

ITA No. 338 of 2015

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 338 of 2015 (O&M)

Date of Decision: 9.10.2015

M/s Council for Citrus and Agri Juicing in Punjab, Chandigarh
...Appellant.

Versus

Commissioner of Income Tax (TDS) and another
...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **Yes**
3. Whether the judgment should be reported in the Digest?

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

PRESENT: Mr. Vishal Gupta, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 17.3.2015 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 30/ASR/2014, for the assessment year 2008-09, claiming the following substantial questions of law:-

- i) Whether the Tribunal erred on facts and in law in dismissing the appeal of the appellant on the ground that the assessee-appellant has failed to prove the loan amount being raised from the State Government and the interest is payable to

the Government and as such the issue is covered under Section 196(i) of the Act?

- ii) Whether the Tribunal was justified in dismissing the appeal of the assessee on the ground that no evidence has been produced on record that the loan amount belongs to the State Government and neither the interest nor the principal has ever been paid by the appellant?

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The Income Tax Officer (TDS)-II, Chandigarh has received information that the assessee has neither deducted or short deducted tax at source under Sections 194A, 194C, 194I and 194J of the Act amounting to ₹ 9,21,626/- for the financial year 2007-08 relating to the assessment year 2008-09 and he passed on the same to the Income Tax Officer (TDS)-I, Jalandhar for necessary action. The Income Tax Officer (TDS)-I, Jalandhar issued a show cause notice dated 21.3.2012 to the assessee for verification of the compliance of TDS/TCS provisions. The Assessing Officer vide order dated 27.3.2012 (Annexure P-1) passed under Sections 201(1)/201(1A) of the Act raised a demand of ₹ 13,64,006/- including interest. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 8.11.2013 (Annexure A-2) partly allowed the appeal. Still dissatisfied, the assessee challenged the orders, Annexures A-1 and A-2 before the Tribunal, who vide order dated 17.3.2015 (Annexure A-3) upheld the order of the CIT(A) and dismissed the appeal. Hence, the present appeal.

3. Learned counsel for the assessee submitted that the authorities below were in error in declining the benefit as was available under Section 196(i) of the Act. It was urged that the interest paid by the assessee was to the Government as envisaged thereunder and, therefore, no tax deduction at source was required to be made. Learned counsel referred to Annexures A-4 and A-5 to contend that it clearly shows that the interest was paid to the Government as the corpus fund was created by the Government.

4. After hearing learned counsel for the appellant-assessee, we do not find any merit in the appeal.

5. Section 196(i) of the Act reads as under:-

“196. Notwithstanding anything contained in the foregoing provisions of this Chapter, no deduction of tax shall be made by any person from any sums payable to-

(i) the Government, or

(ii) to (iv) XX XX XX

where such sum is payable to it by way of interest or dividend in respect of any securities or shares owned by it or in which it has full beneficial interest, or any other income accruing or arising to it.”

6. A plain reading of the said section shows that there would be no deduction of tax from the sums which are paid or payable to the Government by way of interest or dividend in respect of any securities or shares owned by it or in which it has full beneficial interest, or any other income accruing or arising to it.

7. A show cause notice dated 26.3.2012 was issued to the

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assessee for short deduction of tax at source and accordingly the Assessing Officer vide order dated 27.3.2012 (Annexure A-1) created a total demand of ₹ 13,64,006/- including ₹ 9,21,626/- for short deduction of tax at source under Section 201(1) of the Act and ₹ 4,42,380/- on account of interest under Section 201(1A) of the Act. The CIT(A) recorded that the assessee had made a provision for the interest of ₹ 48 lacs in its books of account where no TDS was deducted even after the financial year was over. It was also recorded that the Punjab Agro Industrial Corporation (PAIC) has also not shown the interest income in their books of account. The CIT(A) concluded that the Assessing Officer was right in creating demand of ₹ 5,43,840/- along with interest for not deducting TDS. The Tribunal while affirming the findings of the CIT(A) held that there was no documentary evidence to the effect that the loan has been raised by the assessee from the Government and the interest thereon was payable to the Government. However, the Tribunal sent the matter back to the Assessing Officer for determination of rate of TDS application, i.e. @ 10.30% or 11.33%. The relevant findings recorded by the Tribunal read thus:-

