

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 315 of 2006 (O&M)

Date of Decision: 18.2.2016

M/s Pooja Rice and General Mills, Galwaddhi, Khanna
....Appellant.

Versus

CIT, Ludhiana
...Respondent.

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

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. S.K. Mukhi, Advocate for the appellant.

Mr. Z.S. Klar, Advocate for the respondent.

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 7.10.2005 (Annexure A-1) passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 154/CHANDI/2002, for the assessment year 1998-99, claiming the following substantial questions of law:-

- A. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified on facts and in law in reversing the action of CIT(A) and thereby sustaining the

addition to the extent of ₹ 8,52,513/- by not allowing the appellant to exercise the right granted to him by Section 139(5) of Income Tax Act, 1961 for revising of the Income Tax Return to which he is legally entitled?

B. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified on facts and in law in reversing the orders of CIT(A) and thereby confirming the addition to the extent of ₹ 8,52,513/- as made by the A.O. by failing to appreciate the fact that the A.O. itself has in earlier as well as in future years accepted the similar method of valuation of closing stock of the appellant which is in clear defiance of law of the land as laid down by the Hon'ble Supreme Court in the case of Berger Paints India Limited v. CIT, 266 ITR 99 (SC)?

C. Whether on the facts and in the circumstances of the case the findings of the Income Tax Appellate Tribunal in reversing the orders of CIT (A) are wrong and perverse?

D. Whether on the facts and in the circumstances of the case the findings of the Income Tax Appellate Tribunal in reversing the orders of CIT (A) without passing a speaking order and without controverting the findings of the CIT(A) which finding of the ITAT are wrong and

perverse?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is running a Rice Sheller and is also dealing in other items like wheat, mustard seeds and arhar. It filed its return for the assessment year 1998-99 on 28.10.1998 declaring the income at ₹ 86,080/- and the said return was subsequently revised under Section 139(5) of the Act on 3.2.2000 to ₹ 1,14,162/-. At the time of filing of the original return, the valuation of the closing stock which included the value of rice, rice bran, husk and bardana was shown at ₹ 1,99,20,808.75 which was revised to ₹ 1,99,48,886/- by omitting the stock of mustered seed and damaged arhar by showing certain discrepancies due to inadvertent mistake committed by the Accountant. According to the assessee, the method of valuation of closing stock regularly being followed by it was to value the raw material at their cost price whereas the finished goods and other bye products were to be taken at their realizable value which is discernible from the remarks of the Auditor given on Form 3CB and 2CD of the Tax Audit Report (Annexure A-4) for the year ending 31.3.1997 to 31.3.1999. The Assessing Officer vide assessment order dated 19.3.2001 (Annexure A-2) rejected the revised valuation of the closing stock of the assessee and assessed the income at ₹ 9,38,597/- by making an addition of ₹ 8,52,513/-. 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 31.12.2001 (Annexure A-3) partly allowed the appeal by restricting the addition of ₹ 8,52,513/- made by the Assessing Officer to ₹ 14,344/-. Against the order, Annexure A-3, the revenue filed an appeal before the Tribunal. The Tribunal vide order

dated 7.10.2005 (Annexure A-1) allowed the appeal and confirmed the addition of ₹ 8,52,513/- made by the Assessing Officer. Hence, the present appeal.

3. Learned counsel for the appellant/assessee submitted that the Tribunal has erred in law by not allowing the assessee to revise its return of income under Section 139(5) of the Act. It was further submitted that the CIT(A) had rightly restricted the addition to ₹ 14,344/- whereas the Tribunal has wrongly sustained the addition of ₹ 8,52,513/- made by the Assessing Officer. Reliance was placed upon the judgments in **Goetze (India) Ltd. v. Commissioner of Income Tax (2006) 284 ITR 323 (SC)**; **Commissioner of Income Tax v. Fazilka Co-operative Sugar Mills Ltd. (2002) 255 ITR 411 (P&H)**; **Commissioner of Income Tax v. Satish Estates P. Ltd. (2014) 361 ITR 451 (P&H)**; **Commissioner of Income Tax v. Chandrika Towers (2005) 275 ITR 173 (MP)**; **Commissioner of Income Tax v. Ahmedabad Keiser-E-Hind Mills Co. Ltd. (1981) 128 ITR 486 (Guj)**; **Dr. K.P. Srivastava v. Commissioner of Income Tax 262 ITR 299 (All)** and **Jayshree Tea and Industries Ltd. v. Commissioner of Income Tax 272 ITR 193** in support of his contentions.

