IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 227 of 2009

DATE OF DECISION: 9.7.2009

The Commissioner of Income Tax, Patiala .....Appellant

Versus

M/s Punjab State Electricity Board, Patiala .....Respondent

CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Rajesh Katoch, Advocate
for the appellant.

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ADARSH KUMAR GOEL, J. (Oral)

1. The revenue has preferred this appeal under Section 260A of the Income Tax Act, 1961 (for short, "the Act) against the order of the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh dated 30.9.2008 passed in ITA No. 111/Chd/2008 for the assessment year 1996-97, proposing to raise following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the ITAT is legally correct in holding that in the present case, no colourable device has been adopted by the assessee, even when the intention of the assessee behind drafting the agreements between the assessee and the financial institution was to reduce the tax liability artificially of both the parties and as such the ratio of the decision of the Hon'ble Apex Court in the case of Mc Dowell Ltd. Vs. CTO (154 ITR 148) (SC) has wrongly

been interpreted".

2. The assessee is Punjab State Electricity Board, who sold energy saving devices on which 100% depreciation was permitted under Section 32 of the Act read with rule 5 of the Income Tax Rules, 1962 (for short, "the rules) and the same assets were taken on lease and deduction was sought for lease money. This deduction was disallowed on the ground that the transactions entered into by the assessee were sham transactions. The CIT (A) dismissed the appeal but the Tribunal upheld the plea of the assessee. The relevant observations are as under:-

> "It cannot be said that any and every attempt of tax planning is illegal/illegitimate or that every transaction or arrangement which is perfectly permissible under the law, having the effect of reducing the tax burden on the assessee cannot simply be discarded because it is the businessman/assessee who is to take a decision in view of its business expediency. As far as the reliance by the learned Sr. DR on the decision of the Hon'ble Apex Court in the case of Mc Dowell & co Ltd. Vs. CTO (154 ITR 148) (SC), wherein it was held that the tax planning may be legitimate provided it is within the frame work of law and colourable device cannot be part of tax planning, we are of the humble opinion, that the facts of the aforesaid judicial pronouncements may not help the Revenue because in the present appeal, no colourable device has been adopted by the assessee and even the learned Assessing Officer has not brought on record any evince even to suggest that the tax planning of the assessee is not within the permissible limit or any colourable device has been adopted by the assessee.

> In such a situation, the decision of the Hon'ble Gauhati High Court in the case of CIT Vs. George Williamsons (Assam) Ltd. (265 ITR 626) clear supports the case of the assessee wherein various judicial pronouncements has been considered including the case of Mc Dowells (supra). In the light of aforesaid facts and judicial pronouncements, we have not found any infirmity in the impugned order, consequently all these six appeal of the Revenue are having no merit, consequently dismissed."

3. Only contention raised by the learned counsel for the revenue is that the machinery was integral part of the boilers and the same continued to be with the assessee inspite of sale. The fact remains that the sale consideration was received by the assessee and lease rental was paid by the assessee. Merely because tax liability was reduced could not be conclusive of arrangement being sham of a device. As regards observations of the Hon'ble Supreme Court in **Mc Dowel**, supra, the matter has been explained in subsequent judgments including in **UOI** Vs **Azadi Bachao Andolan**, AIR 2004 SC 107. Reiterating the view that the assessee was entitlted to arrange his affiars to reduce tax liability, without violating the law, it was observed in **Azadi Bachao Andolan,** supra that the principle laid down in **IRC** Vs. **Duke of West Minister,** (1936) ACI was still valid.

4. It was further observed that the above principle had been approved in India in judgment of the Hon'ble Supreme Court in **CIT** Vs. **A. Raman & Co.,** (1968) 67 ITR 11 and observations of Chinnappa Reddy, J. in **Mc Dowel** could not be treated as ratio of the judgment in view of opinions of majority to the effect:-

> "Tax Planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of

tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges.

5. The Hon'ble Supreme Court affirmed the view taken by the Madras High Court in **MV Valliapappan** Vs. **ITO,** (1988) 170 ITR 238 and Gujrat High Court in **Berry** Vs. **CIT,** (1996) 222 ITR 831. Reference was also made to judgment in **CWT** Vs. **Arvind Narottam** (1988) 173 ITR 479 and **Mathuram Aggarwal** Vs. **State of M.P.,** (1999) 8 SCC 667. It was further observed that words “device” or “sham” could not be used to defeat the effect of a legal situation.

6. In view of the finding recorded by the Tribunal in the facts of this case, no substantial question of law arises.

7. The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

July 09, 2009
pooja

(DAYA CHAUDHARY)
JUDGE

Note:-Whether this case is to be referred to the Reporter .....Yes/No