(2015) 08 P&H CK 0250

In the Punjab And Haryana At Chandigarh

Case No : RSA No. 3593 of 2013 (OandM)

Paras Rice Mills — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 31-08-2015

Acts Referred:
Income Tax Act, 1961 — Section 132(1), 132(3), 133A(1), 275-A

Citation : (2016) 236 TAXMAN 21

Hon'ble Judges : Karam Chand Puri, J.

Bench : Single Bench

Advocate : S.S. Dinarpur, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Karam Chand Puri, J.—The unsuccessful plaintiff has directed this appeal against the judgment and decree dated 4.3.2013 passed by Sh. M.M. Dhohchak, Additional District Judge, Kurukshetra vide which the appeal preferred by the plaintiff against the judgment and decree dated 31.8.2010 passed by Dr. Virender Parshad, Civil Judge (Senior Division), Kurukshetra was dismissed.

2. In brief, the facts of the case of plaintiff-appellant are that appellant-plaintiff was a registered partnership firm and Dharam Pal Goel was its registered partner, who had filed the suit. During the financial years 1992-1993 to 1995-1996, the appellant-plaintiff firm had been carrying on the business of paddy shelling/husking under the name and style of M/s. Paras Rice Mills, Kurukshetra. The appellant-plaintiff firm had been filing income tax returns regularly in the office of Income Tax Officer, Kurukshetra. The accounts of the appellant-plaintiff firm for the financial year ending on 31.3.1996 were audited by M/s. Ajay Mittal & Co. Chartered Accountant of Ambala Cantonment. As per the report dated 26.7.1996, no illegality or irregularity was found in the account books. The income tax return filed by appellant-plaintiff for the financial year 1995-1996 was received by the office of Income Tax Department Ambala on 29.10.1996. According to said return, appellant-plaintiff was entitled to a refund

of Rs. 24,160/-. On 26.9.1995, business premises of the appellant-plaintiff firm was raided by the income tax officials. Defendant No. 2 was the in-charge of the whole search operations. Respondent-defendant No. 2 managed to obtain search warrants from higher authorities by misleading the facts. The entire paddy of superfine variety and basmati variety purchased by the appellant-plaintiff firm up to 26.9.1995 was lying in the premises of appellant-plaintiff and M/s. Saraswati Rice Sheller, Bye pass road, Kurukshetra which was on lease with the appellant-plaintiff When the search party could not find any wrong, they entered into a criminal conspiracy. In pursuance of criminal conspiracy, respondent-defendant No. 2 had put an illegal restraint order under Section 132(3) of the Income Tax Act, 1961 on paddy, rice and rice bran belonging to the appellant-plaintiff firm. The said order ultimately resulted into suspension of the business of the appellant-plaintiff firm. Representations dated 27.9.1995 and 29.9.1995 to revoke restraint order were moved to respondent-defendant No. 2, but in vain. It was only on 17.10.1995 that request of appellant-plaintiff to revoke the restraint order dated 26.9.1995 was accepted. To cause further loss to the appellant-plaintiff firm, respondent-defendant No. 2 had promulgated deemed seizure order on 17.10.1995 on the following items which were subjected to natural decay being perishable in nature:-

1. Rice superfine: 1553 quintals 61 kgs.

2. Rice Bran: 61 quintals 70 kgs.

3. Rice Basmati: 42 quintals 96 kgs (actually 42.04 quintals).

4. Bardana of FCI : 16,000 bags.

3. It was further pleaded that the deemed seizure dated 17.10.1995 passed by respondent-defendant No. 2 was without legs and had been passed in violation of provisions of Income Tax Act, 1961 as well as Code of Civil Procedure, 1908 and Code of Criminal Procedure, 1973. The same was legally unjustified and not sustainable. The representations dated 15.11.1995, 19.6.1996, 13.7.1996 and 5.9.1996 were made to respondent-defendant No. 2 and 3 for revocation of seizure order dated 17.10.1995 but the said representations were not decided intentionally. An assessment order for the alleged block period i.e. assessment years 1986-87 to 1996-97 was passed by respondent-defendant No. 3 on 26/27.9.1997. However, after that no order regarding utilization of stock lying under deemed seizure order was passed. The appellant-plaintiff firm offered to defendants-respondents to purchase the stocks at the value being imposed by the respondents-defendants without prejudice to the right of the appellant-plaintiff firm, but in vain. Ultimately, the appellant-plaintiff filed writ petition No. 11567 of 1998 before this Court. In pursuance of order dated 17.9.1998 passed by this Court, stock of rice under deemed seizure order dated 17.10.1995 had been sold on dated 27.11.1998 for Rs. 11,00,000/- and the amount had been received by the defendants-respondents directly from the purchaser. Due to the illegal acts and conduct of the defendants-respondents, the rice bran put by the

