IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-272-2014
Date of decision:- 01.07.2015

Dr. Jasleen Kaur
...Appellant

Versus

Commissioner of Income Tax, Jalandhar and another
...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Akshay Bhan, Senior Advocate,
with Mr. Alok Mittal, Advocate,
for the appellant.

Mr. Rajesh Katoch, Advocate,
for the respondents.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This is an appeal against the order of the Tribunal setting aside the order of the CIT (Appeals) deleting the addition of ₹ 20 lacs made by the AO in the original assessment order. The matter pertains to the assessment year 2007-2008.

2. The appeal is admitted on the following substantial question of law:-

> *"Whether in fact and circumstances of the case, the addition of ₹ 20 lacs is admittedly based on presumption in view of the remand report of the AO and against the material placed on record is sustainable in the eyes of law?"*

3. In view of the order we intend passing, it is not necessary to consider the other questions of law raised in paragraph 7 at this stage. They are kept open in the event of it being necessary for the appellant to raise the

same in any further challenge pursuant to the order of remand that we intend passing.

4. The appellant entered into an agreement for sale dated 24.07.2006 (the first transaction) under which she agreed to purchase 51 marlas 159 sq. ft. from one Hitesh Kumar at the rate of ₹ 2.32 lacs per marla. The appellant paid an advance of ₹ 5 lacs by cheque and ₹ 10 lacs by cash.

On 29.09.2006, the appellant entered into an agreement for the sale of the same property (the second transaction) to one Sandeep Kumar at the rate of ₹ 3.75 lacs per marla. Under this agreement, the appellant received ₹ 20 lacs in advance by cash.

On the same date i.e. 29.09.2006, the appellant entered into an agreement (the third transaction) with one Jatinder Kumar for the purchase of 10 marlas 45 sq. ft. at the rate of ₹ 13 lacs per marla and in respect thereof the appellant paid an advance of ₹ 20 lacs in cash.

5. The appellant's case is that the above three transactions stood cancelled and that pursuant to the cancellation, Jatinder Kumar returned the sum of ₹ 20 lacs to the appellant under the third transaction; the appellant utilized this amount of ₹ 20 lacs to refund the advance paid to Sandeep Kumar under the second transaction and the said Hitesh Kumar refunded the advance of ₹ 15 lacs paid by the appellant under the first transaction.

6. The AO in the original assessment proceedings disbelieved the appellant's case that she had refunded the amount of ₹ 20 lacs paid to her by the said Sandeep Kumar as advance under the agreement dated 29.09.2006 and concluded that the appellant had in fact forfeited the amount.

7. The appellant challenged the assessment order before the CIT (Appeals). The CIT (Appeals) called for a remand report. It is important to note that the AO observed that the details in respect of the transactions such as the date on which the amounts were refunded may not have been furnished due to paucity of time. This is a vital fact which has persuaded us to afford the appellant an opportunity of establishing her case on remand. The CIT (Appeals), however, accepted the appellant's case that she had refunded the amount of ₹ 20 lacs to Sandeep Kumar under the second transaction upon the cancellation thereof.

8. The Tribunal, however, reversed this finding holding the same to be perverse. Based on the evidence, as it stood before the authorities including the Tribunal, the finding of fact cannot be said to be perverse or unsustainable. The appellant's case is that she utilized the amount of ₹ 20 lacs refunded under the third transaction by the said Jatinder Kumar to in turn refund the amount of ₹ 20 lacs to Sandeep Kumar under the second transaction. The appellant is obviously in possession of the facts in this regard. The onus was on the appellant to establish the same. To reiterate, it is the appellant's case that the amount received under the third transaction was utilized to in turn refund the amount to Sandeep Kumar under the second transaction. It was necessary, therefore, for the appellant to establish that she received the amount of ₹ 20 lacs under the third transaction from Jatinder Kumar in such a manner as to have enabled her to refund the advance of ₹ 20 lacs to Sandeep Kumar. In other words, it was for the appellant to establish that the amount of ₹ 20 lacs repaid to her under the third transaction was available to enable her to in turn make the payment of ₹ 20 lacs to Sandeep Kumar under the second transaction. The appellant had

not adduced the facts necessary to establish this case. In view thereof, the finding of the Tribunal cannot be said to be perverse.

9. Having said that, however, it is important to note that in the remand report the AO himself stated that the appellant was probably unable to adduce all the facts due to shortage of time in the original assessment proceedings. We are inclined to accept Mr. Alok Mittal's alternate submission on behalf of the appellant that in view thereof the appellant must at least be afforded an opportunity of establishing her case. He rightly pointed out that in view of this finding the Tribunal ought to have remanded the matter to the AO to adduce the necessary facts on this limited issue.

10. In these circumstances, the ends of justice would require granting the appellant an opportunity of establishing the facts in this regard. However, considering that the matter has been agitated at three levels before the authorities under the Income Tax Act, 1961, we deem it appropriate to remand the matter to the CIT (Appeals) to reconsider the issue in this regard alone. It will be open to the CIT (Appeals) to seek a remand report from the AO pertaining to the facts in this regard. The appellant will be entitled to adduce additional evidence in this regard including of the respective proposed purchasers and proposed sellers under the said three transactions.

The appeal is accordingly disposed of.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

01.07.2015
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