

(1988) 02 P&H CK 0022

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 1418 of 1987

Brij Lal Ram Richhpal

APPELLANT

Vs

Chief Administrator and anr.

RESPONDENT

Date of Decision: Feb. 18, 1988

Citation: (1988) 1 ILR (P&H) 266 : (1988) PLJ 281 : (1988) 1 PLR 465 : (1988) 1 RRR 368

Hon'ble Judges: J.V.Gupta, J

Advocate: Shri Gopi Chand, Advocate., Advocates for appearing Parties

Judgement

J.V. Gupta, J.

1. The respondent market committee, Rewari, made the best judgment assessment against the petitioner on March 27, 1984, to the tune of Rs. 1,62,583.50, and an equal amount of Rs. 1,62,583.50, was imposed as penalty. The petitioner had already deposited the market fee of Rs. 1,28,460.00. It filed an appeal before the Chief Administrator, Haryana State Agricultural marketing Board, under rule 31(13) of the Agricultural Procedure Markets General Rules, 1982. As the appeal of the petitioner could not be entertained without depositing the market fee, it had to deposit Rs. 1,62,583.50 as per the directions given by the Chief Administrator, respondent No. 1. The said appeal was allowed vide order dated February 19, 1987, vide copy, Annexure P. 1. As a result, the impugned assessment order was quashed and the case was remanded to the Committee for making the assessment afresh after supplying the material relied upon by the petitioner firm. In spite of the order quashing the impugned assessment order. The Chief Administrator further directed as follows :

It is further order that the amount of market fee deposited by the firm be refunded only after making the fresh assessment as ordered above and adjusting the amounts of market fee found due and penalty, if any, as result of such assessment, which should be carried out expeditiously."

The petitioner has challenged this direction of the Chief Administrator in this writ petition on the ground that no such direction could be issued when the appeal was accepted and assessment order was set aside. In the return filed on behalf of the respondents, the stand taken is :

"As the case was remanded to the Assessing Authority, therefore, he has rightly passed the direction reproduced in this para. The petitioner is not adversely affected in any way. He will get the full opportunity to plead his case before the Assessing Authority and in case nothing is found due to him then he is entitled to get the full refund of the amount already deposited by him."

2. The learned counsel for the petitioner submitted that even up till today, no fresh assessment has been made after remand and that the market fee deposited by the petitioner firm in appeal is not being refunded to it. According to the learned counsel, no such direction was justified in withholding the refund which had become due to the petitioner as a result of the annulment of the assessment order. In support of the contention, the learned counsel referred to *Hansa Agencies Pvt. Ltd. v. The Commissioner of Income Tax*, 1987(2) Current Law Journal (C. Cr. & Rev.) 264.

3. After hearing the learned counsel for the parties, I find force in the contention raised on behalf of the petitioner.

4. Once the assessment order was set aside, the Chief Administrator was not justified in giving the directions, reproduced in the earlier part of this judgment. While construing sections 240 and 241 of the Income tax Act, 1961, it was held by this Court in *Hansa Agencies*" case (supra), that the assessing authority was not justified in withholding the refund which had become due to the petitioner as a result of the annulment of the assessment merely for the reason that the proceedings questioning the validity of the orders annulling the assessment are pending before appropriate authorities.

5. In these circumstances, this writ petition succeeds and is allowed. The directions for not refunding the market fee, as reproduced in the earlier part of this judgment, are hereby quashed. The petitioner will be entitled to the refund of Rs. 1, 62,583.50 deposited by it while filing the appeal. Since the petitioner has been deprived of this money without any justification, he will be entitled to the interest thereon at the rate of 12 per cent per annum from the date of the appeal was allowed, i.e., February, 19 1987, till its repayment.