

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 305 of 2009

Date of Decision: 1.9.2015

Shri Raj Kumar Tewatia

....Appellant.

Versus

The Commissioner of Income Tax, N.H. IV, Faridabad

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Sanjay Bansal, Senior Advocate with
Mr. B.M. Monga, Advocate for the appellant.

Mr. Tajender K. Joshi, Advocate for the respondent.

AJAY KUMAR MITTAL, 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 dated 12.12.2008 (Annexure A-11) passed by the Income Tax Appellate Tribunal, Delhi Bench "G", New Delhi (hereinafter referred to as "the Tribunal") in ITA No. 1956/Del/2007 for the assessment year 2000-01, claiming the following substantial questions of law:-

- (i) Whether on the facts and circumstances of the case the Tribunal was legally correct in taking the view that the CIT(A) was not justified in

entertaining the grounds regarding validity of notice under Section 143(2) issued to the appellant herein being time barred and the assessment framed in the status of 'Individual' being null and void as per law as the same had not been challenged either before the CIT(A) or before the ITAT before the remand order was passed by the latter?

- (ii) Whether on the facts and circumstances of the case the Tribunal is legally correct in holding that the CIT(A) should have declined to admit additional grounds, even when the assessment framed in the status of 'Individual' is null and void as per law?
- (iii) Whether the Tribunal was legally correct in ignoring the judgment of a coordinate Bench in the case of the appellant for assessment year 2001-02 admitting the ground/plea with regard to assessment having been framed in wrong status affecting the jurisdiction of the Assessing Officer going to the root of the matter, admittedly not requiring any investigation into the facts and thereby being void?
- (iv) Whether the Tribunal was legally correct in reversing the order of the CIT(A) even when the order of assessment passed under Section 143 (3) was bad in law on account of notice under

Section 143(2) issued to the appellant herein being time barred in view of the express provisions of Section 143(2) of the Income Tax Act, 1961?

- (v) Whether the Tribunal misdirected itself in law as well as on facts in recording its conclusion based on irrelevant findings while reversing the order of the CIT(A)?
- (vi) Whether the impugned order passed by the Tribunal is perverse, contrary to judicial discipline and institutional integrity and as a result of non application of correct principles of law to factual position emerging from the material on record?

2. The facts, in short, necessary for adjudication of the instant appeal as narrated therein are that consequent to the acquisition of agricultural lands acquired by the Haryana Urban Development Authority (HUDA), the appellant received enhanced compensation and interest during the financial years 1999-2000, 2000-01 and 2001-02 relevant to the assessment years 2000-01, 2001-02 and 2002-03 on furnishing of security as the enhanced compensation was being challenged by the HUDA in this Court. As the income of the assessee in the status of HUF was not liable to be subjected to income-tax, return of income was not filed. However, the return of income in the status of individual was filed by the assessee for the assessment year 2000-01 on 14.6.2000 under Section 139(1) of the Act. The Assessing Officer issued a notice dated 7.2.2002 under Section 142(1) of the Act to the effect that since the

appellant had received the enhanced compensation from HUDA, he should file return of income for the assessment year 2000-01 which the assessee did on 25.2.2002. In the computation of income, it was stated that since the Land Acquisition Collector and the assessee are in appeal before this Court, therefore, the enhanced compensation of ₹ 28,37,047/- received during the year under consideration was not taxable. The Assessing Officer issued notice dated 26.9.2002 to the assessee under Section 143(2) of the Act in the status of individual. However, on the basis of the return filed by the appellant and in compliance thereto, the assessee submitted a letter dated 15.11.2002 stating therein that the award of enhanced compensation is disputed in appeal before this Court. The Assessing Officer vide assessment order dated 23.12.2002 (Annexure A-1) assessed the enhanced compensation of ₹ 28,37,047/- for the assessment year 2000-01 in the status of individual. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) dismissed the appeal of the assessee against which the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 13.7.2004 (Annexure A-2) set aside the assessment order (Annexure A-1) and remanded the matter back to the Assessing Officer for deciding the question in the light of the decision of the Karnataka High Court in **Chief Commissioner of Income-Tax and another v. Smt. Shantavva (2004) 267 ITR 67 (Kar.)**. Being dissatisfied, the revenue filed an appeal bearing ITA No. 108 of 2005 in this Court against the order dated 13.7.2004 (Annexure A-2) which is still pending adjudication. The assessee had also filed returns of income for the assessment year 2001-02 on 25.2.2002 under Section 139(4) of the Act and for

