IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 361 of 2015 (O&M)

Date of Decision: 3.12.2015

The Principal 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?
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 6.2.2015 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 492/CHD/2014, for the assessment year 2006-07, claiming the following substantial questions of law:-

i) Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in not appreciating that the department has filed appeal before the Hon'ble High Court against the order of Hon'ble ITAT setting aside the order passed under Section 263 of the I.T. Act, 1961, and ITAT ought to have kept the matter pending as far as technical aspect of case is concerned?

2. Whether the Hon'ble ITAT has not erred in holding that the order passed by the A.O. giving effect to the order passed u/s 263 passed by the CIT is invalid on technical ground and not discussing merits of the issues discussed in the assessment order?

3. Whether the Hon'ble ITAT has not erred in not appreciating the facts that in case the department gets favourable order from the Hon'ble High Court in the ITA filed by it challenging the order passed by the ITAT setting aside the order passed under Section 263 of the I.T. Act, the ITAT has no power to review/revise its order?

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 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 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 1/6th 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 to be erroneous as well as prejudicial to the interest of the revenue. The CIT vide order dated 7.3.2011 (Annexure A-4) 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-5) set aside the revisional order passed under Section 263 of the Act and restored that of the order passed by the Assessing Officer. Being dissatisfied, the revenue challenged the order dated 30.4.2013 (Annexure A-5) before this Court vide ITA No. 352 of 2015. During the pendency of the appeal of the assessee against the order dated 7.3.2011 (Annexure A-4) before the Tribunal, the Assessing Officer re-framed the assessment under Section 143(3) of the Act vide order dated 26.12.2011 (Annexure A-1) and enhanced the income of the assessee from ₹ 7,51,120/- to

₹ 2,57,56,820/-. Against the order, Annexure A-1, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [in short "the CIT(A)"]. The CIT(A) vide order dated 20.2.2014 (Annexure A-2) allowed the appeal holding that the Tribunal in its order dated 30.4.2013 (Annexure A-5) had restored the original assessment order dated 21.10.2008 and set aside the order dated 7.3.2011 (Annexure A-4) of the CIT and, therefore, the order dated 26.12.2011 (Annexure A-1) passed by the Assessing Officer had become invalid and stands cancelled. The revenue challenged the order, Annexure A-2, before the Tribunal by way of an appeal. The Tribunal vide order dated 6.2.2015 (Annexure A-3) upheld the order of the CIT(A) and dismissed the appeal. Hence, the present appeal by the revenue.

3. We have heard learned counsel for the appellant-revenue.

4. The Tribunal had dismissed the appeal of the revenue vide order dated 6.2.2015 (Annexure A-3) on the ground that it had cancelled the order dated 7.3.2011 (Annexure A-4) under Section 263 of the Act passed by the CIT. This Court vide order of even date passed in ITA No. 352 of 2015, has upheld the order of the Tribunal dated 30.4.2013 (Annexure A-5) cancelling the revisional order. Accordingly, no substantial question of law arises in this appeal and the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

December 3, 2015
gbs

(RAMENDRA JAIN)
JUDGE