

Punjab-Haryana High Court

Commissioner Of Income Tax vs Market Committee on 17 July, 2012

ITA No. 494 of 2005

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 494 of 2005

Date of Decision: 17.7.2012

Commissioner of Income Tax, Hisar

....Appellant.

Versus

Market Committee, Sirsa

...Respondent.

CORAM: - HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.

PRESENT: Mr. Tajinder Joshi, Advocate for the appellant.

None for the respondent.

AJAY KUMAR MITTAL, J.

1. Learned counsel for the appellant has supplied the photo copies of the paper-books for the purposes of reconstruction of the files as the same were burnt in fire which took place in the premises of this Court. The same are taken on record and are treated to be reconstructed files.

2. This order shall dispose of ITA Nos. 494 and 495 of 2005 as identical questions of law and facts are involved in both the appeals. For brevity, the facts are being extracted from ITA No. 494 of 2005.

3. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 25.2.2005 passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (hereinafter referred to as "the Tribunal) in ITA No. 657/CHANDI/2001, for the assessment year 1996- 97, claiming the following substantial question of law:-

"Whether on the facts and in the circumstances of the case the Hon'ble ITAT is correct in law in deleting the penalty of Rs.1 lac levied u/s 271B of the Income Tax

Act, 1961 for the assessment year 1996-97 despite the fact that Market Committee had turnover exceeding the limit prescribed u/s 44AB of the Act and had failed to get its accounts audited before the specified date and furnish the audit report within the period prescribed?"

4. Put shortly, the facts necessary for the disposal of the present appeal as narrated therein are that the assessee filed its return on 13.2.1997 for the assessment year 1996-97 declaring nil income by giving a note in the computation of income that the income received from house property by it was exempted under Section 10(20) of the Act. The assessee earned income from house property amounting to `7,72,300/- and TDS had been deducted thereon by the payer of the rent, the assessee sought refund of the TDS amount on the ground of the income being exempted. In response to the notice issued to the assessee, it filed income and expenditure account showing total receipt of `7,30,58,508.30. Subsequently, the assessee had also furnished the break up of this income as:-

"1.	U/s 10	59545/-
2.	Market Fee	57871269/-
3.	Composition Fee	15315/-
4.	Sale of forms	19040/-
5.	Other Misc. Fee	2000/-
6.	Security	138/-
7.	Misc. Income	79282.59
8.	Rent	754076.10

9. Interest of investment 14092311.61

10. S/A 162300.00 73058507.30"

5. Since the gross receipts of the assessee were more than the prescribed limit under Section 44AB of the Act for the purpose of getting the accounts audited and submission of a copy of the audit report. The assessing having failed to comply with the provisions of Section 44AB of the Act, a show cause notice was issued to the assessee for imposing penalty under Section 271B of the Act. Accordingly, the Assessing Officer imposed a penalty of ` 1,00,000/- under Section 271B of the Act. Feeling aggrieved by the said order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [in short "the CIT(A)"]. The CIT(A) vide order dated 2.5.2001 upheld the order of the Assessing Officer and dismissed the appeal. Against the order of the CIT(A), the assessee filed appeal before the Tribunal. The Tribunal vide order dated 25.2.2005 allowed the appeal and cancelled the penalty imposed by the Assessing Officer. Hence, the present appeal by the revenue.

6. Learned counsel the appellant-revenue submitted that the respondent-assessee was required to get its accounts audited under Section 44AB of the Act and the assessee having failed to do so, was liable for penalty under Section 271B of the Act. According to the learned counsel, the Assessing Officer had rightly imposed a penalty of ` 1 lac which was upheld by the CIT(A) but the Tribunal had erred in deleting the same.

7. After hearing the learned counsel for the revenue, we do not find any merit in this appeal. It would be expedient to refer to Section 44AB of the Act as it existed at the relevant time which reads thus:-

"44AB. Every person,-

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds forty lakh rupees in any previous year; or

(b) carrying on profession shall, if his gross receipts in profession exceed ten lakh rupees in any previous year; or get his accounts of such previous year or years audited by an accountant before the specified date and obtain before that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

Provided that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BB or section 44BBA or section 44BBB, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later: Provided further that in a case where such person is required by or under any other law to get his accounts audited by an accountant, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and obtains before that date the report of the audit as required under such other law and a further report in the form prescribed under this section, Explanation.- XX XX XX XX XX XX XX"

8. Section 44AB of the Act requires every person carrying on business or profession to get his accounts audited where the turnover or the gross receipts exceeds the prescribed limits. The audit is to be carried out by the specified date.

9. Section 271B of the Act provides for levy of penalty in case of violation of provisions of Section 44AB of the Act. Section 271B of the Act as it existed during the relevant assessment year was in the following terms:-

"271B. If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross

receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred fifty thousand rupees, whichever is less."

10. Under Section 271B of the Act, penalty is leviable for any of the following defaults:-

(1) Failure to get the accounts audited as required under section 44AB; or (2) Failure to furnish the said report."

11. Chapter IV of the Act provides for 'computation of total income'. Section 44AB of the Act is one of the sections enacted under Chapter IV-D dealing with computation of profits and gains of business or profession. Section 44AB of the Act becomes operative where there is computation of profits and gains of business or profession as a part of total income. In other words, it has no applicability where the assessee is not involved in or has no income from profits and gains from business or profession. In the present case, it was not disputed that the income of the assessee was exempted under Section 10 (20) of the Act which falls in Chapter III of the Act. There was no income of the assessee which would fall under heading "profits and gains of business or profession". Once that was so, it could not be said that the provisions of Section 44AB were applicable and as a sequel thereto, penalty under Section 271B of the Act was not leviable. The Tribunal had rightly decided the issue in favour of the assessee.

12. In view of the above, the substantial question of law as claimed by the revenue is answered against the revenue. The appeals are accordingly dismissed.

(AJAY KUMAR MITTAL)  
JUDGE

July 17, 2012  
gbs

(G.S. SANDHAWALIA)  
JUDGE

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH ITA No. 495 of 2005 Date of Decision: 17.7.2012 Commissioner of Income Tax, Hisar ....Appellant.

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

HON'BLE MR. JUSTICE G.S. SANDHAWALIA.

PRESENT: Mr. Tajinder Joshi, Advocate for the appellant.

None for the respondent.

AJAY KUMAR MITTAL, J.

For orders, see ITA No. 494 of 2005 (Commissioner of Income Tax, Hisar v. Market Committee, Sirsa).

(AJAY KUMAR MITTAL)  
JUDGE

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