

In the High Court for the States of Punjab and Haryana at Chandigarh

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(i) ITA No. 363 of 2004  
Date of decision: 29.2.2008  
The Commissioner of Income Tax Rohtak .. Appellant  
Versus  
M/s Haryana Minerals Limited. .. Respondent  
Assessment Year 1993-94.

(ii) ITA No. 364 of 2004  
Date of decision: 29.2.2008  
The Commissioner of Income Tax Rohtak .. Appellant  
Versus  
M/s Haryana Minerals Limited. .. Respondent  
Assessment Year 1994-95

Coram: **Hon'ble Mr.Justice Satish Kumar Mittal**  
**Hon'ble Mr.Justice Rakesh Kumar Garg**

Present: Mr.Yogesh Putney, Advocate  
for the appellant-Revenue.

Rakesh Kumar Garg,J

1. This judgment shall dispose of ITA No.363 and 364 of 2004 as the proposed substantial questions of law involved in both the appeals are similar. For the sake of disposal of these appeals, the facts are being taken from ITA No.363 of 2004.

2. The Revenue has filed this appeal under Section 260-A of the Income Tax Act, 1961 (for brevity "the Act") challenging the order dated 22.1.2004, passed by the Income Tax Appellate Tribunal, Delhi Bench "A" New Delhi( for brevity,"the Tribunal"), in ITA No.1080/Del/2000, in respect of Assessment Year 1993-94 raising the following substantial questions of law for our determination:-

(a) Whether on the facts and in the circumstances of the case, the ITAT was right in law in holding that in any case, if any addition is required to be made for perks, the same can be made in the hands of the M.D. of the Company but no disallowance is called for in the hands of the Company and thus deleted the addition of Rs.66,221/- on account of car expenses including insurance and depreciation for personal use of the car?

b) Whether on the facts and in the circumstances of the case, the ITAT was right in law in sustaining the order of CIT (A) deleting the addition of Rs.7,00,037/- made on account of unutilized contract receipts collected in the shape of labour welfare fund?

3. Briefly the facts of the case are that during assessment year 1993-94 the assessee collected Rs.13,70,548/- and spent Rs.6,70,511/-. The balance left over at the end of the year at Rs.7,00,037/- was disclosed as a liability. The decision to collect Re.1/- per truck from the contractor was taken in the meeting of Board of Directors on 16.3.90 so as to create a labour welfare fund. The fund was to be utilized for the purpose of labour welfare activities at various mines. A separate bank account was opened where all these collections were kept separately. The Assessing Officer treating these collections as trading receipts of the assessee brought to tax the amount of Rs.7,00,037/- the unspent balances as income for assessment year 1994-95. Likewise Rs.788299/- have been brought to tax as trading receipts for assessment year 1995-96.

4. The Commissioner of Income Tax(A) treated this amount as a liability of the assessee by following the decision of Hon'ble the Supreme Court of India in Commissioner of Income Tax Versus Bizli Cotton Mills Pvt. Ltd. Versus (1979) 116 ITR 60(SC) and a judgment of this Court in the case of Commissioner of Income Tax Versus Gheru Lal Bal Chand 111 ITR 134. The appeal filed by the Revenue against the order of the Commissioner of Income

Tax (Appeals) was also dismissed by the Tribunal.

5. It is pertinent to mention here that vide order dated 1.10.2007, this Court has found that the question No.1 as proposed by the appellant is a question of fact and therefore, does not require consideration in exercise of jurisdiction under Section 260 A(1) of the Act.

6. On the second question, vide order dated 1.10.2007, this Court found that to appreciate this question, it would be necessary to have the break up of the total amount calculated by the assessee, which is not discernible from the order. The Revenue placed on record details of LWC Receipts of various projects month wise for the Assessment Year 1993-94.

7. We have heard learned counsel for the Revenue.

8. It is pointed out by the learned counsel that the amount in question was paid by the Contractor for the welfare of the labourers at mines. This amount never reached the assessee as his own income as the assessee had an obligation to utilize the amount so received for a set purposes of welfare fund. The amount which remained unspent at the end of the year was not assessee's own money but a liability. Thus the Tribunal did not commit any error in dismissing the appeal of the Revenue. Our view also finds support from the decision of the Apex Court in Commissioner of Income Tax Versus Sitaldass Tirathdass 41 ITR 367(SC).

9. Even otherwise, from the details of staff and labour welfare expenditure for Assessment Year 1993-94 incurred by the respondent-assessee, it is clear that a very little amount was left as balance in the labour welfare fund.

8. In view of this also, no interference is called for in the order of the Tribunal. Thus, the appeals are dismissed as no substantial question of law survives for determination of this Court.

RAKESH KUMAR GARG)  
JUDGE

February 29,2008  
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(SATISH KUMAR MITTAL)  
JUDGE