

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No. 105 of 1997 and connected appeals

Date of Decision: April 16, 2012

M/s J.R. Solvent Industries (P) Ltd., Sangrur

...Appellant

Versus

Commissioner of Income Tax, Patiala

...Respondent

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

HON'BLE MR. JUSTICE ALOK SINGH

Present: Mr. Pankaj Jain, Advocate,
for the assessee(s).

Mrs. Savita Saxena, Advocate,
for the revenue.

1. To be referred to the Reporters or not? Yes
2. Whether the Judgment should be reported in the Yes
Digest

M.M. KUMAR, J.

1. This order shall dispose of a bunch of appeals* filed under Section 260A of the Income Tax Act, 1961 (for brevity, 'the Act') against the order(s)** rendered by the Chandigarh Bench of the Income Tax Appellate Tribunal (for brevity, 'the Tribunal') and ITR No. 105 of 1997, which has been referred to this Court by the Tribunal on the reference application filed by the assessee – M/s J.R. Solvent Industries (P) Ltd., against the order dated 19.9.1995, passed by the Tribunal in ITA No. 654/Chandi/1990, in respect of the Assessment Year 1987-88. A common question raised for determination of this Court in all the cases would be:-

“Whether the Tribunal was right in law in treating the purchases from non-existent firms as recorded in the books of account of the assessee as bogus without giving an explicit finding that the provisions of Section 145(2) of the Act were attracted in the case of the assessee, especially when complete quantitative details were available?”

2. The facts are being referred from ITR No. 105 of 1997. The applicant-assessee is a Private Limited Company deriving its income from extraction and sale of solvent oil from rice bran. It is shown to have made purchases of rice bran amounting to ₹5,76,645/- from the firm known as M/s Raj Kumar Raghbir Kumar, Ludhiana, as per the entries in the books of account. The Assessing Officer on inquiry found that the party was non-existent and accordingly he treated the entire purchases as bogus. On appeal, the CIT(A) held that only part of the purchases could be treated as bogus while the balance purchases, in fact, were made by the applicant-assessee either from M/s Raj Kumar Raghbir Kumar or from somebody else. Accordingly, partial relief was allowed to the applicant-assessee. Both revenue as well as the applicant-assessee filed appeals before the Tribunal and the Tribunal held that the entire purchases of ₹5,76,645/- made from M/s Raj Kumar Raghbir Kumar were bogus despite the fact that the CIT(A) had observed that the Assessing Officer had not found any discrepancy in the accounts maintained by the applicant-assessee in the regular course of business. It is in the aforesaid facts and circumstances

that the Tribunal has referred the following question of law for the opinion of this Court:

“The Commissioner of Income-tax (Appeals) having observed that the Assistant Commissioner of Income-tax had not found any discrepancy in the accounts maintained by the appellant in the regular course of business and the Revenue not having challenged this finding before the Tribunal, whether the ITAT was right in law in having treated the purchases of ₹5,76,645/- from M/s Raj Kumar Raghbir Kumar recorded in the assessee’s books of accounts, as bogus without giving an explicit finding that the provisions of Section 145(2) were attracted in the case of the assessee specially when complete quantitative details were available?”

3. In order to put the controversy in its proper prospective, it would be appropriate to make a reference to Section 145 of the Act, as it stood at the relevant time and the same reads as under:-

“Method of accounting.

145. (1) Income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” shall be computed in accordance with the method of accounting regularly employed by the assessee:

Provided that in any case where the accounts are correct and complete to the satisfaction of the Income-tax Officer but the method employed is such that, in the opinion of the Income-tax officer, the income cannot

properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

(2) Where the Income-tax Officer is not satisfied about the correctness or the completeness of the accounts of the assessee, or where no method of accounting has been regularly employed by the assessee, the Income-tax Officer may make an assessment in the manner provided in section 144.”

4. A perusal of the aforesaid provision would make it patent that Section 145 deals with method of accounting. However, under Section 145(2) where the Income-tax Officer is not satisfied about the ‘correctness’ or ‘completeness’ of the accounts of the assessee or where no method of accounting has been regularly employed by the assessee then the Income-tax Officer may make best judgment assessment as contemplated by Section 144 of the Act.

5. Mr. Pankaj Jain, learned counsel for the applicant- assessee has not been able to show that it was a case which would be covered by Section 145(2) of the Act because the Income-tax Officer did not record any satisfaction with regard to correctness and completeness of the accounts but has concluded that the entries in the books of account were bogus. The aforesaid view of the Assessing Officer stand confirmed by the Tribunal as is evident from the following observations made by the Tribunal:-

“9. We have carefully considered the rival submissions as also the facts on record. We must compliment the Assessing Officer for having made such

detailed investigation into the case. It appears that the assessee company showed purchases of Rs. 5,76,645/- for assessment year 1987-88 and of Rs. 17,25,300/- for assessment year 1988-89 from M/s Raj Kumar Raghbir Kumar. Copies of sale bills issued by M/s Raj Kumar Raghbir Kumar do not inspire any confidence because they do not indicate any Sales-tax/Central Sales-tax number nor the telephone number. The said party was not found to be in existence when enquiries were made by the Assessing Officer in 1989. The address of the said party was not known to the postal authorities either. The said party was not an existing assessee. The assessee failed to produce the said party as also the books of account. The Assessing Officer made enquiries from the transport authorities and found that some of the truck numbers given by the assessee were not trucks at all but were scooters, motor-cycles and mopeds. Some of the registration numbers quoted by the company were found to be non-existent because no such numbers had been allotted by the transport authorities. It is true that the head-cashier of Union Bank of India in a statement given to the Id. CIT(A) tried to explain the narration given at the back of cheque No. 073353 dated 4.10.1986. It will, however, be straining human intelligence to believe that two parties would come to the bank at the same time when one would be desiring to withdraw a sum of Rs. 69,145/- and the other

to purchase a draft of Rs. 34,579/- and that there would be only one clerk looking after two counters of payment and receipt simultaneously. This appears to be more than a coincidence and there is something more than meets the eye.

