

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 563 of 2006

Date of Decision: 30.8.2010

Commissioner of Income-tax, Panchkula

....Appellant.

Versus

The Haryana Warehousing Corporation

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL.
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.**

PRESENT: Mr. Yogesh Putney, Advocate for the appellant.

Mr. Sanjay Bansal, Senior Advocate with
Ms. Shaveta Malhotra, Advocate for the respondent.

ADARSH KUMAR GOEL, J.

1. This order will dispose of ITA Nos. 563 of 2006, 630 and 684 of 2008 as common questions are involved. The facts are being taken from ITA No. 563 of 2006.

2. ITA No. 563 of 2006 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order of the Income Tax Appellate Tribunal, Bench-A, Chandigarh (hereinafter referred to as "the Tribunal") dated 19.5.2006 in ITA No. 668/Chandi/2003, raising following substantial questions of law:-

"1. Whether on the facts and in the circumstances of the case, the ITAT was right in law in

directing to grant the registration under Section 12AA of the Act, even when the assessee corporation is neither a trust nor a charitable institution and its income is neither derived from the property held under trust wholly or charitable or religious purposes nor from voluntary contributions?

2. Whether on the facts and in the circumstances of the case, the ITAT was right in law in directing to grant the registration under Section 12AA of the Act, even when the assessee has failed to fulfil the basic legal requirement to file the original document evidencing its creation, and to file copies of the audited accounts of the three preceding years which is a mandatory provision as per Section 12(A)(b) of the Income Tax Act, 1961?
3. Whether on the facts and in the circumstances of the case, the ITAT was right in law in directing to grant the registration u/s 12AA of the Act, even when under the Warehousing Corporation Act, the assessee corporation is a deemed company and is liable for income tax in respect of its income, profits and gains?"

3. The assessee is a Corporation established under the provisions of the Warehousing Corporations Act, 1962 (in short "1962

Act”). It was earlier claiming exemption under Section 10(29) of the Act but after deletion of the said provision w.e.f. 1.4.2003, it applied for registration under Section 12AA of the Act. The said application was rejected by the Commissioner mainly on the ground that the assessee was earning income and was declaring dividends. The profits were ploughed back for expanding its activities and then earning larger incomes. Thus, the activities were on commercial principles for profit motive which could not be held to be charitable in nature. On appeal, the Tribunal reversed the said view and held that main purpose of the assessee was to provide better facilities for storage and transportation of food-grains which were objects of general public utility. The dominant object being general public utility, incidental profit making did not affect its character as a charitable organization. Reliance was placed on judgment of the Hon'ble Supreme Court in **Director of Income-tax v. Bharat Diamond Bourse, 259 ITR 280 (SC)**. The finding recorded by the Tribunal is as under:-

“In the present case, the activities of the assessee are also of similar nature as in the cases before the Delhi Bench of the ITAT (supra). We accordingly hold that the appellant had been established mainly with a view to advancing the object of general public utility, which falls within the definition of 'charitable purposes'. The Id Commissioner of Income-tax was, therefore, required to consider the application of the assessee in accordance with law. Some of the reasons given by the Commissioner refusing

registration are also unwarranted. The assessee-corporation has been constituted under the statute-an Act of the Parliament. The State Govt. has issued notification for constitution of the assessee-corporation, copy whereof was filed before the CIT. Since the dominant object of constitution of the corporation was advancement of the object of general public utility, the assessee was entitled to registration u/s 12A.”

4. We have heard learned counsel for the parties and perused the record.

5. Learned counsel for the appellant submits that Section 30 (2) of the 1962 Act provides that the Warehousing Corporation may declare dividend. Under Section 39, it was deemed to be a company which is liable to income-tax and super-tax on its income, profits and gains. Under Section 18 (2), the State Warehousing Corporation is a body corporate and can acquire, hold and dispose of property. He also submits that the assessee was carrying on trading activities of purchasing wheat and selling the same which is one of its statutory functions under Section 24 (d).

