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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: May 22, 2015

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ITA 340/2015 & C.M.No.9241/2015

COMMISSIONER OF INCOME TAX-14

..... Appellant

Through: Ms. Suruchii Aggarwal, Sr. Standing
Counsel, Ms. Lakshmi Gurung, Jr.
Standing Counsel and Mr. Abhishek
Sharma, Adv.

versus

ANIL ARORA

..... Respondent

Through: Mr. Vikas Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE R.K. GAUBA (OPEN COURT)

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1. This appeal under Section 260-A of Income Tax Act, 1961 (hereinafter referred to as "the Act") challenges the order dated 08.08.2014 of Income Tax Appellate Tribunal (hereinafter referred to as "the ITAT") in appeal ITA no. 2293/Del/2011 in respect of the respondent (assessee) for Assessment Year (AY) 2008-09.

2. The assessee is a resident individual associated with business of Wings Pharmaceuticals Pvt. Ltd. It is stated that search and seizure action under Section 132 of the Act was carried out in the case of the said company

on 14.02.2008 in which the assessee was also covered. The searches lead to proceedings being initiated under Section 153A, including against the assessee. All the cases arising out of the said search were centralized with Central Circle-2, New Delhi by CCIT (Central), New Delhi by order F.No. CCIT (Central) 2008-09/449 dated 13.08.2008.

3. Notices under Section 143(2) and 142(1) along with questionnaire were issued on 13.08.2009. In the course of such proceedings, the Assessing Officer (AO), *inter alia*, noted that property (admeasuring 2275.92 sq. yds.) no. 10/78, Punjabi Bagh (West), New Delhi had been purchased from Mr. Munish Sachdeva and Mr. H.K. Sachdeva by registered sale deed executed on 19.04.2007 by the assessee jointly in equal shares with his three brothers for total consideration of ₹3.90 crores. It was noted that while two other brothers (Mr. K.K. Arora and Mr. R.P. Arora) had paid ₹1.05 crores each, the assessee and his other brother had paid ₹90 lakhs each for their respective shares. The AO suspected it to be a case of under-valuation and, thus, referred the matter to Departmental Valuation Officer (DVO) to ascertain the correct value of the property. The DVO, in his report, determined the value of the property at ₹6,47,72,800/-. On the basis of the said estimation, the AO concluded that the assessee had reported the value of the investment incorrectly. He found the value of the assessee's share at ₹1,61,93,200/- and on that basis, discounting ₹90 lakhs as declared, added ₹71,93,200/- treating it as undisclosed investment under Section 69B of the Act.

4. The AO also noted that the assessee had declared rental income only of ₹34,200/- for the shop at Bhagirath Place, Chandni Chowk, Delhi which had been purchased by him for ₹2,55,000/- a number of years ago. The AO

assessed the current rental income to be ₹1,14,000/- on the basis of 6% of the estimated present value of the shop assessed at ₹19 lakhs. On such conclusions, the AO made a further addition of ₹79,800/- to the income of the assessee under Section 23(4)(b).

5. It is the case of the Revenue that during the search, cash of the value of ₹3,22,200/- was found at the residence of the assessee. The AO held this amount to be unexplained money and, thus, added it to the income under Section 69A.

6. The assessee preferred appeal no. 322/09-10 against the order dated 30.12.2009, which was allowed by CIT(Appeals) by order dated 17.02.2011. The Revenue took the matter in second appeal to the ITAT but unsuccessfully.

7. The Revenue urges the following as substantial questions of law:-

“i. Whether the ITAT was justified in upholding the decision of Ld. CIT and passing the order without considering the facts of case and without taking into account the valuation report relied upon by the A.O. u/s 142A of the I.T. Act as an expert opinion and deleted the addition of Rs. 71,93,200/- made u/s 69B of the I.T. Act?

ii. Whether the ITAT, without appreciating the provisions of Sec. 23(4) (b) of the I.T. act, 1961, was justified in upholding the decision of Ld. CIT (A) in deleting the addition of Rs.79,800/- on account of Fair Rental Value stating that the Ld. CIT (A) had deleted the additions on account of difference in market prices of properties as compared with declared values following certain judicial pronouncements and by elaborating the facts clearly?

iii. Whether the ITAT was justified in law in deleting the addition of Rs. 3,22,200/- made u/s 69A of the I.T. Act 1961 on

account of unexplained cash found during the course of search proceedings?

iv. Whether on the facts and circumstances of the case, findings of the ITAT are perverse?”

8. Having heard the learned counsel for the Revenue, we find the contentions urged in the appeal to be wholly misplaced. It is fairly conceded (at bar) by the counsel for the Revenue that the reference to DVO for estimation of the market value of the property in Punjabi Bagh was not based on any material discovered or seized during the search operations. The counsel, however, referred to the case of another property in District Baddi (Himachal Pradesh), in respect of which documentary evidence indicated unaccounted consideration paid by the assessee, referred to by the AO in para 4.3 of his order. At the same time, learned counsel also conceded that no addition to the tax liability of the assessee on account of the said other property has been made. There is no nexus between the property in Baddi (Himachal Pradesh) and the property in Punjabi Bagh (West). There is undoubtedly no material available to even remotely reflect that consideration over and above what was shown to be paid in the registered sale deed of the West Punjabi Bagh property was made over to the seller. In these circumstances, it was not fair in the first place to refer the said property for estimation of its market value by DVO.

9. The assessment of the value by DVO cannot hold primacy over the consideration for which the property was actually acquired. If there is any difference in the shares in consideration borne by the four brothers, it is a matter of their *inter se* understanding. Doubts as to the real value cannot arise from such fact alone.

10. The shop in Bhagirath Place is the property of the assessee. It has been found, as a fact, by the CIT(Appeals) that the shop had remained vacant throughout the AY. No evidence was gathered by the AO to refute the claim of the assessee to such effect or to show that rent over and above what was declared was realized. The conclusion of the CIT(Appeals) to the contrary was affirmed by ITAT in the order dated 08.08.2014. Both the said authorities have also found, on factual inquiry, that the assessee had explained the recovery during the search with the help of books of accounts of Wings Pharmaceuticals Pvt. Ltd. There is nothing brought by the Revenue to demonstrate that these pure findings of fact are perverse.

11. In the foregoing fact and circumstances, no substantial question of law arises. There is no illegality or infirmity in the view taken by the ITAT.

12. The appeal must fail. It is dismissed *in limine*.

R.K. GAUBA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

MAY 22, 2015
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