

(1994) 02 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh

Case No: C. W. P. No. 14324 of 1993

SHAHABAD CO-OPERATIVE
SUGAR MILLS LTD.

APPELLANT

Vs

DEPUTY COMMISSIONER OF
Income Tax AND ANOTHER.

RESPONDENT

Date of Decision: Feb. 16, 1994

Citation: (1994) 208 ITR 756

Judgement

The challenge in this writ petition is to the order, annexure P-3, passed by the Income Tax Appellate Tribunal, Chandigarh Bench, declining to stay the recovery of Rs. 2.10 crores on account of addition of Rs. 5,19,07,100 to the taxable income of the petitioner-co-operative society by the Assessing Officer by his order dated January 8, 1993. It may be stated that the case of the Department was that the aforesaid amount had been used as a device to circumvent the provisions regarding the payment of Income Tax by increasing the share capital of the members on account of increased cane price over and above the minimum fixed by the Government. On behalf of the petitioner, it was submitted that the Income Tax Appellate Tribunal itself had, in the case of Haryana Sugar Mills for the assessment year 1977-78, taken the view that such an amount was not taxable. On a consideration of the matter, the Tribunal, however, declined to stay the said recovery. Hence this writ petition.

Mr. Hemant Kumar, learned counsel for the petitioner, contended that the petitioner had a good prima facie case, being supported by the decision of the Income Tax Appellate Tribunal itself in the case of another co-operative society and the said view still held the field having not been set aside either by the High Court or by the Supreme Court. He made it clear that all that had happened was that the Department had recommended that SLP should be filed against the aforesaid decision of the Tribunal. Accounting to Mr. Hemant Kumar, the fact remained that the said decision held the field and, therefore, the petitioner had a good prima facie case. He also submitted that the petitioner was not in a position to deposit the amount, substantial as it is, on account of financial stringency.

Mr. R. P. Sawhney, learned counsel for the respondents, on the other hand, contended that even a balance-sheet had not been filed in order to make out a case of alleged financial stringency. The amount in question, it was pointed out, had not gone out of the hands of the petitioner-society. It was credited to the account of the cane grower-members by way of increase of their share capital. In other words, the amount had been appropriated under one head instead of paying the tax which had been assessed and the order of the Assessing Officer had been confirmed in the appeal by the Commissioner of Income Tax (Appeals).

After hearing learned counsel for the parties and in the facts and circumstances briefly touched upon above, we find that no case had been made out to show that the impugned order had been passed arbitrarily or is the result of non-application of mind or is based on any extraneous consideration and accordingly we are of the view that no case for interference is made out. We accordingly dismiss the petition in limine.