assessment year 2002-03 in compliance with the notice under Section 148 of the Act in the status of HUF. The Assessing Officer made the assessment for the assessment year 2001-02 on 23.12.2002 (Annexure A-3) in the status of 'individual' and for the assessment year 2002-03 on 27.12.2004 (Annexure A-4) in the status of 'HUF' and assessed the enhanced compensation and interest in the year of receipt. Feeling aggrieved, the assessee filed appeals before the CIT(A) who vide orders dated 9.11.2004 and 29.3.2005 (Annexures A-5 and A-6, respectively) allowed the appeals by holding that the enhanced compensation and interest received was not taxable as the HUDA had challenged the compensation before this Court and, therefore, the right to receive had not crystallized and become final. Against the order of the CIT(A) for the assessment year 2001-02, the revenue filed an appeal before the Tribunal whereas the assessee filed cross-objections challenging the assessment in the status of 'individual' on the plea that the Assessing Officer had accepted the status of 'HUF' for the assessment year 2002-03. The Tribunal vide order dated 11.1.2007 (Annexure A-7) restored the matter to the CIT(A) for the assessment year 2001-02 for adjudication in accordance with law. In pursuance thereto, the CIT(A) vide order dated 5.2.2008 (Annexure A-8) allowed the appeal and annulled the assessment against which the revenue filed an appeal before the Tribunal which is pending adjudication. The Income Tax Officer made re-assessment for the assessment year 2000-01 vide order dated 14.2.2006 (Annexure A-9) on being set aside by the Tribunal and assessed the enhanced compensation of ₹ 28,37,047/- again in the status of 'individual' even when the return was filed in the status of 'HUF'. The said order was challenged before the CIT(A) who vide order

dated 8.2.2007 (Annexure A-10) annulled the assessment made in the status of 'individual'. The revenue took the matter in appeal before the Tribunal. The Tribunal vide order dated 12.12.2008 (Annexure A-11) allowed the appeal and sent the matter back to the CIT(A) to decide the issue on merits. Hence, the present appeal.

3. We have heard learned counsel for the parties.

4. Learned counsel for the assessee relying upon the judgment of the Apex Court in **Assistant Commissioner of Income-tax v. Hotel Blue Moon, (2010) 188 Taxman 113 (SC)**, urged that no assessment could be framed in the status of 'individual'. It was further submitted that for the assessment years 2001-02 and 2002-03, the income from the acquired land was assessed in the status of 'HUF' which had attained finality. It was argued that the order of the Tribunal is unsustainable in view of subsequent decision of the Apex Court in **Hotel Blue Moon's case (supra)**.

5. Learned counsel for the revenue relied upon the provisions of Section 292BB of the Act inserted w.e.f. 1.4.2008 and also judgment of this Court in **CIT v. Panchvati Motors (P) Ltd. (2011) 243 CTR 189**. It was contended that in such circumstances, the reliance on **Hotel Blue Moon's case (supra)** was of no assistance to the assessee.

6. After hearing learned counsel for the parties, we find that the issue arising in this appeal raises mixed question of law and fact and, therefore, it is required to be remanded to the Tribunal to decide afresh in view of the submissions made hereinbefore. Accordingly, the impugned order dated 12.12.2008 (Annexure A-11) passed by the Tribunal is set aside and the matter is remitted to the Tribunal to adjudicate the same afresh after hearing learned counsel for the parties

and by passing a speaking order in accordance with law. The appeal stands disposed of.

**(AJAY KUMAR MITTAL)
JUDGE**

September 1, 2015
gbs

**(RAMENDRA JAIN)
JUDGE**