respondents-defendants under deemed seizure order dated 17.10.1995 worth Rs. 22,212/- became waste/decayed. A sum of Rs. 8,379.83/- was incurred for maintenance of rice stock. The appellant-plaintiff also suffered loss of Rs. 7,03,826.47 towards interest and Rs. 57,456/- on account of rent for space which remained occupied by the said stock put under deemed seizure order by the defendants-respondents. Legal notice dated 31.12.1998 was sent to the defendants-respondents requesting them to make the payment of Rs. 9 lacs along with interest at the rate of 2% per month, but it could not fetch any positive result. Hence, the suit.

4. Defendant-respondent No. 1 did not opt to contest the suit and ultimately, he was proceeded ex parte.

5. Defendant-respondent No. 2 to 4 filed written statement admitting that during the financial year ending on 31.3.1996, the appellant-plaintiff was carrying on the business in the premises of M/s. Saraswati Rice Sheller Bye-pass road, Kurukshetra. It was pleaded that the respondent-defendant No. 2 was neither competent to procure nor obtained the search warrants as alleged. The allegations were not only false but defamatory in nature. The search warrants were always issued by the competent authority in consequence of information in his possession and the competent authority was always competent to issue search warrants after applying mind to the facts and circumstances of the case. No junior officer including respondent-defendant No. 2 could obtain search warrants by misleading the higher authorities. At separate premises, separate officers were authorized to conduct search and seizure proceedings. After working out the stock position from the stock register, following stock was found in excess to the stock mentioned in para No. 6 of the plaint:-

a) Paddy basmati : 1 quintal.

b) Rice superfine : 1553.61 quintals.

c) Rice Basmati : 42.96 quintals.

d) Bran : 61.70 quintals.

6. It was further pleaded that the above stock was found in the premises of the appellant-plaintiff firm situated at Jhansa Road, Thanesar. It was denied that this stock was found in the premises of M/s. Saraswati Rice Sheller By-pass road, Kurukshetra alleged to be on lease with the appellant-plaintiff firm. The premises of M/s. Saraswati Rice Sheller was also covered under survey under Section 133A(1) of the Income Tax Act simultaneously on 26.9.1995. An inventory of the stock found in said premises was also prepared. As was evident from the said inventory, no stock of paddy, rice and rice bran was found in the said premises. It was denied that the officer conspired with respondent-defendant No. 2 to issue restraint order under section 132(3) of the Income Tax Act, illegally. There was every likelihood of accretion of undisclosed income. The seized stock was subsequently sold and the proceeds thereof were adjusted against the

outstanding tax demand in the assessee''s case. The respondents-defendants had no personal enmity with the appellant-plaintiff firm, therefore, the question of having any intention to cause loss to the appellant-plaintiff firm did not arise at all. The deemed seizure order dated 17.10.1995 was perfectly legal and justified. The stock put under seizure was sold in order to effect the recovery of outstanding tax demand as per the orders of this Court and the said stock was sold at Rs. 675/- per quintal. The stock of basmati rice was sold at Rs. 2016/- per quintal as against the valuation of the same at Rs. 1500/- per quintal on the date of seizure. The appellant-plaintiff firm had not challenged the assessment order on the basis of the stock and the material found in excess. Moreover, on 9.2.1998 when the Assistant Commissioner of Income Tax visited the premises of the appellant-plaintiff where the stock was supposed to be lying, it was found that there was no stock in the premises of the appellant-plaintiff firm. On enquiry, the manager of the appellant-plaintiff firm namely Satish Kumar informed the said Assistant Commissioner of Income Tax that the stock had been shifted to the premises of M/s. Saraswati Rice Sheller situated at bye-pass road, Gandhi Nagar, Kurukshetra. The appellant-plaintiff firm was not competent to shift the stock which was under deemed seizure without prior permission of the defendants. Therefore, the appellant-plaintiff firm with mala fide intention had removed the stock. As per the seizure order, the appellant-plaintiff firm was not competent to shift the seized articles/goods. The respondent-defendant No. 2 to 4 acted only in the due discharge of their official duties. The allegations were mala fide and had been made with ulterior motive to defame the officers of the department. The appellant-plaintiff had deliberately concealed true and material facts from the Court as on 27.9.1997, the appellant-plaintiff firm made a request for part release of stock against advance payment of Rs. 1 lac and the appellant-plaintiff was duly informed vide letter dated 10.11.1997 to make payment of full value of stock. Moreover, when the Assistant Commissioner of Income Tax visited the premises of Saraswati Rice Sheller situated at Bye-pass road, Gandhi Nagar, Kurukshetra, it was discovered that the stock was less than the stock placed under deemed seizure. The total stock found in the said premises was as under:-

