

(2010) 328 ITR 23

High Court Of Punjab And Haryana At Chandigarh

Case No: Income-tax Appeal No. 16 of 2008

Haryana Warehousing
Corporation

APPELLANT

Vs

Assistant
Commissioner of
Income TaxRESPONDENT

Date of Decision: Oct. 17, 2008**Acts Referred:**

- Income Tax Act, 1961 - Section 10(29), 260A

Citation: (2010) 328 ITR 23**Hon'ble Judges:** L.N. Mittal, J; Adarsh Kumar Goel, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

Adarsh Kumar Goel, J.

The judgment of the court was delivered by 1 Adarsh Kumar Goel J.-The Assessee has preferred this appeal u/s 260A of the Income Tax Act, 1961, against the order dated February 9, 2007 passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A" for the assessment year 2002-03 proposing the following substantial questions of law:

(i) Whether the income of Rs. 11,80,53,083 and Rs. 25,13,561 derived by the Appellant from procurement of wheat and paddy as agent of Food Corporation of India/Government is exempt u/s 10(29) of the Act along with rental income from warehouses, the business of the Appellant being one integrated ?

(ii) Whether if the answer to question No. 1 is in the negative, the common expenses incurred by the Appellant can be apportioned notionally towards taxable and non-taxable income ?

(iii) Whether the income from rent of warehouses received by the Appellant, is to be computed under the head "Income from house property" even though it is derived in the course of its business ?

2. The Assessee is a warehousing corporation and claimed exemption u/s 10(29) in respect of income received from procurement of wheat and paddy as agent of Food Corporation. This claim was not allowed on the ground that exemption u/s 10(29) was confined to income derived from letting of godown from warehousing or storage, etc.

3. We have heard learned Counsel for the parties.

4. The plea of the Assessee that income will fall under the head of "House property" instead of "business" was also rejected. The Tribunal has remanded the matter to the Assessing Officer on the question of apportionment of expenses. Learned Counsel for the Revenue points out that question (i) is covered against the Assessee by the judgment of the Supreme Court in [Orissa State Warehousing Corporation Vs. Commissioner of Income Tax](#), which has been followed by this Court in the case of the Assessee in ITR No. 120 of 1998 Haryana Warehousing Corporation v. CIT decided on September 6, 2006. The issue cannot, thus, be held to be substantial question of law.

5. Question No. (ii) relating to apportionment of expenses towards taxable or non-taxable income, having been remitted back to the Assessing Officer also not be held to be substantial question of law.

6. As regards question No. (iii), the finding recorded by the Tribunal is as under:

The next issue raised is that the authorities below erred in holding that providing of storage facility to FCI is only incidental and part of business receipts and that the whole receipt from FCI is composite trading receipt, therefore, cannot be split up under various heads and further erred in holding that the Assessee is storing its own goods and thus cannot let out the premises to itself in respect of providing of storage facilities to FCI. The same submissions were reiterated by the representative of the authority. On a perusal of record and after hearing the rival submissions, it is seen that this issue has already been adjudicated upon in I. T. A. No. 1263/CHD/2004 (assessment year 2000-01) vide paras 4 and 5 (page 2 of the order) wherein the Assessee conceded that this issue is covered against the Assessee, vide order dated September 1, 2004 (I. T. A. Nos. 681 to 683/CHD/2002) for the assessment years 1997-98 to 1999-2000. The Tribunal held that the rent received by the Assessee on account of providing storage facilities, etc., is part of its business income, therefore, has to be computed under the head "Profits and gains of business" and not "Income from house property". Respectfully, following the same, this ground of the Assessee is dismissed.

7. From the above, It is clear that it is the case of the Assessee itself that providing storage facility to FCI, is its main business and not merely incidental business. If this is so, income derived from storage facility will not be covered by the head "Income from

house property". There is nothing to show that the Assessee challenged the treatment of the said income as "Income from business" in the previous year as noticed in the impugned order.

8. Learned Counsel for the Assessee relies on the judgment of the Madras High Court in [Commissioner of Income Tax Vs. Indian Warehousing Industries Ltd.](#), wherein the Assessee claimed income from warehousing to be income from business but the assessing authority held the same to be a rental income. However, the appellate authority and the Tribunal held the same to be business income. On the basis of the judgment of the hon"ble Supreme Court in [East India Housing and Land Development Trust Ltd. Vs. Commissioner of Income Tax, West Bengal](#), the hon"ble High Court upheld the claim of the Assessee. In [East India Housing and Land Development Trust Ltd. Vs. Commissioner of Income Tax, West Bengal](#), it was not regular business of the Assessee to let out the warehouses. The business of the Assessee was to promote and develop markets and in that context, income of the Assessee from rent was held to be rental income and not income from business. The said judgment could not have any application to the case of an Assessee whose main business is of letting out warehouses for storage, etc., as in the present case.

9. The hon"ble Supreme Court applied the test whether income was directly covered by one head. It was held that if income was covered directly under one head, the head of income will be such head. Applying the said test, we are of the view that income of the Assessee in the present case falls directly under the head of business and not under the head of income from house property.

10. In [S.G. Mercantile Corporation P. Ltd. Vs. Commissioner of Income Tax, Calcutta](#), the hon"ble Supreme Court held that the paramount consideration to decide whether income was from business or property, is the nature of business of the Assessee. Reference was made to earlier judgment of the hon"ble Supreme Court in [Karanpura Development Co. Ltd. Vs. The Commissioner of Income Tax, West Bengal](#), taking the view that where letting out of premises and collection of rent was a part of business, the income will be business income. Following this view, it was held that income of the Assessee in the said case was business income. In view of above, we respectfully disagree with the view of the Madras High Court in Indian Warehousing Properties, supra.

11. The matter being covered against the Assessee by the judgments of the hon"ble Supreme Court discussed above, the question raised cannot be held to be substantial question of law.

12. Accordingly, the appeal is dismissed.