclusion that they were forged. In respect of M/s Surya Enterprises, Damtal it has been found that summons under Section 131 were issued which were returned unserved with the remarks that there was no such firm. Thereafter dasti summons were again issued on 8.3.2000 for service on the firm as requested by Shri V.B .Aggarwal, Chartered Accountant, who has represented the assessee. On the adjourned date no one attended the proceedings. The bills also revealed the registration number of the truck which had allegedly transported the wheat from Damtal to Hoshiarpur. The owner of the truck was summoned who had given in writing that he had never transported the wheat for M/s Surya Enterprises, from Damtal to Hoshiarpur. Similarly, in respect of M/s Ambika Trading Co. the statement of its proprietor was recorded who had admitted on 7.1.2000 and 14.3.2000 stating that he had not made any genuine sale and the bills issued by him were fictitious. There are further details as to how the employees of the assesse firm S/Shri Daharam Pal and Kamal Kishore

used to take self chqeues from Shri Ram Kumar Dhir. It appears that on the basis of the afore-mentioned incontrovertible situation, the assessee through his representative Mr. V.B. Aggarwal, CA had agreed for the levy of penalty under Section 271(1)(c) of the Act, accepting discrepancies in the purchase or sales. The application filed by the assessee through Shri V.B. Aggarwal, CA before the Assessing Officer on 30.3.2000 (Annexure P.5) placed the matter beyond any doubt. Paras 2 and 3 of the statement made in the application reads as under:

> " That if there is any discrepancy in purchases or sales this is absolutely not known to the partners of the firm and it may have been done by the employees which is also evident from the statements recorded by your honour in the course of the assessment proceedings. The statements of Shri Kamal Kishore and Shri Manohar Lal, the employees of the firm may kindly be referred. Further assessee's reply dated 22.3.2000 may also be taken into consideration in this regard.
>
> That since the assessee has agreed for the levy of penalty u/s 271(1)(c), the assessee may be levied this penalty on the basis of the discussions with your honour which is due to the negligence of the employees of the assessee only. The penalty levied be minimum on the tax payable by the assessee firm and after taking into consideration the replies filed in the course of the assessment proceedings. The assessee has agreed for the levy of to buy peace of mind."

On the basis of the afore-mentioned averments made in the

application, the Tribunal concluded that there was clear admission by the assessee with regard to concealed income at the stage of quantum proceedings as well as in respect of penalty. The assessee had agreed to the addition as well as penalty.

Mr. Vinod Aggarwal, learned counsel for the assessee insisted that no such admission infact had been made nor any such instructions were issued by the assessee and therefore the letter written by Shri V.B. Aggarwal on 30.3. 2000 (Annexure P.5) cannot constitute the basis to conclude that the assessee had admitted the factum of bogus purchase/sale.

Mr. Sanjiv Bansal, counsel for the revenue, however, produced before us the original record which categorically shows that Shri V.B. Aggawal was duly authorised by the assessee to represent it and there is no escape from this conclusion. He has further pointed out that no doubt could be entertained after perusal of the communication dated 30.3.2000 addressed by the authorised representative of the assessee to the Assessing Officer that it is not an admission.

After hearing learned counsel for the parties and perusing the record with their assistance, we are of the considered view that no question of law much less a substantial question warranting admission of the instant appeal would arise for the determination of this Court. It is evident that the assessee through its agent Shri V.B.Aggarwal had sent a communication to the Assessing Officer on 30.3.2000 (Annexure P.5) admitting the discrepancies in the purchase or sales and also agreed for levy of penalty under Section 271(1)(c) of the Act. The statement made by the assessee is categorical that it had agreed to the addition and penalty only to buy peace of mind. Under Sections 17 and 18 of the Indian Evidence Act, 1872 the

expression 'admission' is defined. It is a self harming statement , oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by the person or his agent. The basic ingredients of 'admission' as defined in Sections 17 and 18 of the Evidence Act are completely satisfied in the present case as the assessee had admitted that there are discrepancies in the purchase or sales and penalty under Section 271(1)(c) of the Act be levied. Therefore, we find no legal infirmity in the order of the Tribunal. The appeal is wholly without any merit and the same is liable to be dismissed.

For the reasons recorded above, this appeal fails and the same is dismissed.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

5.2.2007
okg