

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

ITA No. 670 of 2008
Date of decision 28 .1.2010

The Commissioner of Income tax-1, Chandigarh ... Appellant

Versus

M/s Punjab State Warehousing Corporation ... Respondents.

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

Present: Ms. Urvashi Dhugga ,Advocate for the appellant

- 1.To be referred to the Reporter or not ?
- 2.Whether the judgement should be reported in the Digest ?

M.M.KUMAR, J.

The revenue has approached this Court challenging order dated 8.2.2008 passed by the Income Tax Appellate Tribunal, Bench B, Chandigarh (for brevity 'the Tribunal') in ITA No. 895/ CHD/ 2006 in respect of the assessment year 2003-04. The Revenue has claimed that following substantive questions of law would emerge for determination of this Court:

“ Whether in the facts and circumstances of the case the Hon'ble Tribunal was right in confirming the order of the CIT (A) by directing to take the figure of closing stock of the immediately preceding year based on provisional accounts as opening stock of current year instead of the figure of opening stock available as per audited accounts and adopted by the A.O.”?

The Tribunal while reiterating the view taken by the CIT (Appeals) has recorded a categorical finding that once the Revenue has accepted then

closing stock it would automatically become the opening stock for the subsequent assessment year. There has not been any dispute on the fact that the department itself finalised assessment for the assessment years 1994-95 to 2000-01 on the basis of provisional accounts inspite of availability of final audited accounts. For the assessment years 1999-2000 and 2000-01, returns were filed in response to notices issued under Sections 147 and 148 of the Act which were accompanied by final audited account. However, the assessment was framed on the basis of provisional accounts submitted with the original return and the Assessing Officer ignored the final audited accounts. Accordingly, the Revenue could not have adopted pick and choose method to finalize the assessment i.e. the higher profit out of provisional account or final audited accounts for the calculation of taxable profit by ignoring the principles of consistency. The Tribunal has noticed the fact that for the assessment year 1999-2000 the value of the closing stock as on 31st March was the same amount which was the amount shown as the opening account for the assessment year 2000-01 as on 1st April. Similar factual position is prevalent in respect of the assessment years 2000-01, 2001-02, 2002-03 ad 2003-04. Accordingly the principles of consistency has been relied upon and the judgement of the Hon'ble Supreme Court rendered in the case of Berger Paints India Ltd. v. CIT 266 ITR 99 (SC) has been cited.

Having heard the learned counsel we are of the considered view that once the factual position is similar in respect of the earlier assessment years, for the disputed assessment year 2003-04 no different view could be taken. We find that categorical findings of fact have been recorded in that regard which cannot be re-opened especially when there is no change of

circumstance warranting a different view. The appeal is wholly without merit and no substantive question of law warranting admission of the appeal would arise. Accordingly, the appeal fails and the same is dismissed.

(M.M.Kumar)
Judge

28.1.2010

(Ajay Tewari)
Judge

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