IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-92-2015 (O&M)
Date of decision:- 21.05.2015

The Principal Commissioner of Income Tax, Faridabad
...Appellant

Versus

Avtar Kukreja
...Respondent

ITA-94-2015 (O&M)

The Principal Commissioner of Income Tax, Faridabad
...Appellant

Versus

Avtar Kukreja
...Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Tajender K. Joshi, Advocate,
for the appellant.

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S.J. VAZIFDAR, A.C.J. (ORAL)

These appeals are against the common order of the Tribunal dated 30.11.2010 allowing substantially the respondent's appeal against the order of the CIT (Appeals) confirming the additions made by the Assessing Officer.

2. Both the appeals pertain to the assessment years 2004-2005 and 2006-2007 respectively. A search was carried out under Section 132 of the Income Tax Act, 1961. The Assessing Officer had the properties valued by the Departmental Valuation Officer (in short DVO). The Tribunal upheld the matter having been referred to the DVO. However, on merits, the Tribunal has set aside the additions made by the Assessing Officer.

3. No question of law arises in the matter. The matter involved an appreciation of facts alone. In respect of the first property, the difference in

valuation of the plot by the assessee and DVO came to ₹ 1,18,887/-. The Tribunal noted that no comparable sale instance had been given and that there was no incriminating material which could justify the addition made. The Assessing Officer had added an amount of only ₹ 46,916/-. The Tribunal rightly deleted the addition.

4. With respect to the second property, the Tribunal noted that the stamp duty had been paid on the current circle rate. The Tribunal rightly observed that the DVO had valued the property on 18.11.2008 ignoring the vital fact that the property was acquired in the year 2003 and registered on 03.03.2004 with the constructed house thereon. There was no evidence to support the addition. The same was, therefore, rightly set aside.

5. With respect to the third property, the cost of construction was assessed at ₹ 5,76,926/- against the respondent's claim that the cost of construction was ₹ 3,00,000/-. The Tribunal found merit in the argument that the PWD rates should have been adopted instead of the CPWD rates and that no rebate had been given for self-supervision. The Tribunal adopted a rebate of 15% on account of difference between the CPWD rates and the PWD rates and 5% on account of self-supervision. The Tribunal, therefore, after balancing the factors reduced the addition to ₹ 1,61,542/-. There is no warrant for interfering with the discretion.

6. The last property was valued at ₹ 48,60,000/- by capitalizing the rent. However, the rent was taken as prevalent in the year 2007-2008. It was noted that by then the locality had become more prominent and had started fetching commercial value. The rent was fixed in respect of a lease granted in favour of a Multi National Company (MNC). The Tribunal rightly noted that the estimated cost of the acquisition ought to have been considered with

respect to the relevant assessment year, namely, 2003-2004. At that time, the rent was about 1/10th of the rent in the year 2007-2008. The addition was, therefore, rightly deleted.

7. As regards the next property, the issue was similar. The rent was capitalized on an erroneous basis.

8. The above findings are in any event purely questions of fact. No question of law arises.

9. The appeals are, therefore, dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

21.05.2015
Amodh