

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

ITA-359-2014 (O&M)

Date of decision:- 09.07.2015

Commissioner of Income Tax, Jalandhar-I, Jalandhar.

...Appellant

Versus

M/s Marketers, Basti Danishmandan Road, Jalandhar.

...Respondent

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

Present: Mr. Vivek Sethi, Advocate,
for the appellant.

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

This is an appeal against the order of the Tribunal dated 30.04.2013 directing the Assessing Officer to compute the capital gains on the basis of the valuation indicated in the order.

The matter pertains to the assessment year 2002-2003.

2. The appellant contends that the following issues raise substantial questions of law:-

“(i) Whether on the facts and in the circumstances of the case and in law the Hon’ble ITAT has erred in directing the Assessing Officer to adopt the value as on 01.04.1981 at the rate of Rs. 2,833/- per marla without appreciating the material on record and without taking into account the report of the Valuation Officer who took 12 instances including 2 sale instances given by the assessee in arriving at value of 1118 per marla of the land as on 01.04.1981 and thus vitiating its decision?”

“(ii) Whether on the facts and in the circumstances of the case and in law the Hon’ble ITAT has erred in directing the A.O. to adopt the value of the factory building land sold on 01.04.2002 @ Rs. 12,500/- per marla which is a rate of agriculture land whereas the sale was of commercial property?”

Re: Question (i)

3. The assessee was a firm constituted w.e.f. 04.07.1981 under the Partnership Act, 1932. On 19.12.2001, the firm stood dissolved under the deed of dissolution. One of the partners took over the assets and liabilities of the firm. Another firm was constituted under the deed of partnership dated 21.12.2001 comprising one of the erstwhile partners and his son.

4. We proceed on the basis that the erstwhile firm is liable to capital gains on account of the transfer of the immovable properties. The Tribunal has rightly valued the properties as in the year 1981 and in the year 2001 for those are the years in which the properties are deemed to have been acquired and transferred respectively. The Tribunal while considering the valuation at the time of acquisition i.e. in the year 1981 observed that the valuation arrived at by the Valuation Officer and the Assessing Officer cannot be accepted as the instances of sale were not provided to the assessee for rebuttal. The Tribunal accepted the instances of sale furnished on behalf of the assessee on the ground that they were in respect of the properties in close proximity to the land owned by the assessee. Copies of registered sale deeds were relied upon in this regard. The Tribunal's reliance upon the instances of sale furnished by the assessee cannot be said to be perverse or irrational. Absent anything else, proximity of the land in question is not only an important, but a relevant factor. The Tribunal, therefore, accepted the valuation of Rs. 2833/- per marla as contended by the assessee and rejected the valuation of Rs. 1118/- per marla as contended on behalf of the department.

5. The Tribunal thereafter valued the land as on 19.12.2001 i.e. the date on which the land was transferred by the assessee/erstwhile firm upon the dissolution of the firm. In this regard, the Tribunal accepted the rate of Rs. 12,500/- per marla as contended by the assessee and did not accept the rate of Rs. 45,350/- per marla as computed by the Valuation Officer and

accepted by the Assessing Officer. The Tribunal rightly noted that the sale instances relied upon by the Assessing Officer were irrelevant as they pertained to small piece of lands admeasuring from 1.5 marlas to 6 marlas, whereas the land in question was 150 marlas. The Tribunal was justified in taking into consideration the fact that the assessee had purchased land admeasuring 170 marlas at the rate of Rs. 12,500/- per marla on 04.01.2002, which was just after a fortnight from the date of the dissolution of the firm. Two important factors, namely, the area of the land and the proximity of the dates of the transactions were taken into consideration by the Tribunal. The finding of the Tribunal on this ground cannot be said to be perverse.

6. Question (i), therefore, raises not a question of law, but a question of appreciation of facts.

7. The appeal in this regard is, therefore, dismissed.

Re: Question (ii)

8. The aforesaid land had standing on it factory sheds. Considering the age of the factory sheds, the Tribunal came to the conclusion that the written down value as declared in the books of account ought to be taken into consideration. The Tribunal set aside the addition of Rs. 14,75,292/- on account of short term capital gains observing, inter alia, that the Assessing Officer had failed to take into consideration the relevant factors such as the age of the building and the condition thereof.

9. Question (ii) also does not raise a question of law.

10. The appeal is, therefore, dismissed.

**(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE**

**(G.S. SANDHAWALIA)
JUDGE**

09.07.2015

Amodh