IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 40 of 2010 (O&M)
Date of decision: 18.9.2015

Commissioner of Income Tax II, Chandigarh

……Appellant

Shri Rajiv Kumar Manuja

…..Respondent

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

1. Whether Reporters of 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: Ms. Urvashi Dhugga, Advocate for the appellant.

Mr. Rajesh Garg, Sr. Advocate with
Ms. Nimrata Shergill, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated dated 23.7.2009, Annexure A.3 passed by the Income Tax Appellate Tribunal Chandigarh Bench 'B', Chandigarh (in short, "the Tribunal) in ITA No.1/CHANDI/2009 for the assessment year 2005-06, claiming following substantial questions of law:-

> "i) Whether on the facts and in the circumstances of the case and in law the order of the Hon'ble ITAT is correct in deleting the addition made by the Assessing Officer, holding that assessee cannot be said to be benami of Shri Nalnish Aggarwal,

whereas Shri Nalnish Aggarwal was neither produced before the AO nor any evidence was given in support of his capacity to make payment of ₹ 20 lakhs?

ii) Whether on the facts and in the circumstances of the case and in law, the order of the Hon'ble ITAT is correct in deleting the above addition made by the Assessing Officer, in the absence of any evidence of genuineness of the payment/transaction by Shri Nalnish Aggarwal?

iii) Whether on the facts and in the circumstances of the case and in law, the order of the Hon'ble ITAT is correct in deleting the addition in the absence of any evidence of ownership of the property at Panipat, the sale proceeds of which are stated to be the source of investment of the assessee to the tune of ₹ 5.0 lakhs?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. A survey under section 133A of the Act was conducted at the business premises of M/s Chandigarh Overseas Pvt. Limited wherein certain documents were impounded as under:-

i) An agreement dated 1.1.2005 between M/s Chandigarh Overseas Pvt. Limited through its director Shri Somesh Chawla and Shri Rajiv Kumar son of late Shri Sher Chand Manuja and Shri Nalnish Aggarwal son of Shri Nathru Ram. According to this document, the first party had received ₹ 25 lacs (₹ 15 lacs by cash and ₹ 10 lacs by cheque from second party for allotting a flat/commercial site etc. at Knowledge Park for Fashion Technology in Sector 90,Mohali and;

ii) A receipt of ₹ 11.50 lacs according to which Shri Nalnish Aggarwal received back an amount of ₹ 11.50 lacs (10 lacs by cheque and ₹ 1.5 lacs by cash) from M/s Chandigarh Overseas Pvt. Limited.

During the assessment proceedings, it was submitted by the assessee that he did not know Shri Nalnish Aggarwal and he was introduced to him by M/s Chandigarh Overseas Limited. He also submitted that he had invested only ₹ 5 lacs from the sale proceeds of H.No.886 at Panipat. The balance of ₹ 20 lacs were invested by Shri Nalnish Aggrwal (₹ 4 lacs by cheque of HDFC Bank, Sector 35, Chandigarh, ₹ 6 lacs by cheque of Bank of India,Sector 16, Chandigarh and balance ₹ 10 lacs in cash). The Assessing Officer vide order dated 24.12.2007, Annexure A.1 made an addition of ₹ 25 lacs in the hands of the assessee holding that Shri Nalnish Aggarwal was not a genuine party, therefore, the total amount of ₹ 25 lacs paid to M/s Chandigarh Overseas Pvt. Limited was treated as unexplained income of the assessee inter alia on the basis of the reasons i.e. Shri Nalnish Aggarwal was not known to him; Mr. Aggarwal did not reside at the given address as mentioned in the agreement; no account existed in the name of Mr. Aggarwal in HDFC Bank and the assessee could not produce Shri Aggarwal. The assessee's contention that he invested ₹ 5 lacs from the sale proceeds of H.No.886 at Panipat was rejected by the Assessing Officer on the ground that according to the purchase deed of the said property, the assessee was neither the purchaser nor did he submit any evidence to show that he was owner of the said property. The appeal filed by the assessee before the Commissioner of income Tax (Appeals) [(CIT(A)] was allowed vide order dated 17.10.2008, Annexure A.2. The revenue went in appeal before the Tribunal. Vide order dated 23.7.2009, Annexure A.3, the Tribunal dismissed the appeal holding that the addition was made by the Assessing officer merely on the basis of enquiry from one Shri Kedia residing at

H.No.559, Sector 10, Panchkula i.e. the so called address of Shri Nalnish Aggarwal as per departmental records and no specific opportunity was given to the assessee to prove the genuineness of his contention. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.

