

(2001) 08 P&H CK 0223**High Court Of Punjab And Haryana At Chandigarh****Case No:** IT Appeal No. 47 of 2000 22 August 2001

Kwality Skin Co

APPELLANT

Vs

Asst. Commissioner of Income
TaxRESPONDENT

Date of Decision: Aug. 22, 2001**Acts Referred:**

- Income Tax Act, 1961 - Section 260A, 271B

Citation: (2001) 119 TAXMAN 876**Hon'ble Judges:** Jawahar Lal Gupta, J; Jawahar Lal Gupta Ashutosh Mohunta, J; Ashutosh Mohunta, J**Bench:** Full Bench**Advocate:** A.K. Mittal and Akshay Bhan, for the Assessee R.P. Sawhney and Kishan Singh, for the Revenue, for the Appellant;

Judgement

Gupta, J.

The assessee derives its income from business. Its premises were surveyed on 24-11-1992. On 27-11-1992, the assessee was given a notice u/s 271B of the Income Tax Act, 1961 (hereinafter referred to as the Act). The assessee filed a reply on 4-1-1993, After recording evidence, the assessing authority levied a penalty of Rs. 99,568. The assessee filed an appeal. It was accepted by the Commissioner vide order dated 26-10-1993. Aggrieved by the order, the revenue filed an appeal. The Tribunal having reversed the order of the Commissioner, the assessee had filed this appeal u/s 260A of the Act.

2. Mr. A.K. Mittal, the learned counsel for the appellant, contends that the audit report was ready on 30-10-1992. The managing partner of the assessee-firm was sick. Thus, the report could not be collected and produced before the officer at the time of survey. The learned counsel has further pointed out that an affidavit had been filed by the managing partner indicating that he was not well and that the

audit report had been prepared by the chartered accountant in October 1992.

3. Admittedly, the assessee's premises were surveyed on 24-11-1992. His statement was recorded. The relevant portion has been reproduced in the order of the Assistant Commissioner, a copy of which has been produced as Annexure P-1. It reads as under---

"Q Where is the audit report?

A The report is not lying with me. It is with Shri Jasbir Singh, C.A.

Q Should we go to the office of Sh. Jasbir Singh, C.A. and collect the report in your presence?

A I know that report is not yet ready by this time and it is yet to be prepared."

4. A perusal of the above extract from the statement clearly shows that Mr. Rajinder Kumar Arora, the managing partner, did not have the report on 24-11-1992 with him. Still further, when the Surveying Officer had offered to go to the office of Mr. Jasbir Singh, the Chartered Accountant, to collect the report, the partner had stated that he knew that the "report is not ready". Thus, it is clear that till 24-11-1992, the report had not even been prepared. It is, thus, clear that the assessee's claim that the audit report was ready by the due date is not correct. Thus, we are not surprised that the Tribunal had felt constrained to reverse the order passed by the Commissioner (Appeals).

5. Mr. Mittal has produced before us a copy of the affidavit of Mr. Rajinder Kumar Arora which appears to have been verified on 4-1-1993. It is taken on record as Mark A. The counsel submits on the basis of the affidavit that the managing partner of the assessee was not well and, thus, the audit report could not be obtained.

6. We have examined this affidavit. In para 4, it has been stated as under:

"4. That at the time of completion of audit on 23-10-1992 our auditor Sh. Jasbeer Singh, CA told me that now the audit of Kwality Skin Co. is complete and I could collect the tax audit report from their office cum residence in the next week, ie., in the last week of October, 1992."

A perusal of the above shows that the audit had allegedly been completed on 23-10-1992. This is clearly contradicted by the above noted statement made by Mr. Rajinder Kumar Arora before the officer on 24-11-1992.

No other point has been raised.

7. In view of the above, we find no infirmity in the order of the assessing officer or that of the Tribunal so as to call for any interference.

8. The appeal is, accordingly, dismissed. No costs.