IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 217 of 2015 (O&M)

Date of Decision: 13.8.2015

Commissioner of Income Tax (Central), Gurgaon
....Appellant.

Versus

Principal Officer, M/s Hill View Infrastructure (P) Ltd., Chandigarh

...Respondent.

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?

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

PRESENT: Mr. Rajesh Sethi, Senior Standing Counsel with
Mr. Arun Biriwal, Advocate and
Ms. Pridhi Jaswinder Sandhu, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Delay of 53 days in re-filing the appeal is condoned.

2. This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 6.6.2014 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 549/Chd/2013 for the assessment year 2009-10, claiming the following substantial question of law:-

Whether ITAT has erred in not appreciating that once

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the entries appearing on any seized document in the course of search are credible and shows that outstanding liability of the assessee amounting to ₹ 1,28,89,362/- was in respect of an investment and by virtue of section 69 of the Act should have been treated as income and could not have been restricted to part payment?

3. Put short, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. A search operation under Section 132(1) of the Act was conducted at the premises of the assessee on 7.7.2009. The assessee filed its return of income under Section 153A of the Act on 22.11.2011 declaring nil income. The Assessing Officer passed the assessment order dated 21.12.2011 (Annexure A-1) by assessing the income at ₹ 1,71,18,360/-. The Assessing Officer made addition of ₹ 1,28,68,362/- to the taxable income of the assessee under Section 69 of the Act besides other additions. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"] who vide order dated 6.3.2013 (Annexure A-2) for the assessment years 2007-08 to 2009-10 partly allowed the appeals and restricted the addition made by the Assessing Officer to ₹ 59,43,115/- for the assessment year in question. However, the appeal relating to the assessment year 2010-11 was allowed. Being dissatisfied, the assessee as well as the revenue filed appeals before the Tribunal. The Tribunal vide a consolidated order dated 6.6.2014 (Annexure A-3) dismissed the appeal of the assessee and the revenue for the assessment year 2009-10 on this issue. Hence, the present appeal by the revenue.

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4. Learned counsel for the revenue submitted that on the basis of pages 59 to 67 of Annexure A-2 [before the CIT(A)] found and seized from the premises of the assessee, it was established that the total amount which was shown as outstanding in the books of account was ₹ 1,28,89,362/- and the assessee had failed to satisfactorily explain the source of the said amount. It was further submitted that the outstanding liability of the assessee amounting to ₹ 1,28,89,362/- was an investment and the same had to be treated as income and could not have been restricted to part payment of ₹ 59,43,115/-.

5. After hearing learned counsel for the revenue, we do not find any merit in the appeal. The CIT(A) had partially accepted the contention of the assessee and had deleted the amount of ₹ 59,43,115/- out of addition of ₹ 1,28,89,362/- made by the Assessing Officer on the ground that the assessee had made the payment of ₹ 46,43,115/- in addition to ₹ 13,00,000/- to Mr. Monga whereas the remaining amount was still outstanding in the books of account of the assessee. The relevant findings read thus:-

> "From the narrations above, it is crystal clear that the documents in dispute corroborate and are self-speaking, containing financial transactions of various projects. At page 14 of the impugned order, a table has been drawn which enumerates the total amount of transactions from the seized pages; Amount shown as credit/payment of Rs.46,43,115/- and outstanding totaling Rs.1,28,69,362/- which is the same figure as per the letter dated 10.08.2008 (page 3) from Sh. Monga described as receivables and of which

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Rs.13,00,000/- was shown as already received. The AO has added Rs.1,28,69,362/- which to my mind is not correct as the same is an outstanding. At page 15, para (i) the amount of Rs.59,43,115/- [46,43,115 plus 13,00,000] has been stated by AO as received by Sh. Monga. So in the absence of any reflection in the books being shown by the assessee, I hold that Rs.59,43,115/- is the amount to be added. The addition made by the AO is restricted accordingly. Consequently the assessee partly succeeds on this ground."

6. The Tribunal while dismissing the appeal has recorded as under:-

"37. We have heard the rival contentions and perused the record. The issues raised vide ground No.1 in the appeal of the assessee and ground No.3 in the appeal filed by the revenue is relatable to the seized documents found from the possession of the assessee during the course of search. The said documents being page Nos. 59 to 67 of Annexure A-2 are scanned and reproduced by the Assessing Officer at pages 3 to 11 of the assessment order. The page 67 of A-2 is a letter written by one Shri Anil Monga to Shri Lalit Jindal on 10.08.2008. The said letter talks of an account with approximate figures of the Mall building price and rest of the figures in respect of the Ashreya Studio Apartments, Hill View & M-1 Plaza.

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The letter further talks about advance lying with Mr. Lalit Jindal of ₹ 4,50,000/-. The person writing the letter has concluded by stating "Total receivable from you- ₹ 1,28,89,362/-, less already received from you – ₹ 13,00,000/- and balance due from you ₹ 1,15,89,362/-." To the said letter, Mr. Monga has further attached annexures i.e. transaction letter marked as (a) to (e) which incorporates the conclusion in respect of the different claims made in the letter dated 10.08.2008. The said letter is scanned by the Assessing Officer and is reproduced at page 3 of the assessment order and the same is not being reproduced for the sake of brevity.

