IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.311 of 2015 (O&M)
Date of decision:2.11.2015

Chiranji Lal Garg

……Appellant

Vs.

Commissioner of Income tax, Bathinda and another

…..Respondents

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: Mr. Sumeet Mahajan, Sr. Advocate with Mr. Amit Kohar, Advocate for the appellant.

Mr. G.S.Hooda, Advocate for the revenue.

Ajay Kumar Mittal, J.

CM No.18311 CII of 2015

1. There is a delay of 578 days in filing the appeal. Notice of the application was given to the respondents. After hearing learned counsel for the parties and for the reasons stated in the application, the delay in filing the appeal is condoned. CM stands disposed of.

ITA No.311 of 2015

2. 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 12.9.2013, Annexure A.1 passed by the Income Tax Appellate

Tribunal, Amritsar Bench, Amritsar (in short, "the Tribunal") in ITA No.467 (Asr)/2013 for the assessment year 2007-08, claiming following substantial questions of law:-

> "i) Whether on the facts and in the circumstances of the case, the Tribunal erred in upholding the order of the Assessing Officer in bringing to tax the entire consideration receivable under the JDA dated 25.2.2007 as liable to tax under the head "Capital gains"?
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> ii) Whether the Tribunal erred on facts and in law in holding that there was "transfer" of immovable property under section 2 (47)(v) of the Act read with section 53A of the TPA?
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> Iii) Whether the Tribunal erred on facts and in law in holding that the requirement of registration of the JDA under section 53A of the TPA could not be read into section 2(47)(v) of the Act?
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> iv) Whether the Tribunal erred on facts and in law in holding that the requirement of registration of the JDA under section 53A of the TPA was not necessary once power of attorney was registered?
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> v) Whether the Tribunal erred in law in construing "possession", as contemplated under section 2(47)(v) of the Act read with section 53A of the TPA, to have a wider connotation, to include concurrent possession and/or right to enter into possession?
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> vi) Whether the Tribunal erred on facts and in law in holding that "possession" as contemplated under section 2(47)(v) of the Act read with section 53A of the TPA was given by the society to the developers, who held concurrent possession over the immovable property?
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> Vii) Whether the Tribunal erred on facts and in law in holding that "possession" as contemplated under section 2(47)(v) of the Act read with section 53A of the TPA was given by the society

to the developers since the developers had not only the authority/right to enter into the immovable property but also to deal with the same for various purposes?

viii) Whether the Tribunal erred on facts and in law in holding that there was “transfer” under section 2(47)(v) of the Act read with section 53A of the TPA even though “unconditional willingness” on the part of the developers was absent?

ix) Whether the Tribunal erred on facts and in law in holding that in view of applicability of clause 26 dealing with “Force Majeure”, it could not be said that “unconditional willingness” on the part of the developers was absent?

x) Whether the Tribunal exceeded its jurisdiction by sitting in judgment on issues concerning civil dispute between parties to the JDA and in inter alia holding that (a) there was no default on the part of the developers in complying with the terms of the JDA; (b) there was no default on the part of the developers in making payment; (c) the developers were making sincere efforts to obtain all approvals/permissions; and (d) cancellation of the JDA and/or revocation of power of attorney by the society was not proper and would not stand the test of law?

xi) Whether the Tribunal erred on facts and in law in holding that there was transfer within the meaning of section 2(47) of the Act despite the fact that the JDA was terminated/cancelled by the society?

xii) Whether the Tribunal erred on facts and in law in holding that there was “transfer” even under clause (vi) of section 2(47) of the Act?

xiii) Whether the Tribunal erred on facts and in law in not holding that there was no “transfer” under clause (ii) of section 2(47) of the Act?

xiv) Whether the Tribunal erred on facts and in law in holding that the entire consideration receivable under the JDA was taxable without appreciating that the same tantamount to taxation of hypothetical/notional oncome which is not permissible in law?

xv) Whether the Tribunal erred on facts and in law in upholding the taxation of value of the flat as part of the consideration receivable under the JDA?

xvi) Without prejudice, whether the Tribunal erred on facts and in law in upholding the determination of value of the flat at the rate of ₹ 4500/- per square feet?

Xvii) Without prejudice, whether the Tribunal erred on facts and in law in not adjudicating the claim of exemption under section 54F, simply because sections 54 and 54EC were inadvertently mentioned in the grounds of appeal and not section 54F of the Act?

Xviii) Without prejudice whether the Tribunal erred on facts and in law in holding that exemption under section 54F of the Act was not available on the value of the flat receivable under the JDA?

Xix) Whether on the facts and in the circumstances of the case the findings arrived at by the Tribunal are perverse, inasmuch as no reasonable person correctly informed of the provisions of law would come to such a conclusion?

xx) Whether demand of respondents to demand alleged income tax liability even though as per the ruling of this Hon'ble Court rendered in ITA No.200 of 2013, no tax is liable to be paid?

xxi) Whether the demand is justified once question of law that there is no capital gains has been decided in favour of the assessee?”

3. The facts being identical as in ITA No.200 of 2013 (***C.S.Atwal vs. The Commissioner of Income Tax, Ludhiana and another),*** need not be noticed herein again. It was not disputed by learned counsel for the parties that the issues involved in this appeal have already been decided by

this Court in ***C.S.Atwal's*** case (supra) vide order dated 22.7.2015, wherein it was concluded as under:-

> "1) Perusal of the JDA dated 25.2.2007 read with sale deeds dated 2.3.007 and 25.4.2007 in respect of 3.08 acres and 4.62 acres respectively would reveal that the parties had agreed for pro-rata transfer of land.
>
> 2) No possession had been given by the transferor to the transferee of the entire land in part performance of JDA dated 25.2.2007 so as to fall within the domain of Section 53A of 1882 Act.
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> 3) The possession delivered, if at all, was as a licencee for the development of the property and not in the capacity of a transferee.
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> 4) Further Section 53A of 1882 Act, by incorporation, stood embodied in section 2(47)(v) of the Act and all the essential ingredients of Section 53A of 1882 Act were required to be fulfilled. In the absence of registration of JDA dated 25.2.2007 having been executed after 24.9.2001, the agreement does not fall under Section 53A of 1882 Act and consequently Section 2(47)(v) of the Act does not apply.
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> 5) It was submitted by learned counsel for the assessee-appellant that whatever amount was received from the developer, capital gains tax has already been paid on that and sale deeds have also been executed. In view of cancellation of JDA dated 25.2.2007, no further amount has been received and no action thereon has been taken. It was urged that as and when any amount is received, capital gains tax shall be discharged thereon in accordance with law. In view of the aforesaid stand, while disposing of the appeals, we observe that the assessee appellants shall remain bound by their said stand.
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> 6) The issue of exigibility to capital gains tax having been

decided in favour of the assessee, the question of exemption under Section 54F of the Act would not survive any longer and has been rendered academic.

7) The Tribunal and the authorities below were not right in holding the assessee-appellant to be liable to capital gains tax in respect of remaining land measuring 13.5 acres for which no consideration had been received and which stood cancelled and incapable of performance at present due to various orders passed by the Supreme Court and the High Court in PILs. Therefore, the appeals are allowed.

4. In view of the above, the appeal is disposed of in the same terms as in ***C.S.Atwal's*** case (supra).

(Ajay Kumar Mittal)
Judge

November 02, 2015 **(Ramendra Jain)**
gs' **Judge**