IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 352 of 2015 (O&M)

Date of Decision: 3.12.2015

Commissioner of Income Tax, Hisar

....Appellant.

Versus

Dr. R.S. Sangwan

...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? Yes
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. Tajender K. Joshi, Advocate for the appellant.

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 30.4.2013 (Annexure A-III) passed by the Income Tax Appellate Tribunal, Chandigarh Bench “B”, Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 458/CHD/2011, for the assessment year 2006-07, claiming the following substantial questions of law:-

i) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is right in law in holding that twin conditions of order being erroneous and prejudicial to the interest of revenue did not exist?

ii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is right in law in ignoring the position of law that incorrect assumption of facts by the Assessing Officer that five other claimed co-owners had legal rights in the property and these legal rights were transferred by the subject sale of flat, renders order of AO as erroneous?

iii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is right in law in ignoring the position that Assessing Officer ignored correct position of law that the entire transfer in terms of section 2(47) of the Income Tax Act was in respect of the Respondent assessee and the other five claimed co-owners did not have any legal rights in the said flat and the omission of this position of law by the Assessing Officer renders the assessment order as erroneous as well as prejudicial to the interest of revenue?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed his return of income on 28.11.2006 for the assessment year 2006-07 declaring the total income at ₹ 7,07,090/-. The return was processed

under Section 143(1) of the Act on 12.2.2007. Later on, the case was taken up for scrutiny and notice under Section 143(2) of the Act was issued on 28.3.2007. The Assessing Officer framed the assessment vide order dated 21.10.2008 (Annexure A-I) under Section 143(3) of the Act at a total income of ₹ 7,51,120/-. The assessee sold a house located at Vasant Vihar, New Delhi for a sale consideration of ₹ 4,51,00,000/- vide sale deed dated 11.11.2005 (Annexure A-V) during the previous year relevant to the assessment year 2006-07 which was purchased by him as sole buyer on 24.12.1974. The assessee had declared capital gains corresponding to $1/6^{th}$ share of the property and as such the Assessing Officer accepted the capital gains so declared. The then Commissioner of Income Tax (for brevity “the CIT”) on examining the assessment record found the assessment order dated 21.10.2008 passed by the Assessing Officer under Section 143(3) of the Act as erroneous as well as prejudicial to the interest of the revenue. The CIT vide order dated 7.3.2011 (Annexure A-II) passed under Section 263(1) of the Act set aside the aforesaid order of the Assessing Officer holding that the property in question was solely owned by the assessee and has to be assessed in his hands alone. Further, the CIT had held the order of the Assessing Officer to be erroneous and prejudicial to the interest of the revenue and directed the Assessing Officer to make fresh assessment on all the issues after affording due opportunity of hearing to the assessee. Feeling aggrieved, the assessee filed an appeal before the Tribunal who vide order dated 30.4.2013 (Annexure A-I) set aside the revisional order passed under Section 263 of the Act and restored the assessment order dated 21.10.2008 passed by the Assessing Officer. Hence, the present appeal by the revenue.

3. After hearing learned counsel for the appellant-revenue, we do not find any merit in the appeal.

4. The assessee has been pursuing his profession of medical practitioner and filed his return of income on 28.11.2006 for the year in question declaring the total income at ₹ 7,07,090/-. He had shown his income from long term capital gains and professional income. The assessee had sold a flat situated at Vasant Vihar, New Delhi for a sale consideration of ₹ 4,51,00,000/- purchased on 24.12.1974. According to the assessee the said property was jointly owned by him with other family members and his HUF and he was having only 1/6th share in the said property. The assessee in his computation of income furnished along with the return of income had shown his share in profit from sale of the property at ₹ 41,76,828/- after reducing indexed cost of acquisition etc. The Tribunal had noticed that all the co-owners have signed on the sale deed and they had been showing rental income arising out of above flat in their respective returns of income and share had also been shown by the co-owners in their respective returns of wealth. Accordingly, the assessee had only 1/6th share in the sale consideration which had been properly taxed in the hands of the assessee by the Assessing Officer. Further, the finding of the CIT that the entire capital gains arising out of sale was required to be assessed in the hands of the assessee alone was not accepted by the Tribunal and the view taken by the Assessing Officer was accepted as correct. The findings recorded by the Tribunal read thus:-

