ITA No. 519 of 2010

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 519 of 2010

Date of Decision: 9.11.2010

The Commissioner of Income Tax

....Appellant.

Versus

M/s Shahabad Co-op Sugar Mills Ltd.

...Respondent.

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

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

## ADARSH KUMAR GOEL, J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chandigarh Bench "B" in ITA No. 32/Chandi/2009 dated 9.9.2009 for the assessment year 2002-03, proposing to raise following substantial question of law:-

"Whether on the facts and in the circumstances of the case the Ld. ITAT is right in law in deleting the penalty imposed upon the assessee u/s 271(1)(c) of the Income Tax Act on account of admitted wrong claim of depreciation against the law laid down by the Hon'ble Apex Court in the case of Union of India and others vs. Dharmendra Textiles Processors and others 306 ITR 277 (SC)?"

2. The assessee is a Cooperative Sugar Mill and in its return made a claim for depreciation which was found to be inadmissible. Apart from disallowing the said claim penalty was also imposed which was set aside on appeal. The Tribunal upheld the order of the CIT(A) with the following observation:-

"Firstly, it is to be appreciated that there is no allegation on the assessee of not disclosing the complete particulars. In fact, the return of income of the assessee was accompanied by a schedule of fixed assets which inter-alia showed additions made prior to 30.09.2001 and post 30.09.2001. Moreover, the Account Books of the assessee have been subject to tax audit u/s 44AB of the Act by a firm of Chartered Accountants, a copy of which has been placed on record. Even in such statement, the depreciation claim has been calculated by applying the normal rate of depreciation on the entire additions. Secondly, having regard to the fact that the respondent assessee is a Co-operative Sugar Mills which is manned by public officers, the bonafides of the same are prima-facie not in doubt. Further, the difference in the claim has arisen on account of a mere wrong application of depreciation rate. It is not a case where such mistake has been found after a long drawn investigation or enquiry so as to establish that any concealed income has been

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unearthed. The mistake was discovered during the assessment proceeding and the assessee filed a corrected claim in the assessment proceeding. Under these circumstances, we therefore are satisfied that it was a mere mistake committed by the assessee while filing return of income and the entire facts had been duly disclosed by the assessee bonafidely. Thus, there cannot be a scope for alleging any concealment or furnishing of inaccurate particulars of income against the assessee within the meaning of Section 271(1)(c) of the Act."

- 3. We have heard learned counsel for the appellant.
- 4. In view of finding of the Tribunal which is not shown to be perverse in any manner, no substantial question of law arises.
- 5. The appeal is accordingly dismissed.

(ADARSH KUMAR GOEL)
JUDGE

November 9, 2010 gbs

(AJAY KUMAR MITTAL)
JUDGE