

HC denied to admit appeal as assessee changed its stand initially taken before AO

Summary – The High Court of Punjab & Haryana in a recent case of Maken Cement Industries, Kathua., (the Assessee) held that where it was only before High Court assessee-cement manufacturer took stand that out of total transportation subsidy to which it was entitled, it was assessable for amount actually received in concerned year, while its stand before Assessing Authority at initial stage was totally opposite, said issue could not be addressed before High Court

Facts

- The return of the assessee cement-manufacturer had been duly processed under section 143(1). It was noticed that transport subsidy had been received by the assessee from the State Development Finance Corporation which had not been declared as income and the case was re-opened. Thereafter, the assessment was framed by noticing that transport subsidy had been received from the State Government and had no direct nexus with the industrial undertaking and a sum of Rs. 21,28,603 was liable to tax and added to the returned income.
- On appeal, the Commissioner (Appeals), partly allowed same by upholding the reasoning given by the Assessing Authority on the issue of section 80-IB that the assessee was not eligible for deduction since the receipt of transport subsidy did not fall in the category of direct source of profit but was any other profit. However, the Commissioner (Appeals) granted the benefit of a sum of Rs. 16,11,480 on account of the fact that it had not been received by the assessee and therefore, need not be taxed at the hands of the assessee.
- On cross appeals, on the basis of consensus arrived at, that benefit of rebate under section 80-IB could not be granted, on the transport subsidy received in view of the judgment of the Apex Court in *CIT v. Sterling Foods* [1999] 237 ITR 579/104 Taxman 204 and *CIT v. Pandian Chemicals Ltd.* [2003] 262 ITR 278/129 Taxman 539 (SC), the appeal of the assessee was dismissed. However, the Tribunal allowed the appeal of the revenue whereby the Commissioner had given the benefit of Rs. 16,11,480 on account of the fact that the assessee had not filed any documentary evidence supporting its claim for the concerned assessment year and had adopted the mercantile system of accounting. It had credited subsidy receivable on 21-3-2002 and therefore, it was considered to be received on the said date. Accordingly, the appeal of the revenue was allowed.
- On appeal before High Court:

Held

- The assessee apart from adopting mercantile system of accounting had chosen to take benefit of section 80-IB and sought exemption. It had never taken the plea before the authorities below which is now sought to be raised that it was only liable to be assessed to the tune of Rs. 5,17,123 which was actually received in the year concerned. As noticed neither was the certificate filed from the concerned General Manager, District Industries Centre when the return was filed. The certificate

was only obtained for the subsequent period and therefore, it was never only the case of the assessee from day one that it could take benefit of the Transport Subsidy Scheme on the ground that actual freight paid would be the income.

- Once that was not the specific case before the assessing authority and neither the same material had been placed before the Tribunal, the substantial question of law which is now sought to be raised on the strength of the Transport subsidy scheme is not permissible. It is settled principle that the substantial question of law would only be on the strength of documents which have been brought before the authorities below and also which was subject matter of consideration before the Tribunal. Once the stand was contrary before the Assessing Authority at the initial stage, the argument which is now sought to be raised cannot be addressed before this Court.
- Therefore, the Tribunal was justified in holding that though the transport subsidy amounting to Rs. 16,11,477 which was never received by the assessee and for this merely a claim was lodged with State Government, yet same could be treated as income accrued and taxed in the hand of the assessee.