“8. We have heard the rival contentions and perused the facts of the case. There is no documentary evidence placed on record by the Id. counsel for the assessee that the loan has been raised from the Government and interest is payable to the Government and therefore, the submission made before the Id. CIT(A) and before us cannot help the assessee to cover the issue u/s 196(i) of the Act. It has also been conceded before the Id. CIT(A) that

Punjab Agro Food Grains Corpn. Ltd. has also not declared the said interest income in their books of account and therefore, judicial pronouncement in the case of Hindustan Coca-Cola will not be available to the assessee as held by the Id. CIT(A). The relevant findings of Id. CIT(A) at page 18 are reproduced for the sake of convenience as under:-

“It has been submitted by the assessee that the Punjab Agro Food Grains Corporation Limited has provided loan/funds of Rs.6 crores to the assessee on which no interest was ever paid by the assessee. It has also been submitted that the assessee has also not provided any interest on the loan of Rs.6 crores in the books of account/balance sheet. When asked the assessee to substantiate its claim, it has been fairly conceded by the Ld. ARs of the assessee that the assessee has provided for the interest of Rs.48 lakhs in the books and no TDS was deducted as the financial year was already over. It has also been conceded during the appellate proceedings that PAIC has also not shown the interest income in their books of account as their income meaning thereby that the benefit of the judicial pronouncement in the case of Hindustan Coca-Cola will also not be available to the assessee. In these facts and in

the circumstances of the case, I am of the opinion that the AO is justified in creating demand of Rs.5,43,840/- along with interest in the case of the assessee for not deducting TDS as per provisions of section 194 of the Act. In the result, ground of appeal no.2 taken by the assessee is dismissed.”

9. In the facts and circumstances of the case, we find no infirmity in the order of the Id. CIT(A), who has rightly held the assessee in default u/s 201(1) and 201(1A) of the Act. We find no infirmity in the order of the Id. CIT(A) subject to the rate of interest which the assessee in ground No.3 has agitated should have been 10.30% instead of 11.33%. The AO is directed to verify the rate of interest as per law whether it is 10.30% or 11.33%. Accordingly, the matter is set-aside to the file of the AO only to the extent of determination of rate of TDS applicable i.e. @ 10.30% or 11.33%. Hence, ground no.2 of the assessee is dismissed and ground no.3 is set aside to the file of the AO to determine the rate of interest applicable in the light of our direction hereinabove. Ground No.4 is also dismissed in view of our finding and finding of the Id. CIT(A).”

8. Learned counsel for the assessee was unable to show from the perusal of Annexures A-4 and A-5 appended along with the appeal that the payment of interest was made to the Government except to

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repeat that the corpus fund was created by the Government from which the loan was advanced to the appellant. A perusal of Annexure A-4 shows that it is a certificate issued by the PAIC that the corpus fund belong to the State Government of Punjab and an income arising out of it belonged to the Government of Punjab. Annexure A-4 is a self-serving certificate issued without any corroboration from any supporting material. Annexure A-5 also does not advance the case of the appellant as it is the minutes of meeting of Corpus Fund Committee only. Thus, it cannot be said that the interest paid by the appellant was to the Government and would fall under Section 196(i) of the Act.

9. In view of the above, no substantial question of law arises in this appeal. Consequently, finding no merit in the instant appeal, the same is hereby dismissed.

10. There is a delay of 2 days in filing the appeal. CM No. 19282-CII of 2015 has been filed for condonation of 2 days' delay in filing the appeal. Since the appeal has been dismissed on merits, no further orders are required to be passed in the application for condonation of delay in filing the appeal and the same is disposed of as such.

**(AJAY KUMAR MITTAL)
JUDGE**

October 9, 2015
gbs

**(RAMENDRA JAIN)
JUDGE**