38. XX XX XX

39. Along with the said letter, five other pages were attached and each page related to a different transaction between Mr. Monga and his family members with the assessee in respect of various investments made by the family of Mr. Monga in the projects floated by the assessee. The Assessing Officer requisitioned the assessee to produce Shri Monga but he was never produced despite the assessee stating that he was prepared to produce him. However, during the course of assessment proceedings, letter from Mr. Monga dated 21.11.2011 was produced in which it is claimed that the figures in the said letters were notional figures. Further, though

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the assessee claimed that the entries were reflected in the books of account but the same were not produced to the satisfaction of the Assessing Officer. The payments received from Mr. Monga or made to Mr. Monga were not fully accounted for in the books of account. The director Shri Lalit Jindal in his statement had said that all the payments received from Mr. Monga were duly accounted for and some part of the payment relating to M-1 Plaza property were not accounted against which surrender to the tune of ₹ 2 crores was claimed to have been made in the name of M/s Mella Infracom. However, the assessee failed to co-relate the total entries. The perusal of the various documents reflect the financial transactions in relation to various projects and in view of the covering letter which is very categorical in stating that the total amount receivable from the assessee was ₹ 1,28,89,362/- against which sum of ₹ 13 lacs was already received and the balance due from the assessee was ₹ 1,15,89,362/-. The presumption is to be drawn against the assessee where the assessee has failed to discharge the onus cast upon him. However, we are in conformity with the order of Commissioner of Income Tax (Appeals) in restricting the addition to ₹ 59,43,115/-, as against addition of ₹ 1,28,69,362/- made by the Assessing Officer because the said amount of ₹ 1,28,69,362/- depicts

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the amount receivable by Mr. Monga. The Assessing Officer at page 14 has tabulated the total amount of transaction page-wise and the amount shown as credit/payment and the balance outstanding amount. The notings at page 66 reflect the total value of investment at ₹ 79,60,250/- as against which there was a credit of ₹ 33,01,375/- and the outstanding was ₹ 46,48/875/-. At page 65, the transaction was of ₹ 36,00,000/- against which there was a credit of ₹ 1,43,000/- and balance was ₹ 34,57,000/-. Similarly at page 64, the transaction was of ₹ 57,50,000/- against which there was a credit of ₹ 16,00,000/- and balance was ₹ 41,50,000/-. At page 63, there was an advance lying with the assessee of ₹ 4,50,000/- which in no case can be added in the hands of the assessee. Further, the page 61 reflected cash payments of ₹ 2,00,000/- and ₹ 8,00,000/- which were paid by the assessee before us to the family members of Shri Monga and as the same were not reflected in the books of account, the said amounts are to be treated as income from undisclosed sources in the hands of the assessee. Another page was No.60, on which as against total amount of transaction, ₹ 2,34,542/-, ₹ 1,98,740/- was paid and the balance was ₹ 35,805/-. As per tabulated details at page 14, the amount credited/paid totalled to ₹ 46,43,115/- and the balance on each page was shown as receivable

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by Mr. Monga and his family members from the assessee vide letter dated 10.08.2008. Further sum of ₹ 13,00,000/- is mentioned in the said letter placed at page 67 as having been received by him. In totality thus the total payments made by the assessee were of ₹ 46,43,115/- + ₹ 13,00,000/- and the addition is to be restricted to ₹ 59,43,115/- as held by the Commissioner of Income Tax (Appeals). The balance being the amount payable by the assessee to Shri Monga and his family members is not includible as income of the assessee. Accordingly, we uphold the addition of ₹ 59,43,115/- in the hands of the assessee and dismiss the grounds of appeal raised by both the assessee and the revenue in this regard."

7. A perusal of the above shows that the CIT(A) restricted the addition of ₹ 59,43,115/- as against the addition of ₹ 1,28,69,362/- made by the Assessing Officer as the said amount depicted the payments actually made to Mr. Monga. The amount paid to Mr. Monga was to the tune to ₹ 46,43,115/- and the balance was shown as receivable by Mr. Monga and his family members from the assessee vide letter dated 10.08.2008. A sum of ₹ 13,00,000/- as mentioned in the said letter was also received by him. In totality thus the total payments made by the assessee to Mr. Monga were of ₹ 46,43,115/- + ₹ 13,00,000/- and the addition had been restricted to ₹ 59,43,115/-. The Assessing Officer had erred in making addition of ₹ 1,28,69,362/- to the income of the assessee. The balance amount payable by the assessee to Shri Monga and his family members which was shown in the books of account of the

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assessee as outstanding could not be termed as undisclosed income and included in the total income of the assessee. The CIT(A) and the Tribunal were right in sustaining the addition of ₹ 59,43,115/- in the hands of the assessee for the assessment year 2009-10.

8. In view of the concurrent finding of fact recorded by the CIT (A) and the Tribunal, no substantial question of law arises in this appeal. Accordingly, the instant appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 13, 2015
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(RAMENDRA JAIN)
JUDGE

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