4. On the other hand, learned counsel for the revenue supported the orders passed by the Assessing Officer as well as the Tribunal.

5. We have heard learned counsel for the parties.

6. The original return was filed on 28.10.1998 declaring the income at ₹ 86,080/- which was subsequently revised to ₹ 1,14,162/- on 3.2.2000. In the original return, the valuation of the closing stock was

shown at ₹ 1,99,20,808.75 which was revised to ₹ 1,99,48,886/-. The closing stock included rice, rice bran, phak, husk and bardana and the assessee revised the value of rice husk, rice bran and bardana. The assessee took a plea that since the valuation of certain finished goods was wrongly adopted at higher rates, their realizable value needed to be rectified. The assessee in the revised return filed under Section 139(5) of the Act also had not depicted the true and correct value of the finished goods. Accordingly, the Assessing Officer assessed the income of the assessee at ₹ 9,38,600/- by making an addition of ₹ 8,52,513/-. On appeal by the assessee, the CIT(A) restricted the said addition of ₹ 8,52,513/- to ₹ 14,344/-. On further appeal by the revenue, the Tribunal sustained the addition of ₹ 8,52,513/- made by the Assessing Officer by holding that the said addition was made on the basis of sale instances and not on hypothetical basis. It was further held by the Tribunal that nothing was produced by the assessee to show the basis of wrong valuation. The assessee itself adopted the value of rice at ₹ 1050/- per quintal and no reason had been given for re-valuing the same at ₹ 950/- per quintal. The stock had to be valued either at the market rate or at the cost price but the assessee had adopted a different view which was not realistic. Further, for husk, the original value was taken at ₹ 55/- per quintal which was revised to ₹ 48/- per quintal but in the case of M/s Pooja Fats Pvt. Ltd., a sister concern of the assessee, the closing stock of husk was valued at ₹ 60/- per quintal. For rice bran, the value of rice was worked at ₹ 328/- per quintal which was revised to ₹ 280/- per quintal whereas during the relevant financial year, it was at the rate of ₹ 295/- per quintal. The relevant findings recorded by the Tribunal read thus:-

“We have not found any mistake in such a conclusion of the Assessing Officer which is based on sale instances and not hypothetical. What was the basis of wrong valuation has not been adduced before us by the assessee. This is an undisputed fact that assessee himself adopted the value at ₹ 1050/-. What prompted the assessee to re-value the same at the rate of ₹ 950/- has not been explained before us. Undisputedly, the original return was duly signed by the partner of the assessee firm. The Id. CIT(A) has not adduced any reasoning in coming to a particular conclusion. We are in agreement with the contention of Id. counsel for the assessee that correct value has to be adopted in the present case. The conclusion of the Assessing Officer is correct which is based on more scientific method wherein sale instances have been quoted and at the same time, those rates were duly authenticated by the assessee itself in its original return. Normally, stock is to be valued either at the market price or at the cost price. The assessee has adopted a different method which in our view is not realistic. Likewise, for husk, the original value was taken at ₹ 55/- per quintal and was revised to ₹ 48/- per quintal but in the case of M/s Pooja Fats Pvt. Ltd. which is a sister concern of the assessee, the closing stock of husk was valued at ₹ 60/- per quintal. For rice bran, the value of rice was worked at ₹ 328/- per

quintal which was revised at ₹ 280/- per quintal whereas during the relevant financial year, it was at the rate of ₹ 295/- per quintal. The Assessing Officer has mentioned certain bill nos also dated 6.11.1997. We have not found any mistake in coming to the conclusion regarding particular rate adopted by the Assessing Officer. In view of these facts, the order of the CIT(A) is set aside and that of the Assessing Officer is restored.”

7. Adverting to the judgments in **Goetze (India) Ltd., Fazilka Co-operative Sugar Mills Ltd., Satish Estates P. Ltd., Chandrika Towers, Ahmedabad Keiser-E-Hind Mills Co. Ltd., Dr. K.P. Srivastava and Jayshree Tea and Industries Ltd's cases (supra)** relied upon by the learned counsel for the assessee, suffice it to notice that the principle of law enunciated therein, is well recognized, but in view of the findings recorded by the Tribunal as noticed hereinbefore, no benefit can be derived by the assessee from the aforesaid pronouncements.

8. In view of the above, there is no error in the approach of the Assessing Officer as well as the Tribunal. The substantial questions of law claimed are answered accordingly. Consequently, there is no merit in the appeal and the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

February 18, 2016
gbs

(RAJ RAHUL GARG)
JUDGE