10. The Id. counsel has placed considerable reliance on the Tribunal's decision in the case of M/s Oswal Woollen Mills (supra). We, however, find that in that case the receipt of goods by the party had been proved by payment of octroi, freight etc. we are clear in our mind that the assessee did not make any purchases of Rs. 5,76,645/- from M/s Raj Kumar Raghbir Kumar. We also do not subscribe to the view of the Id. CIT(A) that the assessee might have made purchases from some other party/parties but that it did make purchases of Rs. 5,76,645/-. In the first instance, that is not even the case of the assessee that it had made purchases from some other party or parties. Secondly, there is no independent evidence that the goods did reach the assessee's premises and were used in production.”

6. A bare perusal of Section 145 of the Act would reveal that the provision deals with method of accounting. Under Section 145(2) of the Act if Assessing Officer is not satisfied about the correctness or the completeness of the accounts of the assessee then best assessment judgment can be made under Section 144. It is patent that the provision deals with cases where Assessing

Officer is not satisfied about 'correctness' and 'completeness' of the accounts of the assessee. Fraud is entirely different than 'correctness' or 'completeness' of accounts. The expression 'correct' is antonymous to the word 'wrong' which would imply erroneous account. The error or wrong might be in a particular entry or in totaling etc. Like 'completeness' is an expression opposite to the word 'incomplete'. Both would not cover a situation like the one in hand. If there is a fraudulent entry or fabricated entry then it cannot be regarded as wrong or incomplete entry. The findings in the present case suggest that the firm M/s Raj Kumar Raghbir Kumar is not in existence. No actual transaction took place. The findings are pronounced and categorical. Therefore, Section 145 of the Act would have no application to such a situation.

7. However, Mr. Jain, learned counsel for the applicant-assessee has sought to argue that the CIT(A) had held that rice bran purchased by the applicant-assessee either from M/s Raj Kumar Raghbir Kumar or some other party or parties had reached the premises of the assessee and was utilised for production of rice bran oil. Accordingly, the CIT(A) was fully satisfied on the basis of the statement of the Cashier of the Union Bank of India that the amount of ₹34,579/- did not reach the assessee company. It was further held that the applicant-assessee did make genuine purchase either from M/s Raj Kumar Raghbir Kumar or some other party or parties and, hence, no addition could be made on that count. The aforesaid findings, in fact, were reversed and, therefore, the question of law.

8. Mrs. Savita Saxena, learned counsel for the revenue has, however, argued that overwhelming evidence against the applicant-assessee would show that the whole purchases shown by the applicant-assessee from M/s Raj Kumar Raghbir Kumar were bogus. The Tribunal has rejected the copies of the sales tax bills purported to have been issued by the aforesaid firm because the bills did not inspire any evidence as the bills did not carry any sales tax/Central Sales Tax number nor the telephone number. The said firm was not found to be in existence when inquiry was made by the Assessing Officer in the year 1989 nor the address of the party was known to the postal authorities. The said firm was not an existing assessee and the applicant-assessee had failed to produce the said party as also their books of account. The inquiries made by the Assessing Officer from the transport authorities led to the finding that some of the truck numbers given by the applicant-assessee were not truck at all but either scooters, motorcycle and mopeds and many other found to be non-existence because no such number had been allotted by the transport authorities. Dealing with the statement of the Cashier of the Union Bank of India, our attention was invited to the view of the Tribunal that the narration given at the back of Cheque No. 073353, dated 4.10.1986, was not acceptable. Moreover, it was never ever put before the lower authorities.

9. In view of the above, we answer the question against the assessee and in favour of the revenue. The reference is disposed of accordingly. As a necessary corollary of the above discussion, the appeals filed by the revenue, namely ITA Nos. 20 of 1999 and 420

of 2010 are allowed and ITA No. 598 of 2006, filed by the assessee is dismissed.

10. A photocopy of this order be placed on the files of connected appeals.

**(M.M. KUMAR)
JUDGE**

**(ALOK SINGH)
JUDGE**

April 16, 2012
PKapoor

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Sr. No.	ITA No.	Title	Arising out of			
			Date of the impugned order**	Name of the Bench of the ITAT which has passed the impugned order	ITA No. before the Tribunal	Assessment Year
1	20 of 1999	Assistant Commissioner of Income Tax, Circle, Patiala v. M/s J.R. Solvent Industries Pvt. Limited, Sangrur	6.11.1998	Chandigarh Bench	ITA No. 620/Chandi/1990	1988-89
2	598 of 2006	Guru Proteins Limited, Patiala v. Commissioner of Income Tax, Patiala	31.7.2006	Chandigarh Bench 'B'	ITA No. 222/Chandi/2005	1996-97
3	420 of 2010	Commissioner of Income Tax, Patiala v. M/s Guru Proteins Limited, Patiala	24.8.2009	Chandigarh Bench 'B'	ITA No. 649/Chd/2008	1996-97

**(M.M. KUMAR)
JUDGE**

**(ALOK SINGH)
JUDGE**

April 16, 2012
PKapoor