6. On the other hand, learned counsel for the assessee submits that its case was covered under Section 2(15) of the Act. It was constituted under a statute to advance a public purpose of running warehouses for storage of agricultural produce and carrying on other allied activities under Section 24 of the 1962 Act. Merely because it was a juristic person to acquire, hold and dispose of property and was

deemed to be a company and declared dividend did not deviate from its character as charitable body covered under Section 2(15) of the Act. Under Section 19 of the Act, 50% share capital was subscribed to by the Central Warehousing Corporation while the remaining 50% by the State Government. He submits that there was no substantial question of law as the Tribunal has followed judgment of the Hon'ble Supreme Court in **Bharat Diamond Bourse's case (supra)** which judgment was further reiterated by the Hon'ble Supreme Court in **Commissioner of Income-Tax v. Gujarat Maritime Board, [2007] 295 ITR 561**. He also placed reliance on order passed by this Court on 5.7.2010 in **ITA No. 333 of 2009 (The Commissioner of Income Tax v. Market Committee, Pundri)**.

7. It is clear by reference to the statutory provisions of the Act that the assessee has been constituted with the object of warehousing of agricultural produce and other activities and matters connected therewith. Constitution of the assessee is under the statutory provisions by way of a notification in official gazette by the State Government with the approval of Central Warehousing Corporation. The Central Warehousing Corporation is constituted under Section 3 by the Central Government. The functions of the assessee are statutory functions of acquiring and building godowns and warehouses and running of such warehouses for storage of agricultural produce and other similar commodities providing facilities for transport of agricultural produce and to act as agent of Central Warehousing Corporation for purchasing, selling, storing and distribution of such produce. These being statutory functions of the assessee clearly falls under Section 2(15) of the Act as

interpreted by the Hon'ble Supreme Court in **Bharat Diamond Bourse** and **Gujarat Maritime Board cases (supra)**, no fault can be found with the finding recorded by the Tribunal. Mere fact that it can acquire, hold and dispose of property which is feature of every juristic person and that it is deemed to be a company and can declare dividend will not in any manner deviate from the character of the assessee.

8. We may refer to following observations in judgment of the Hon'ble Supreme Court in **Gujarat Maritime Board**:

“We have perused a number of decisions of this court which have interpreted the words, in section 2(15), namely, “any other object of general public utility”. From the said decisions it emerges that the said expression is of the widest connotation. The word “general” in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose (CIT v. Ahmedabad Rana Caste Association [1983] 140 ITR 1 (SC). The said expression would prima facie include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable even if public welfare is intended to be served. If the primary purpose and the predominant object are to promote the welfare of the general public the purpose would be charitable

purpose. When an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the said trade or industry (CIT v. Andhra Chamber of Commerce [1965] 55 ITR 722 (SC). If the primary or predominant object of an institution is charitable, any other object which might not be charitable but which is ancillary or incidental to the dominant purpose, would not prevent the institution from being a valid charity (Addl. CIT v. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1 (SC).”

9. The matter being covered by the judgments, referred to above, the questions are answered against the revenue and in favour of the assessee.

10. The appeals are dismissed.

**(ADARSH KUMAR GOEL)
JUDGE**

August 30, 2010
gbs

**(AJAY KUMAR MITTAL)
JUDGE**

ITA No. 563 of 2006

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 684 of 2008

Date of Decision: 30.8.2010

Commissioner of Income Tax, Panchkula

....Appellant.

Versus

Haryana Warehousing Corporation

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL.
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.**

PRESENT: Mr. Yogesh Putney, Advocate for the appellant.

Mr. Sanjay Bansal, Senior Advocate with
Ms. Shaveta Malhotra, Advocate for the respondent.

ADARSH KUMAR GOEL, J.

For orders, see **ITA No. 563 of 2006 (Commissioner of
Income-tax, Panchkula v. The Haryana Warehousing Corporation).**

**(ADARSH KUMAR GOEL)
JUDGE**

**August 30, 2010
gbs**

**(AJAY KUMAR MITTAL)
JUDGE**

ITA No. 563 of 2006

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 630 of 2008

Date of Decision: 30.8.2010

Commissioner of Income Tax, Panchkula

....Appellant.

Versus

Haryana Warehousing Corporation

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL.
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.**

PRESENT: Mr. Yogesh Putney, Advocate for the appellant.

Mr. Sanjay Bansal, Senior Advocate with
Ms. Shaveta Malhotra, Advocate for the respondent.

ADARSH KUMAR GOEL, J.

For orders, see **ITA No. 563 of 2006 (Commissioner of
Income-tax, Panchkula v. The Haryana Warehousing Corporation).**

**(ADARSH KUMAR GOEL)
JUDGE**

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