> "5. Reverting to the facts of this case, we have found that the assessee filed his return of income for the year under consideration declaring total income of

Rs.7,07,090/- on 28.11.2006. The assessee has been pursuing his profession of medical practitioner as proprietor of M/s Sangwan Nursing Home. The assessee has shown income from long term capital gains besides professional income. Assessment was completed u/s 143(3) vide order dated 21.10.2008. It is found that the assessee had sold a flat bearing No. E-1/9, Vasant Vihar, New Delhi for a consideration of Rs.4,51,00,000/-. This house was purchased by the assessee on 24.12.1974 from one Shri S.N. Sharma and thereafter made some construction thereon. The case of the assessee is that this property was jointly owned by him with other family members and his HUF and he was not the sole owner but having only 1/6th share in this property. The assessee, in his computation of income furnished along with the return of income for the year under consideration has shown his share in profit from sale of the property at Rs.41,76,828/- after reducing indexed cost of acquisition etc. As per the ld. CIT, this properly was solely owned by the assessee and has to be assessed in his hands alone. The assessee has claimed that in this property himself and his HUF along with Shri R.S. Sangwan, HUF, Smt. Savitri Sangwan, Shri Yogesh Sangwan and Shri Amar Sangwan are having beneficial interests in the said property as they had also contributed/invested towards the cost of acquisition, construction and made other payments for acquisition of the said property. Photocopy of the written reply submitted by him before the then A.O. during the course of assessment proceedings in his case for A.Y. 1983-84 vide which the source of investment in purchase of the property was explained as under was produced:

i. R.S. Sangwan HUF Bank Draft No. 530788 dated 10.1.1983 from S.B. A/c No. 17107 of PNB : Rs.34,000/-

ii. R.S. Sangwan Bank Draft No. 98996 dated 10.1.1983 from S.B. A/c No. 4900 of PNB : Rs.20,000/-

iii. Smt. Savitri Sangwan HUF Bank Draft No. 98997 from S.B. A/c No. 5203 of PNB : Rs.10,000/-

iv. Shri Amar Sangwan Bank Draft No. 98995 dated 10.1.1983 from S.B. A/c No. 10063 of PNB : Rs.15,000/-

v. Cap. Karen Singh Sangwan Bank Draft No. 5176710 dated 10.1.1983 from New Bank A/c No. 12228 of PNB : Rs.10,000/-

vi. Rent from Ghana Embassy for fitting and fixture for the quarter Jan to March, 1983 through Mrs. Savitri Sangwan dated 12.1.1983 : Rs.12,000/-

All the co-owners have signed on the sale deed. All these co-owners had been showing rental income arising out of above flats in their respective returns of income and share in above property had been shown by the co-owners in respective returns of wealth. From this, it has been proved beyond doubt that the assessee is only 1/6th share holder in the sale consideration which has been property taxed in the hands of the assessee to that extent. It was found for a fact that in the hands of all other co-owners 1/6th of the profit from sale of this house have been accepted by the same A.O. and the Id. CIT has not revised their accepted assessment orders. It is also found that on the basis of very same facts the A.O. has taken possible which has to be accepted as correct and, therefore, we do not find any error in this finding of the A.O. We are not in agreement with the Id. CIT's finding that entire capital gain out of sale is required to be assessed in the hands of the assessee alone."

5. The aforesaid finding of fact recorded by the Tribunal was not shown to be erroneous or perverse in any manner. It is a plausible view taken by the Tribunal. Therefore, the Tribunal was justified in cancelling the revisional order passed by the CIT under Section 263 of the Act. Accordingly, no substantial question of law arises in this appeal. The instant appeal is dismissed.

6. There is a delay of 531 days in refiling the appeal. CM No. 20235-CII of 2015 has been filed for condonation of 531 days' delay in refiling the appeal. Since the appeal has been dismissed on merits, no further orders are required to be passed in the application for

condonation of delay in refiling the appeal and the same is disposed of as such.

(AJAY KUMAR MITTAL)
JUDGE

December 3, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**