
(2000) 07 P&H CK 0208
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Case No. 81 of 1999

Commissioner of Income Tax

APPELLANT

Vs

Bharat Rice Mills

RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2)

Citation : (2001) 169 CTR 455 : (2001) 250 ITR 584 : (2002) 122 TAXMAN 418

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : R.P. Sawhney and Rajesh Bindal, for the Appellant;

Judgement

G. S. Singhvi, J.—This is a petition u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act"), for directing the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the Tribunal"), to refer the following questions of law for the opinion of the High Court :

"(i) Whether, on the facts and in the circumstances of the case and in view of the detailed reasons discussed in the assessment order, the Income Tax Appellate Tribunal was right in law in holding that the account books did not deserve to be rejected ?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in deleting additions of Rs. 6,26,615 and Rs. 3,78,484 for the first period and second period, respectively, in rice, rice bran, phak and husk accounts made by the Assessing Officer and additions of Rs. 1,04,000 and Rs. 74,400 confirmed by the Commissioner of Income Tax (Appeals) in rice account and phak account ?"

2. A perusal of the record shows that the return filed by the assessee (respondent) for the accounting period from September 1, 1987, to March 31, 1989, was not accepted by the assessing authority on the following grounds :

"(1) The entire paddy had been purchased by the assessee above support price. The paddy issued for milling in February and March does not contain same moisture as in October and November. Thus, the maximum shortage on account of moisture, dust and dirt could not be more than 5 per cent.

(2) No day-to-day stock tally was maintained on account of diage.

(3) No day-to-day stock tally is maintained in respect of phak and husk.

(4) No day-to-day stock register of actual weightment is maintained in respect of paddy issued for milling.

(5) No stock register in respect of quality of paddy is maintained.

(6) No day-to-day stock is maintained about percentage of moisture in various lots.

(7) No record is maintained about dust, dirt and other impurities."

3. He, therefore, issued notice to the assessee and after considering its reply passed the order dated October 5, 1990, for payment of tax by making additions of Rs. 6,28,615 for the first period and Rs. 3,78,484 for the second period. The appeal filed by the assessee was partly allowed by the Commissioner of Income Tax (Appeals), Patiala, who ordered deletion of Rs. 5,10,515 for the first period and Rs. 3,20,184 for the second period. The appellate order was challenged by the assessee as well as the Revenue by filing appeals before the Tribunal which upheld the plea of the assessee and dismissed the one raised by the Revenue. A reference application filed by the Revenue u/s 256(1) of the Act was also rejected by the Tribunal.

4. We have heard Shri R. P. Sawhney and perused the record.

5. The Tribunal has dealt with the issue relating to the additions made by the assessing authority in the following words :

"We have considered carefully the submissions made by both the parties and have perused the orders of the Departmental authorities. It is observed that the Assessing Officer has proceeded to adopt yield of rice and various by-products on the basis of report of PAU before working out the addition in respect of both the periods. It is also observed that the Commissioner of Income Tax (Appeals) has clearly held that bulk of purchase of paddy were made in the months of September, October and November, when there was more moisture in paddy than that purchased in January and February. He further noted that the assessee had made purchases of inferior quality of paddy too. Thus, learned Commissioner of Income Tax (Appeals) has accepted in principle that the assessee had purchased paddy containing more moisture and of inferior quality. Still learned Commissioner of Income Tax (Appeals) upheld the rejection of books by making a cursory reference that the Assessing Officer has pointed out certain defects in the books maintained. He did not point out specific defects on the basis of which rejection of books could be justified. We feel that in view of the case law relied

upon by learned counsel, his contentions have to be accepted and that yield of rice estimated by the Commissioner of Income Tax (Appeals) at 65.5 per cent, of paddy milled is without basis. It is also observed that the case law relied upon by the learned Departmental Representative is distinguishable on facts as in this case stock register and milling register have been maintained and the only defect pointed out by the Assessing Officer is that the assessee had shown yield on some percentage basis. The Departmental authorities have not brought anything on record to show that there are sales outside the books so as to justify the addition. Accordingly, addition of Rs. 1.04 lakhs sustained by the Commissioner of Income Tax (Appeals) on account of alleged suppressed yield of rice is deleted.

With reference to yield of phak it is observed that the assessee did not show any yield for the first period and the Assessing Officer worked out yield of phak at 3 per cent, and by applying the market rate of Rs. 80 per qtl. he made an addition of Rs. 1 lakh. Similarly, he worked out yield of phak for the second period at 566 qtls. and by applying a rate of Rs. 102 per qtl. as shown by the assessee, worked out addition of Rs. 57,732. The Commissioner of Income Tax (Appeals) observed that yield of phak ranges between 2 to 5 per cent, of rice obtained. He worked out suppression of yield of phak to the extent of 571 qtls. for the first period and applying a rate of Rs. 100 per qtl. worked out addition at Rs. 57,100. Similarly, he applied the rate of 2 per cent, of yield for the second period and worked out suppression of yield at 364 qtls. and after making adjustment of 231 qtls. declared by the assessee, made addition with reference to suppressed yield of balance of 133 qtls. by applying a rate of Rs. 100 per qtl. It is observed that the Assessing Officer had applied the market rate of Rs. 80 per qtl. in relation to first period, whereas the Commissioner of Income Tax (Appeals) has adopted a rate of Rs. 100 per qtl. for working out addition of Rs. 57,100. We feel that on the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) has rightly adopted yield of 2 per cent. However, we feel that the addition in respect of 571 qtls. of phak should be made with reference to the rate of Rs. 80 as applied by the Assessing Officer instead of Rs. 100 per qtl. The assessee would thus get relief of Rs. 11,420 on this account. The addition made for the second period, however, needs no interference. The Assessing Officer may allow appropriate relief to the assessee on the said basis.

With reference to the relief allowed by the Commissioner of Income Tax (Appeals) in relation to yield of rice bran and of husk, it is observed that the Commissioner of Income Tax (Appeals) has worked out yield of rice bran with reference to yield of rice and not with reference to paddy husked. Similarly, the Assessing Officer adopted yield of husk at 22 per cent, and the Commissioner of Income Tax (Appeals) has observed that the average yield for the two periods worked out to more than 22 per cent, which is fair and reasonable. In the circumstances, we see no reason to interfere with the order of the Commissioner of Income Tax (Appeals) in this behalf."

6. In our opinion, the reasons assigned by the Tribunal for upholding the plea of

the assessee against the additions does not suffer from any patent legal error and the mere possibility of our forming a different opinion on a total reappreciation of the record cannot be made the basis for directing it to make reference of the questions mentioned hereinabove.

7. Hence, the petition, is dismissed.