

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

ITA No.872 of 2010 (O&M)

COMMISSIONER OF INCOME TAX

Vs

M/s DABWALI TRANSPORT COMPANY

Adarsh Kumar Goel and Jaswant Singh, JJ

Dated: March 3, 2011

Appellant Rep by: Mr K K Mehta, Sr.Standing counsel

Respondent Rep by: None

JUDGEMENT

Per: Adarsh Kumar Goel:

1. This appeal has been preferred by the revenue under Section 260-A of the Income Tax Act, 1961 (for short, "the Act") against the order of the Income Tax Appellate Tribunal, Chandigarh dated 24.8.2009 in I.T.A. No.596/Chd/2009 for the assessment year 2000-01 proposing following substantial questions of law: -

"(i) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in cancelling the penalty levied u/s 271(1)(c) without appreciating that the additions/disallowance made which formed basis of penalty had been upheld not only by the Ld. ITAT but also by the Hon'ble High Court vide order dated 15.10.2007.

(ii) Whether on the facts and in the circumstances of the case and in law, the Ld. ITAT was justified in canceling the penalty by ignoring the fact that the assessee had consciously concealed its income by deliberately claiming excessive expenses which remained unsupported/ substantiated and were not found to be genuine in quantum appeal proceedings by the Ld. ITAT?"

2. The Assessing Officer, during the course of assessment, disallowed the labour expenses claimed by the assessee in respect of loading and unloading of wheat bags for Haryana Warehousing Corporation, FCI and other departments. It was observed that the assessee failed to produce evidence in support of the claim for the expenses and to rebut the information collected by the Assessing Officer that the charges paid were at a lesser rate. On appeal, the CIT (A) reduced the addition and on further appeal, disallowance of expenses was further reduced. The Assessing Officer also initiated penalty proceedings and finally, levied penalty, which was upheld by the CIT(A). On further appeal, the Tribunal set aside the penalty. It was held that there was no material to show that the assessee consciously concealed the income or furnished inaccurate particulars. Mere disallowance of expenses for want of evidence

could not automatically entail penalty. The finding recorded by the Tribunal is as under: -

"4.A perusal of the assessment records shows that the books of account were duly audited and the firm showed net profit at the rate of 0.41% against 0.47% showed in immediate proceeding year. The impugned profit was declared after setting of interest and salaries to the partners. Admittedly, the profit declared in assessment year 1999-2000 was accepted by the department. The huge labour and transportation expenses left unpaid during assessment year 1999-2000 and disbursed this year had already explained and accepted and verified during scrutiny proceedings for assessment year 2000-01. Similarly, the labour and transport expenses carried over this year and paid in next year were also verified by the learned Assessing Officer during assessment proceedings for 2001-02. In view of these facts, it can be said that there was no conscious act by the assessee, which lead to the concealment of income or furnishing of inaccurate particulars of income....." xx xx xx xx xx

"21. In the light of the above, we are of the view that there is no justification in imposing the penalty especially when necessary information/particulars were furnished by the assessee. It may be a good case of addition on quantum but may not be good for imposition of penalty as quantum and penalty proceedings are altogether different. The Assessing Officer is directed to delete the penalty so imposed."

3. We have heard learned counsel for the parties.

4. Contention raised on behalf of the appellant is that addition on account of disallowance of expenses having been upheld by this Court, burden of proof was on the assessee to show that expenses were claimed on valid basis, in absence of which, it could be presumed that the assessee had consciously furnished incorrect particulars to conceal income by deliberately claiming excessive expenses.

5. We are unable to accept the submission.

6. No doubt the assessee claimed expenses which could not be substantiated and on that ground, the same were disallowed and disallowance was partly upheld upto this Court, but mere fact that the assessee could not furnish evidence in support of the expenses claimed, was not by itself enough to hold that the assessee had furnished incorrect particulars of income consciously. As held by the Tribunal in the order reproduced above, the books of account of the assessee were duly audited and profit declared by the assessee was accepted by the department for the previous year. Substantial part of the expenses claimed was duly explained by the assessee. Whether or not in the facts and circumstances of the case, an inference could be drawn that there was concealment of income or there was furnishing of incorrect particulars, is a question of fact. In the present case, the Tribunal has analysed the facts and held that the assessee could not be held to have consciously given inaccurate particulars.

7. In these circumstances, we are unable to hold that any substantial question of law arises for consideration.

(The appeal is dismissed.)