4. Learned counsel for the revenue submitted that the Assessing Officer while holding that Shri Nalnish Aggarwal was *benami* of the assessee had taken into consideration various facts as mentioned in paras 3.5 and 3.6 of its order. On appeal filed by the assessee, the CIT(A) reversed the findings without controverting the aforesaid reasons. The findings were upheld by the Tribunal. The findings recorded by the Assessing Officer are as under:-

> "3.5 For ascertaining the genuineness of the facts stated by the assessee, the information was called under section 133(6) from the Bank of India. It was found that Shri Nalnish Aggarwal had only one saving account SB 7909 in Bank of India. Copy of statement submitted by the bank proves that there is no withdrawal from this account of the cheque mentioned in the agreement. Information under section 133(6) was again asked from Bank of India Sector 16, Panchkula. It was found that cheque No.260257 of ₹ 6,00,000/- dated 1.1.2005 was issued from the account of Mr. Nalnish Aggarwal in favour of M/s Chandigarh Overses Pvt. Limited. It was cleared on 4.1.2005 through Andhra Bank, Sector 34, Chandigarh. Information was asked under section 133(6) from HDFC Bank. In response to this HDFC Bank stated that no such account exists in the name of Nalnish Aggarwal, House No.559, Sector 10, Panchkula in their Branch.
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> 3.6 The submissions of the assessee have been duly considered which is not acceptable. It is impossible that any individual will

have property transaction in partnership with other individual whom he does not know. Moreover, assessee admitted that Shri Nalnish Aggarwal was not known to them and he was introduced by M/s Chandigarh Overseas (P) Limited in their office. The agreement (Annexure A) does not explain regarding ratio of share of the assessee and Shri Nalnish Aggarwal. The assessee was asked to produce any evidence to prove that Shri Nalnish Aggarwal was party to the agreement but he failed to do so. Moreover, the inquiries made by the department prove that Shri Nalnish Aggarwal does not reside at the given address mentioned in the agreement. The person naming Mr.A.K.Kedia staying at that address had mentioned that he does not know anything about Shri Nalnish Aggarwal. Thus, all the above facts prove that either Shri Nalnish Aggarwal does not exist or the assessee had used the name of any existing person for benami transaction with M/s Chandigarh Overseas.The enquiries made by the department prove that no account exist in the name of Nalnish Aggawal in HDFC Bank from where cheques have been withdrawn as mentioned in the agreement and also stated by the assessee. The cheque of ₹ 6 lacs was withdrawn from Bank of India, Sector 16, Panchkula which is not the account mentioned in the agreement but from another account. It may be possible that the assessee used the name of Shri Nalnish Aggarwal to operate the account just to avoid tax and to channelize his unaccounted money. Moreover the account from which ₹ 6 lacs have been withdrawn was opened on 1.1.2005 i.e. on the same day of the agreement with M/s Chandigarh Overseas.

3.7 In view of all above, it is clear that here is no evidence of any type whether Shri Nalnish Aggarwal was a genuine party to the agreement and the payments were actually made by him. Therefore,it is held that the whole of the amount of the agreement with M/s Chandigarh Overseas (P) Limited i.e. rs.25,00,000/- belongs to the assessee and had been invested out of unexplained sources.

5. The CIT(A) while partly allowing the appeal recorded as under:-

"15. The assessee furnished before me various documents as given in para 9 above. It was submitted by the assessee that sufficient opportunity was not offered during the course of assessment proceedings. On perusal of the assessment order,I find that the Assessing Officer has treated the assessee as benami simply from the enquiry from one person Shri Kedia. No specific opportunity was given to the assessee to prove that the assessee is not a benami. I am satisfied that the case of the assessee get covered under the circumstances mentioned in Rule 46A. Moreover, the documents which have been submitted by the assessee are not such which can be fabricated, for example, sale deed, copy of return of Shri Nalnish Aggarwal, copy of passport of Shri Nalnish Aggarwal etc. These documents go to the root of the matter and deserve to be admitted.

