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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No. 152 of 1996.
Date of Decision : 26.3.2007

Commissioner of Income Tax, Haryana, Rohtak

Appellant.

Vs.

Haryana Land Reclamation Development Corporation Ltd. Chandigarh.

Respondent.

CORAM:- Hon'ble Mr. Justice M.M.Kumar
Hon'ble Mr. Justice Rajesh Bindal

Present:- Mr. Yogesh Putney, Advocate, for the revenue.
Mr. Pankaj Jain, Advocate, for the assessee.

Rajesh Bindal,J.

Following questions of law have been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal'), arising out of its order dated 22.1.1995 in I.T.A.No. 8414/Del/90, in respect of the assessment year 1987-88:-

"1. Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding that the income derived from hiring of tractors and combines etc was agricultural income within the meaning of sub-sec (1A) of Section 2 of the Income-tax Act, when the immediate and effective source of such income was not land?

2. Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding that the proviso to Section 43B, inserted by the Finance Act,

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1987, w.e.f. 1.4.1988 is applicable retrospectively?

3. Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding that bonus relatable to the employees and labour at agricultural farm whose income was non-taxable, can be allowed as a deduction against taxable income from the business."

The assessee, which is a State owned undertaking, filed its return of income, for the assessment year in question, on July 31, 1987 declaring a loss of Rs. 131.93 lacs. As the return was not accompanied by audited Trading, Profit and Loss Account, a notice was issued under Section 139(9) of the Income Tax Act, 1961 (for short 'the Act') on August 12, 1987. Thereafter, the assessee filed another return on August 27,1987 alongwith audited Profit and Loss account and Balance Sheet. The assessee is running an agricultural farm at Hisar. A perusal of the the profit and loss account shows that a sum of Rs. 3,40,304/- had been shown as income from each tractors, trucks, combines and trollies which included a sum of Rs. 2/- charged from each labour for bringing them at the agricultural farm. According to the Assessing Officer, as there was no detail available, on estimate basis a sum of 25% of the total receipt was disallowed as agricultural income and was treated as business income. In appeal before the Commissioner of Income-tax (Appeals), the averment was upheld. However, the Tribunal accepted the appeal of the assessee and ordered for deletion of the above amount by holding that the amount charged was incidental or ancillary to the agricultural activity. As far as the question of charging Rs. 2/- each from labourers for bringing them to the farm was concerned, there was no evidence on record to establish that the assessee was doing any business of running the vehicle on hire and the receipt on this account was also held to be in connection with the agricultural operation.

Learned counsel for the Revenue submitted that since the assessee had not produced any record to show the details of the amount charged, the authorities below were well within their right to make an estimation thereof and treat that part of the receipt as income. According to

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the counsel, the Tribunal had gone wrong in holding that this kind of receipt from the labourers for bringing them to the farm was part of agricultural receipt. However, it has not been disputed that the entire activity of the corporation was in connection with the agricultural operation.

On the other hand, learned counsel for the assessee did not dispute the receipt of small token amount charged from the labourer. However, he submitted that the sum will not have any effect as the assessee had not claimed special expenses made on account of earning that income, if that is considered, in fact there will not be any balance. This plea taken by the assessee, in the alternative, was not considered by the Tribunal as it had accepted the primary contention of the assessee to the effect that the assessee being not in the business of hiring of vehicles, the small amount charged would not be treated as a business income. We do find force in the contention raised by learned counsel for the assessee that the receipt of the kind in question falls within the ambit of agricultural receipt. We do not find any reason to differ with the view taken by the Tribunal and accordingly answer the question against the revenue and in favour of the assessee.

Question No.2.

As far as question No.2 is concerned, learned counsel for the parties do not dispute that the issue is squarely covered by the judgment of Hon'ble the Supreme Court in Allied Motors (P) Ltd. Vs. Commissioner of Income Tax (1997) 224 ITR 677 wherein it has been held that proviso to 43-B of the Act inserted by Finance Act, 1987 with effect from 1.4.1988 is retrospective in operation being clarificatory. Accordingly, the question referred is answered against the revenue and in favour of the assessee.

Question No.3

As regards the claim for deduction on account of bonus payable to the employees and labour is concerned, the claim was accepted by the Tribunal while relying upon a judgment of Hon'ble Bombay High Court in **Commissioner of Income-Tax Vs. Brihan Maharashtra Sugar Syndicate Ltd. (1989) 80 Current Tax Reporter 196.** On consideration of the

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material on record, it was found by the Tribunal that the facts of the case in hand are identical to the facts considered by the Bombay High Court in Brihan Maharashtra Sugar Syndicate Ltd's case. Learned counsel for the revenue has not been able to cite any judgment taking a view different than what has been taken by the Bombay High Court. There being no contrary view available, we deem it appropriate to take the same view as was taken in Brihan Maharashtra Sugar Syndicate Ltd's case.

Accordingly, the question referred is answered against the revenue and in favour of the assessee.

(RAJESH BINDAL)
JUDGE

March 26, 2007.
Anoop/Pka

(M. M. KUMAR)
JUDGE