IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 17998 of 2005

DATE OF DECISION: 23.7.2007

The Punjab State Agricultural Marketing Board

…Petitioner

Versus

Commissioner of Income Tax-I, Chandigarh and another

…Respondents

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

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Rajesh Garg, Advocate,
for the petitioner.

Mr. S.K. Garg Narwana, Advocate, and
Mr. Yogesh Putney, Advocate,
for the respondents.

JUDGMENT

M.M. KUMAR, J.

This order shall dispose of C.W.P. Nos. 17998, 17810 and 2753 of 2005 as common question of law and facts are involved. However, the facts are being taken from C.W.P. No. 17998 of 2005.

In this petition filed under Article 226 of the Constitution, the petitioner i.e. the Punjab State Agricultural Marketing Board, has sought quashing of notice dated 26.4.2004, under Section 148 of the Income-tax Act, 1961 (for brevity, 'the Act'), issued by the Assistant Commissioner of Income Tax, Circle 2(1), Chandigarh (P-2) and notice dated 18.10.2005, issued by the Deputy Commissioner of Income Tax, Circle 2(1), Chandigarh (P-8) as well as re-assessment proceedings initiated pursuant thereto for the assessment year 2001-2002. On 23.7.2001, the petitioner filed a return under Section 139(1) in respect of assessment year 2002-03 declaring its income as Nil under the status of "Local Authority", claiming refund of Rs. 19,25,555/-. The return was processed under Section 143 (1) of the Act by the Assessing Authority-respondent No. 2 and on

26.4.2004 a notice was issued to the petitioner under Section 148 of the Act to file its return of income. On 26.5.2004, the petitioner again filed its return in the status of "Local Authority" as in the return filed under Section 139(1) of the Act. The petitioner also asked for the reasons recorded to re-open the case. One of the reason cited by respondent No. 2 was that the petitioner is not a "Local Authority". The other reason given was that the expenses incurred by the petitioner on development of Mandis and construction of link roads etc., which are the objectives of the petitioner Board, are not allowable. On 11.8.2004, the Assessing Officer issued notice under Section 143(2) and 142(1) of the Act. A questionnaire was also issued to proceed further in making assessment under Section 143 (3) of the Act. The petitioner gave reply to the notice taking the stand that it is a Local Authority. The circular issued by the Board was also brought to the notice of the Assessing Officer wherein it has been clarified that upto assessment year 2002-03 the income of the Board will be exempted under Section 10(20) of the Act and will not be exempt after amendment by Finance Act, 2002. In response to the aforementioned questionnaire, the petitioner took the plea that as per the circular issued by the Central Board of Direct Taxes (C.B.D.T.), the Board is a Local Authority and that the circular issued by the C.B.D.T. was binding on the revenue authorities. Accordingly, respondent No. 2 was requested to drop the proceedings under Sections 147/148 of the Act. On 18.10.2005, respondent No. 2 rejected the contention of the petitioner and asked it to file reply to the questionnaire issued by him.

Without going into the merits of the case, it is appropriate to notice that the issue raised in these petitions is not *res integra*. The respondent-revenue has also filed an appeal titled as **The Commissioner of Income-tax-I, Chandigarh v. M/s Punjab Mandi Board (I.T.A. No. 513 of 2005)**, under Section 260-A of the Income-tax Act, 1961 (for brevity, 'the Act') against an order dated 9.5.2005, passed by the Income Tax Appellate Tribunal, Chandigarh Bench-B, Chandigarh

(for brevity, 'the Tribunal'), in I.T.A. No. 506/Chandi/2001, in respect of the assessment year 1997-98. The aforementioned appeal has been dismissed by us vide separate order of the even date, holding as under:-

> "……The appellant-revenue has claimed that the following substantial question of law would arise for determination of this Court:-
>
> > "Whether on the facts and in the circumstances of the case, the ITAT was right in allowing the status of Local Authority under Section 10(20) of the Income-tax Act, 1961, whereas the Mandi Board does not fulfill the ingredients of Local Authority as defined under Section 3(31) of the General Clauses Act and the five tests laid down by the Hon'ble Apex Court in the case of Union of India v. State of Madhya Pradesh, AIR 1981 SC 951."
>
> The Tribunal has taken the view that the assessee – Punjab Mandi Board must be considered as a local authority in respect of the period prior to the amendment carried in Section 10(20) of the Act by the Finance Act, 2002 w.e.f. 1.4.2003. The Tribunal on the basis of the status of the respondent Board recognised in the earlier and subsequent assessment order as local authority and also by placing reliance on various judgments of various High Courts in the cases of **CIT v. Agricultural Market Committee, 143 ITR 1020 (AP); Krishi Utpanna Bazar Samiti v. ITO, 158 ITR 742 (Bom.); CIT v. Agricultural Marketing Produce Committee, (2001) 165 CTR 298 (Delhi); and Patel Premji Jiva v. State of Gujarat, (1971) 3 SCC 815 (SC)**, has remitted the matter to

the Assessing Officer for fresh assessment by treating the assessee-respondent Board as local authority.

Learned counsel for the assessee-respondent Board at the outset has cited an order passed by a Division Bench of this Court in the case of **Commissioner of Income-tax v. M/s Haryana State Agricultural Marketing Board** (I.T.A. No. 520 of 2006, decided on 23.2.2007), where the Haryana State Agricultural Marketing Board was the assessee and it was held that whether the Board is a local authority or not would necessarily be a pure question of fact, which cannot be gone into in an appeal filed under Section 260-A of the Act and it would not give rise to any substantial question of law. Perusal of the order passed by the Tribunal shows that the amendment carried in Section 10(20) of the Act is applicable w.e.f. 1.4.2003 and as the matter pertains to the assessment year 1997-98, the amendment did not have any application. We are further of the view that in respect of the earlier and subsequent years than the assessment year in question (1997-98) the respondent Board has always been regarded as a local authority and assessed as such. Applying the principle of consistency as laid down by Hon'ble the Supreme Court in the case of **Radhasoami Satsang v. Commissioner of Income-tax, (1992) 193 ITR 321**, it must be held that no substantial question of law within the meaning of Section 260-A of the Act would arise for our determination, especially when a Division Bench of this Court in the case of Haryana State Agricultural Marketing Board (supra) has dismissed the appeal filed by the appellant-revenue.

In view of the above, the appeal fails and the same is dismissed."

Since, in the aforementioned I.T.A. No. 513 of 2005, we have already arrived at a conclusion and held that the petitioner Board is a local authority within the meaning of Section 10(20) of the Act, therefore, adopting the same reasoning, the notices impugned in the instant petitions are hereby quashed. The Assessing Officer is directed to proceed with the framing of assessment by treating the petitioner Board as a Local Authority.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

July 23, 2007

Pkapoor