

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

ITA No.861 of 2008 (O&M)

Date of decision: 6.11.2009

Chandigarh Bottling Co.Chandigarh

-----Appellants

Vs.

Commissioner of Income Tax, Chandigarh

-----Respondent

**CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE GURDEV SINGH**

**Present:- Mr. Pankaj Jain, Advocate for the appellant.
Ms. Urvashi Dhugga, Advocate for the revenue.**

Adarsh Kumar Goel,J.

1. This appeal has been preferred by the assessee under section 260A of the Income Tax Act, 1961 (in short, 'the Act') against the order of the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh in ITA No.341/Chandi/2006 dated 11.1.2008, for the assessment year 2002-03, proposing to raise following substantial question of law:-

“Whether on the true interpretation of section 29 of the Act the soft drink bottles having leakage, breakage and of unserviceable nature is an allowable expense?

2. The assessee is engaged in trading and distribution of soft drinks and made a claim towards loss on account of leakage/breakage of bottles. The said claim was rejected by the Assessing Officer in absence of evidence to substantiate the same. It was also observed that the assessee was only a distributor and loss claimed was attributable to the principal. This view has been affirmed by the CIT(A) as well as the Tribunal. The Tribunal observed:-

“...It is a mere assertion by the assessee that the reasons leading upto the damage of the stock could not be attributed to the principal company and thus the loss was to be borne by the assessee. Leave alone the substantiation of such plea there is no evidence to show as to in what manner the stock in question had become bad or unserviceable. Therefore, in the absence of any evidence to support the claim, the assessee has to fail in this ground. Accordingly, we

upheld the action of the Income Tax authorities in disallowing a sum of Rs.4,81,151/- claimed to be loss on account of leakage/breakage of stock of soft drinks. On this ground, the assessee fails.”

3. We have heard learned counsel for the parties.

4. Learned counsel for the appellant submits that the assessee was entitled to deduction under section 29 of the Act in respect of loss suffered as loss was incidental to business.

5. We are unable to accept the submission. Even for claiming loss, the assessee has to establish that loss was factually suffered. All the authorities have concurrently recorded a finding of fact that loss in question was never suffered by the assessee. The said finding is not shown to be perverse.

6. No substantial question of law arises.

7. The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

(Gurdev Singh)
Judge

November 6, 2009
'gs'