IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 78 of 2015

Date of Decision: 18.8.2015

Shakun Mehta

....Appellant.

Versus

Commissioner of Income Tax, Hisar

...Respondent.

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

PRESENT: Mr. Ravi Shankar, Advocate and
Mr. B.M. Monga, Advocate for the appellant.

Mr. Tajender K. Joshi, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. 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 7.11.2014 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 901/CHD/2012, for the assessment year 2009-10, claiming the following substantial questions of law:-

i. Whether on the facts and in the circumstances of the case, the Tribunal has erred in law in sustaining the addition of ₹ 43,00,000/- though received as advance for sale of property ignoring the vital fact that the deal could not be materialized and the said advance was returned during the year itself from the same bank account?

ii. Whether the ITAT is justified while sustaining the addition of ₹ 43,00,000/- without appreciating that the assessee had discharged the initial onus and the AO was duty bound to discharge its onus to prove that the impugned bank deposits are actually the undisclosed income of the assessee which in fact had been received from the intending purchasers which finding is contrary to judgment of the Hon'ble Delhi High Court in CIT vs. Oasis Hospitalities Pvt. Ltd. 333 ITR 119?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed return of income on 26.6.2009 declaring an income of ₹ 2,14,820/-. The assessment was framed by the Assessing Officer vide order dated 30.12.2011 (Annexure A-1) by making addition of ₹ 43,00,000/-. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The said appeal was allowed by the CIT(A) vide order dated 18.6.2012 (Annexure A-2) and addition of ₹ 43,00,000/- made by the Assessing Officer was deleted. Against the order, Annexure A-2, the revenue filed an appeal before the Tribunal who vide order dated 7.11.2014 (Annexure A-3) set aside the order of the CIT(A) and restored that of the Assessing Officer. Hence, the present appeal by the assessee.

4. We have heard learned counsel for the parties and perused the record.

5. The Assessing Officer vide assessment order dated 30.12.2011 (Annexure A-1) made an addition of ₹ 43,00,000/- to the total income as the assessee had failed to explain the sources of the said amount. Further, the agreement of advance was held to be not a reliable document. On appeal by the assessee, the CIT(A) vide order dated 18.6.2012 (Annexure A-2) allowed the appeal. The CIT(A) held the finding of the Assessing Officer that the agreement to sell is not a reliable document was erroneous and without basis and accordingly deleted the addition of ₹ 43,00,000/- made by the Assessing Officer. Being aggrieved, the revenue filed an appeal before the Tribunal who vide order dated 7.11.2014 (Annexure A-3) set aside the order of the CIT (A) and restored that of the Assessing Officer.

6. The Tribunal noticed that the assessee was not the owner of the land in respect of which she had entered into agreement as the land belonged to her husband. No copy of any registered power of attorney of her husband in her favour was produced. Further, a perusal of para 13 of the Tribunal's order where affidavits of four persons who had allegedly advanced money is seen, it is noticed that it is exactly in the same language. None of the affidavits has individually specified the amount advanced. Still further, no specific source of the payment of these persons had been explained except to state that they are agriculturist and not income tax assessees. The said persons had not been produced before the Assessing Officer for verification of their affidavits as well. The relevant findings of the Tribunal are as under:-

> “12. We have considered the rival submissions

carefully and find no force in the submissions of Ld. Counsel for the assessee. First of all, it is very difficult to believe that the assessee who is not owner of the land had entered into agreement when the land belonged to her husband. Though it was stated before Assessing Officer and the Ld. CIT(A) that Power of Attorney was executed by her husband in favour of the assessee but copy of the power of attorney has not been produced before the Assessing Officer and, therefore, the Ld. CIT(A) should have been little careful in asking for the power of attorney but he simply believed this theory without examining the Power of Attorney. Before us also a copy of Power of Attorney is not filed. It is very difficult to ascertain in what circumstances the Power of Attorney was given by her husband. This fact itself is sufficient to disbelieve the story of Agreement to Sell entered by the assessee.

13. Normally, no purchaser would agree to purchase the land from attorney holder until and unless such Attorney is duly registered or the persons owning the land becomes a confirming party in the Agreement to Sell. As observed above, Power of Attorney has not been filed before us and the perusal of the Agreement to Sell clearly shows that Shri I.D. Mehta who is husband of the assessment is not a confirming party in the Agreement to Sell. The copies

of the affidavits filed by four different purchasers who were stated to be not related parties reads as under:-

"HARYANA 21AA 12878

AFFIDAVIT

I Ravi Parkash S/o Sh. Bhim Singh resident of village Khera, teshil Dabwali, Distt. Sirsa, do hereby solemnly affirm and declare as under:

1. That I am permanent resident of village Sukhera Khera and purely agriculturist.
2. That my source of income is from agriculture and I am not assessed to income tax.
3. That an agreement to purchase agriculture land situated at village Budhabhana, Distt. Sirsa was made by me with 3 other co-sharer on dated 02.07.2008 with Smt. Shakun Mehta R/o Sirsa.
4. That the said agreement was made jointly with Sh. Sarjeet Singh, Sh. Prem Nath and Sh. Puran Chand.
5. That we have given total advance of Rs.43.00 lakh to Smt. Shakun Mehta during the year 2008-09.
6. That however, the deal could not be materialized due to disputes between us and Shakun Mehta and ultimately the

advance given was returned back.

Sd/-

DEPONENT

VERIFICATION:

The above said facts are true and correct to the best of my knowledge and belief and nothing is concealed therein.

Place: SIRSA Sd/-

Dated: 22.9.11 DEPONENT"

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14. The perusal of the above affidavits would show that exactly the same language has been used in all the affidavits. All the four persons have not stated how much money each one of them has paid. No specific source of the payment has been explained and it has been simply stated that they are agriculturists. When four persons have paid a sum of Rs.43 lakhs the Assessing Officer could have verified the sources only if such persons were produced before him. We fail to understand how Ld. CIT(A) believed these affidavits particulars when the Assessing Officer had insisted on producing these persons. The affidavits are clearly in the nature of self serving documents and cannot be believed. Further there is no evidence why the deal did not mature. How the amounts were returned whether any receipts

were taken or not is not clear. All these circumstances make the whole story not plausible. In our opinion it seems to be only a story to explain the deposits of cash and does not have any substance. Therefore, we set aside the order of Ld. CIT(A) and restore that to Assessing Officer."

7. The aforesaid findings of fact recorded by the assessing authority and the Tribunal are not shown to be erroneous or perverse in any manner. Thus, no substantial question of law arises in this appeal. Accordingly, the instant appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 18, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**