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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 510 of 2006
Date of decision: 21.3.2007

New Kailash Cotton Factory, Mansa (Punjab) ...Appellant

Versus

The Assessing Officer-cum-Income Tax Officer, Ward No.1,

Mansa (Punjab) ...Respondent

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

Present: Mr.Kashmiri Lal Goyal, Advocate for the appellant.

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RAJESH BINDAL, J.

The appellant has approached this Court by filing the present appeal under Section 260-A of Income Tax Act, 1961 (for short 'the Act') against order dated June 16, 2006 (Annexure A-12) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short 'the Tribunal') in ITA No. 200(ASR)/1995 in respect of the assessment years 1988-89 raising the following substantial questions of law:-

i) Whether on the facts and circumstances of the case, the findings of the ITAT that profits derived by 21 different persons from trading done by them through commission agency of assessee-appellant is income of the assessee itself, are perverse, based on frivolous grounds and without any legal basis and therefore not sustainable in the eyes of law?

AND

If the answer to question No.(i) is in affirmative

(ii) Whether the amount of Rs.306802/- added to the income

of assessee is liable to be deleted?

Briefly the facts, are that for the assessment year in question, the assessee filed his return of income on June 28, 1988 declaring his income at Rs. 91, 200/-. The assessee firm is engaged in the business of cotton ginning and extracting oil from cotton, seeds and Mustard seeds. During the course of assessment proceedings, it was found that the assessee had claimed to have conducted business on behalf of various other persons/parties and transferred profits to them. As claimed the business was conducted on behalf of 21 parties resulting into profit of Rs. 3,06,802/- which was transferred to these parties. Finding the claim made by the assessee to be ingenuine, the assessee was asked to justify the claim made by it. Having not been able to satisfy the Assessing Officer with regard to conduct of business on behalf of other parties and the profit arising therefrom was transferred to those parties, the Assessing Officer made addition to Rs. 3,06,802/- in the income of assessee treating the amount to be as a transfer of profit to 3rd parties without any valid reason. The assessee even failed in his appeal before the Commissioner of Income Tax (Appeals). Even further appeal before the Tribunal was also dismissed. However, the Tribunal while dismissing the appeal accepted the plea of the assessee to the extent that addition being on account of speculation profit, the assessee should be allowed to adjust the speculation loss alone in relation to account of three parties**.** The Tribunal while disposing the appeal observed as under:-

> "6. We have heard both the parties and given our thoughtful consideration to the rival submissions, perused the material and evidence placed on record as well as the orders of authorities below. The undisputed facts of the case are that the assessee claimed to have entered into these transactions on behalf of third parties. But one of the transactions was entered in the 'Sauda Bahi' and purchase and sale bills were also in the name of the assessee. No physical delivery of the goods was either given or taken. The goods were not transferred to the parties in the books of account of the assessee. The transactions of purchase and sale took

place by and large, on the same date. In most of the cases assessee had not received any advance against the purchases shown in their names. In some cases advance of a very nominal amount of Rs. 1000/- and 5000/- had been received. The assessee has heavily relied on the fact that none of the persons was related to the partners of the firm and the profit had been transferred to the parties. The main question that requires to be decided in this case is that to whom the profit belongs and if the profit belongs to the assessee, the mere transfer of the profit to the parties would amount to diversion of profit. Now the overwhelming evidence referred to by the authorities below that purchase and sale bills were in the name of assessee, no advance or nominal advance was paid by the parties, transactions were not entered in the 'Sauda Bahi' and there was no evidence of parties placing oral orders are suggestive of the fact that these transactions were of the assessee and not entered into on behalf of other parties. The profit also belonged to the assessee and mere transfer of the same to third parties after the same had been earned does not mean that it was not liable to tax in the hands of assessee. The very fact that parties were not related to the assessee would not make any difference. The fact other parties were assessed to tax and the same was offered to tax would not make any material difference so far as assessee is concerned because the income has been diverted after earning the same. Reliance of the assessee on the judgment of Bombay High Court in the case of K.H.Valia Vs. CIT (Supra) is misplaced because in that case assessee was able to lead sufficient evidence in support of the solitary speculative transaction. In this context the High Court held that mere fact transaction was not entered in 'Sauda Bahi' would not mean that transaction was not genuine. But these are not the facts of the case as

the assessee has not been able to lead any evidence in support of the contention that these transactions had been entered on behalf of others. The facts are glaring and obvious which show that these were collusive arrangements to reduce the incidence of tax by the assessee.

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6.3To sum up, the plea of the assessee that this being speculation profit, the assessee should be allowed to adjust the speculation loss alone is accepted. In the result, the ground of appeal is partly allowed."

Learned counsel for the assessee primarily contended that the findings recorded by all the authorities below are perverse as the real issue involved in the present case has not been appreciated. Revenue has failed to bring any evidence on record to dislodge the claim of the assessee to the effect that the assessee had conducted the business on account of 3rd parties to whom the profit and loss arising therefrom had been transferred. The transactions in question were genuine in nature. He further submitted that merely because no 'Sauda Bahi' was maintained, the claim made by the assessee could not be rejected.

Having heard learned counsel for the assessee, we do not find any merit in the appeal. A perusal of the concurrent findings recorded by all the authorities below show that assessee had not been able to prove on record the genuineness of the transactions resulting into claim made by him for diverting the profits arising out of his speculation business. It was found that there was no proof available either in the form of written or oral agreement between the parties for purchase and sale of commodities. For the purpose of conducting so called business on behalf of 3rd parties, the assessee invested its own fund, no 'Sauda Bahi' was maintained recording day to day transactions. All the purchases and sales were made in the account of assessee. It was assessee's own infrastructure which was used in all the transactions. These being the facts on record, even if there is a second view possible on re-appreciation of evidence on record in preference to view taken by the Tribunal, we are unable to hold that the view expressed

by the Tribunal was not possible view. The findings recorded are based on evidence and could not be regarded as perverse. In the appellate jurisdiction under Section 260-A of the Act, the appeal can be entertained only on a substantial question of law. No doubt perversity in the findings of the Tribunal would amount to substantial question of law but learned counsel for the assessee has failed to point out any material on record which could impell this Court to hold that the view expressed by the Tribunal was not at all possible.

Accordingly, we do not find any merit in the present appeal and the same is dismissed.

(Rajesh Bindal)
Judge

March 21 , 2007 **(M.M.Kumar)**
Pka **Judge**