16. The assessee has been able to give sufficient evidence to prove that Shri Nalnish Aggarwal is an existing person. On these facts, the assessee cannot be called as benami of Shri Nalnish Aggarwal. If any action is to be taken, then the action would lie in the hands of Shri Nalnish Aggarwal. The assessee cannot be saddled with the liability of Shri Nalnish Aggarwal. The examination of the entire evidence prove that the assessee has justified the investment in M/s Chandigarh Overseas Pvt. Limited, Chandigarh jointly. It is in the normal business relationship that many persons come together for making a joint investment. It is also to be noted that the documents were found in the premises of M/s Chandigarh Overseas Pvt. Limited. The agreement clearly indicates that there are two persons i.e. Shri Rajiv Kumar Manuja and Shri Nalnish Aggarwal. If Shri Manuja has responded and cooperated with the department that does not mean that investment made by Shri Nalnish Aggarwal is made by Shri Manuja. It was obligatory on the part of the

Assessing Officer to make further investigation to find out the whereabouts of Shri Nalnish Aggarwal. A simple enquiry from the house of Shri Nalnish Aggarwal and also a statement of one Shri Kedia does not lead to the conclusion that Shri Rajiv Kumar Manuja is benami of Shri Nalnish Aggarwal. On the other hand, the assessee has been able to produce clinching evidence to show that Shri Nalnish Aggarwal is an existing person (see para 9). In my opinion, the Assessing Officer was not justified to treat investment made by Shri Nalnish Aggarwal as an investment/undisclosed income of Shri Rajiv Manuja i.e. the assessee."

6. While affirming the findings recorded by the CIT(A), the Tribunal noticed thus:-

"4.There is a finding in the impugned order that the impugned addition was made merely on the basis from inquiry from one Shri Kedia and no specific opportunity was given to the assessee to prove that the assessee was not benami. There is a further finding that the nature of the documents like sale deed, copy of return, bank documents etc. are as such that these cannot be fabricated. If the conclusion drawn in the impugned order is analyzed, we have found that there was sufficient evidence to prove that the assessee cannot be said to be benami of Shri Nalnish Aggarwal. The investment with M/s Chandigarh Overseas Pvt. Limited was found to be genuine and the documents were also found from the premises of M/s Chandigarh Overseas Pvt. Limited. Even if the agreement is perused, we have found that it is between Shri Rajiv Kumar i.e. the assessee and M/s Chandigarh Overseas Pvt. Limited wherein there is a mention of receipt of ₹ 25 lakhs, the details of which has also been given. There is a certificate from Chandigarh Overseas Pvt. Limited that the amount of ₹ 5 lakhs was invested by the assessee. In this affidavit of Smt.Tarawanti, there are details and the details of PAN number and cash payment of ₹ 26

> lakhs. The sale deed clearly mention about the sale of H.No.559, Sector 10, Panchkula and the consideration amount of ₹ 16,40,000/- entered into between Smt.Usha Verma and Shri Nalnish Aggarwal. All these documents are available in the paper book. The reallotment letter issued by Haryana Urban Development Authority has also been furnished alongwith copy of return of Shri Nalnish Aggarwal. If all these documents and the conclusion drawn in the impugned order are kept in juxtaposition and analyzed, we have found that the learned first appellate authority is quite justified in coming to particular conclusion. The documents as contained in the paper book have not been controverted by the revenue. In view of these facts, we have not found any infirmity in the impugned order. Consequently, the same is upheld."

7. A perusal of the findings recorded above shows that the Assessing Officer after considering the various factors came to the conclusion that there was no evidence of any type whether Shri Nalnish Aggarwal was a genuine party to the agreement and the payments were actually made by him. It was held that the whole of the amount of the agreement with M/s Chandigarh Overseas (P) Limited i.e. ₹ 25,00,000/- belonged to the assessee and had been invested out of unexplained sources. We find that the CIT(A) as well as the Tribunal had not adverted to the reasons given by the Assessing Officer while holding that the transaction on behalf of the Nalnish Aggarwal was not *benami.* The reasons recorded by CIT(A) and the Tribunal are neither cogent nor convincing on the basis of which the findings of the Assessing Officer could be validly set aside. Accordingly, the orders dated 17.10.2008 and 23.7.2009, Annexures A.2 and A.3 are set aside and the matter is remanded to the CIT(A) to decide it afresh after hearing learned counsel for the parties in accordance with law.

Needless to say, the CIT(A) shall deal with all the objections on the basis of which the Assessing Officer had held Shri Nalnish Aggarwal to be benami of the assessee. However, it shall be open for the respondent-assessee to produce any evidence in terms of Rule 46A of the Income Tax Rules, 1962 to substantiate that the transaction was genuine and Shri Nalnish Aggarwal was not *benami* of the assessee. The appeal stands disposed of accordingly.

(Ajay Kumar Mittal)
Judge

September 18, 2015 (Ramendra Jain)
'gs' Judge