

**(2009) 08 P&H CK 0235**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** IT Appeal No. 446 of 2009 (O and M)

Commissioner of Income Tax

APPELLANT

Vs

Patiala Distt. Co-op. Milk  
Producers' Union Ltd.

RESPONDENT

**Date of Decision:** Aug. 19, 2009

**Acts Referred:**

- Income Tax Act, 1961 - Section 114, 260A

**Citation:** (2010) 328 ITR 615

**Hon'ble Judges:** Daya Chaudhary, J; Adarsh Kumar Goel, J

**Bench:** Division Bench

**Advocate:** Rajesh Katoch, for the Appellant;

**Final Decision:** Dismissed

**Judgement**

@JUDGMENTTAG-ORDER

1. The Revenue has preferred this appeal u/s 260A of the income tax Act, 1961 (for short, "the Act") against the order dated December 31, 2008 of the income tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh passed in I. T. A. No. 593/Chandi/2008 for the assessment year 2004-05, proposing to raise the following substantial questions of law:

(i) Whether on the facts and in the circumstances of the case, the income tax Appellate Tribunal is right in law in confirming the findings of the Commissioner of income tax (Appeals) by holding that there is no case for rejection of books of account, ignoring the fact that the assessee had failed to furnish the requisite separate trading and profit and loss account of trading of various commodities and that of the bottling plant and as such, in terms of section 114 of the Evidence Act, the Assessing Officer was justified in taking an adverse view?

(ii) Whether on the facts and in the circumstances of the case, the income tax Appellate Tribunal is legally justified in holding that the Commissioner of income tax (Appeals) is justified in coming to a particular conclusion, especially when the ACIT's letter dated February 28, 2008 addressed to the Commissioner of income tax (Appeals) has merely affirmed the stand taken in the assessment order and nothing adverse had been pinpointed, even when the assessee had failed to furnish the requisite separate trading and profit and loss account of various commodities and that of the bottling plant?

The assessee is a co-operative society engaged in the business of milk processing. It filed its return, declaring loss. The Assessing Officer, rejecting the books of account, made assessment by applying a gross profit rate of 22.29 percent. The Commissioner of income tax (Appeals) set aside the order of the Assessing Officer and held that there was no justification for rejecting the books of account. The assessee had given explanation for decrease in sale. There was no infirmity in the valuation of stock. The assessee followed the same method of valuation consistently for the last so many years.

2. The Tribunal upheld the said view with the following observations:

We have considered the rival submissions and perused the material available on the file. The brief facts are that the assessee was engaged in the business of milk processing, declared a loss of Rs. 33,91,918 in its return, filed on October 29, 2004 which was accompanied by computation of total income, tax audit report, TDS certificate and other necessary documents. The assessee attended the assessment proceedings from time to time and furnished requisite information/details called for and the same were duly test checked with the account books produced by the assessee. The Assessing Officer assessed the returned income at Rs. 66,70,872 by rejecting the books of account by applying a gross profit rate as per the last year which resulted into addition of Rs. 1,00,47,230. Admittedly, the method of accountancy was same as was for the earlier year. There is no denying the fact that the books of account were maintained with the same procedure. The assessee duly maintained all the bills, vouchers, etc. The Assessing Officer did not point out any defect in the books of account and applied the gross profit rate as was in the earlier year. Admittedly, every assessment year is a separate and independent year which should be considered to the facts of that year. Even otherwise the Assessing Officer has not given any basis while increasing the gross profit rate while comparing the rate of purchases and sales of the last year specially when the rate of purchases for the impugned assessment year considerably increased in comparison to the last year. The conclusion as drawn in paragraph 3.2 of the impugned order is reproduced herewith:

During the appellate proceedings, the counsel for the appellant Shri Sanjay Goyal attended and argued that the reason for decrease in sale and gross profit rate is due to the fact that outsourcing for preparation of ghee was done by supplying

81,62,860 litres milk to M/s. Milk Specialties Ltd., Dera Bassi, in 2002-03 and the appellant neither entered into agreement to prepare ghee before the assessment year 2003-04 nor after that. He has also contended that the return shows that for the year 2002-03 conversion charges of Rs. 71,80,109 packing expenses of Rs. 7,18,109 and purchase tax of Rs. 32,57,072 are actually manufacturing expenses but had not shown in that expenses in the manufacturing account rather these were shown in the profit and loss account resulting into higher booking of gross profit by Rs. 1,11,55,290 in 2002-03. Considering these expenses as direct expenses the gross profit rate comes to 19.26 percent. for the year 2002-03 whereas for the year 2003-04 it is 19.22 percent., i.e., almost same as per the last year. So, in this way there is no difference in the gross profit rate. He also stated that a comparative chart for the last three years has been submitted during assessment which clearly shows that the abovementioned expenses are extraordinary for 2002-03 as compared to other years. So, reasons to be ascertained for such variance but the Assessing Officer fails to take into account this variance.

If the facts mentioned in the aforementioned paragraph and the conclusion drawn in paragraph 3.6 of the impugned order, are analysed we have not found any infirmity in the impugned order specially when the Assessing Officer has not assigned any reason while coming to a particular conclusion specially when no defect was pointed out in the valuation of closing stock. The assessee has followed the FIFO method while valuing the stock at cost and copies of bills were submitted during the assessment proceedings and the latest rates were available with the assessee in respect of its products. In the light of these facts it can be said that the learned Commissioner of income tax (Appeals) is justified in coming to a particular conclusion specially when the ACIT, vide letter dated February 28, 2008, addressed to the learned first appellate authority has merely affirmed the stand taken in assessment order and nothing adverse had been pinpointed. This letter was duly considered in the impugned order which was passed on April 21, 2008. In the light of these facts, the stand of the learned Commissioner of income tax (Appeals) is upheld.

3. We have heard learned counsel for the appellant.

4. The findings recorded above show that the same have been arrived at by appreciating relevant circumstances and are not shown to be perverse. No substantial question of law arises. The appeal is dismissed.