i) Super fine rice : 500 to 600 quintals.

ii) Rice Bran : 44 quintals.

7. It was further pleaded that the said stock of rice was packed in gunny bags with 1997-98 marking whereas deemed seizure was made in the year 1995-96 that too of the stock lying in the premises of M/s. Paras Rice Mills. This clearly showed that the said stock was not the same which was placed under deemed seizure. Not only this, on the said date of inspection, the officials of the department were manhandled and the record was snatched by one Shri Nitin Goyal and Nalin Goyal, close relatives of the appellant-plaintiff and their driver, as a result of which, an FIR was also lodged by the said officer with the Police Station, City Thanesar. Separate proceedings under Section 275-A of the Income Tax for violation of the order passed under Section 132(1) of the Income Tax Act

had already been initiated against the appellant-plaintiff firm. The plaintiff, in fact, himself sold away the entire stock which was placed under seizure on 17.10.1995 which included rice, rice bran etc. Therefore, no loss whatsoever was caused to the appellant-plaintiff. Other allegations made in the plaint were denied. The suit was also resisted on the grounds of maintainability, limitation and jurisdiction of the Court.

8. Replication to the written statement was filed wherein the averments made in the plaint were reasserted and those of the written statement were controverted.

9. From the pleadings of parties, the following issues were framed:-

1) Whether the plaintiff firm is entitled to recover the suit amount along with interest @ 2% per month from 31.12.1998 till realization thereof? OPP.

2) Whether the civil court has got no jurisdiction to try and entertain the suit? OPD.

3) Whether the suit is not maintainable? OPD.

4) Whether the suit is not within limitation? OPD.

5) Whether the suit is barred U/s. 10-11 CPC? OPD.

6) Relief.

10. Both the parties led their respective evidence. Learned trial Court vide judgment and decree dated 31.8.2010 dismissed the suit of the plaintiff.

11. Feeling dis-satisfied with the aforesaid judgment and decree dated 31.8.2010, the plaintiff filed first appeal and the same was dismissed by the first appellate Court on 4.3.2013.

12. Still feeling dis-satisfied with the aforesaid judgments and decrees, the plaintiff-appellant has directed this regular second appeal.

13. Learned counsel for the appellant, in para No. 9 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the instant appeal:-

1) Whether the suit for recovery for the losses caused by the inaction of the respondents in not disposing of the perishable items taken in possession vide deemed seizure order dated 17.10.1995 is maintainable?

2) Whether the appellant is entitled for the damages for the loss suffered by it due to non-disposal of the seized items and kept in deemed possession of the respondents without any rhyme or reason?

3) Whether once it has been found that the items seized by the respondents were perishable and they did not dispose of the same and kept sitting tight over the matter, the appellant is entitled for the damages caused to it due to the inaction of the respondents?

14. I have heard learned counsel for the appellant and have gone through the record of the case.

15. The plaintiff has filed suit for recovery of damages caused by the act of income tax authorities. Both the Courts below have given a categorical finding that the appellant has exhausted all the remedies under the Income Tax Act, 1961. The Income Tax Act is a complete Code and no separate suit is maintainable. So, that finding of fact cannot be interfered in regular second appeal. The plaintiff has failed to prove that any illegal raid was conducted by the Income Tax Authorities and he has also failed to prove the damages suffered by him. So, I have no hesitation in holding that no substantial question of law has arisen in the present regular second appeal. Consequently, the appeal is without any merit and the same stands dismissed.