

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.168 of 2011
Date of decision: 21.04.2016**

The Commissioner of Income Tax III, Ludhiana

.....Appellant

M/s Marvel Home Constructions (P) Ltd.

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of 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?

Present: Mr. Rajesh Katoch, Advocate, Advocate for the appellant- revenue.

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 30.8.2010, Annexure-3 passed by the income Tax Appellate Tribunal, Chandigarh Bench 'B' Chandigarh in ITA No.29/CHD/2010, for the assessment year 2006-07, claiming following substantial questions of law:-

- "i) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is right in upholding the order of CIT(A) in deleting the addition of ₹ 38,50,000/- made by the Assessing Officer on account of unexplained unsecured loans?
- ii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is right in upholding the order of CIT(A) in

deleting the addition of ₹ 21,55,000/- made on account of unexplained investment in purchase of land?

iii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is right in upholding the order of CIT(A) in deleting the addition of ₹ 24,10,000/- made on account of unexplained payment of stamp duty?

iv) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is right in upholding the order of CIT(A) in deleting the addition of ₹ 1,30,000/- made on account of unexplained cash deposits in the bank account?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee company is carrying on the business of real estates, purchase, construction, sale of buildings of flats, shops, godown etc. It filed its return of income for the assessment year 2006-07 on 30.11.2006 declaring total income at ₹ Nil. Assessment under Section 143(3) of the Act was completed on 30.12.2008, Annexure-1 and the following additions were made:-

- i) Addition on account of unexplained unsecured loans ₹ 38,50,000/-.
- ii) Under hand payments made for purchase of 7 kanal 17 marla land in Village Sunet ₹ 21,55,000/-.
- iii) Stamp duty paid ₹ 24,10,000/-
- iv) Unexplained cash deposit in OBC ₹ 1,30,000/-
- v) Disallowance under section 40(a)(i) ₹ 2,63,540/-
- vi) Income from other sources (interest received) ₹ 1,11,700/-

Total income ₹89,20,240/-

Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 6.10.2009, Annexure 2, the CIT(A) partly allowed the appeal deleting the additions made by the Assessing Officer. Not satisfied with the order, the revenue filed appeal before the

Tribunal. Vide order dated 30.8.2010, Annexure 3, the Tribunal dismissed the appeal. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the appellant-revenue. On the basis of substantial questions of law claimed by the revenue, the following four issues arise for our consideration in this appeal:-

- i) Addition on account of unexplained unsecured loans
₹ 38,50,000/-.
- ii) Under hand payments made for purchase of 7 kanal
17 marla land in Village Sunet ₹ 21,55,000/-.
- iii) Stamp duty paid ₹ 24,10,000/-
- iv) Unexplained cash deposit in OBC ₹ 1,30,000/-

4. Concurrent findings have been recorded by the CIT(A) and the Tribunal on appreciation of entire evidence on record on all the four issues. With regard to the first issue regarding deleting the addition of ₹ 38,50,000/-, the Assessing Officer noticed that the assessee had raised unsecured loans of ₹ 2.21 crores during the relevant period. The assessee was asked to produce the confirmation from whom the said loans were raised. The assessee vide letters dated 17.11.2008 and 23.12.2008 furnished confirmation of the loan creditors. Learned counsel for the assessee had also furnished written submissions on 23.12.2008 before the assessing authority. While computing the income for the year under consideration, the Assessing Officer observed that the assessee had not complied with the requirements as per letter issued on 22.12.2008 and confirmation of balance unsecured loans of ₹ 38,50,000/- had not been furnished. Thus, addition of ₹ 38,50,000/- was made. On appeal before the CIT(A), it was noticed that the assessee had filed confirmation statements of unsecured loans in respect of Shri Deepak Mahindra, Dr. Murari Lal Aggarwal and Shri Rajinder Mohan Singla. Their PAN numbers were also mentioned in the said confirmation statements. Thus, the Assessing Officer was not held to

be justified in making the addition on this ground. The findings recorded by the CIT(A) were upheld by the Tribunal with the following observations:-

“4. We find no merit in the said ground of appeal raised by the revenue in view of the confirmations being filed by the assessee in respect of the balance three loan creditors i.e. S/Shri Deepak Mahindra, Dr. Murari Lal Aggarwal and Rajinder Mohan Singla. The assessee has also furnished on record the confirmation of the aforesaid parties at pages 17 to 19 of the paper book. The addition was made by Assessing Officer for non furnishing of balance confirmation of loan creditors. In view thereof where the assessee has duly complied with the requisitions of the Assessing Officer, there is no merit in any disallowance. We confirm the order of CIT(A) and dismiss ground No.1 raised by the revenue.”

Learned counsel for the revenue could not demonstrate that the conclusion of the Tribunal was erroneous or perverse in any manner.

5. Taking up second addition with regard to ₹ 21,55,000/- on account of alleged unexplained payment for purchase of land, the Assessing Officer noticed that the purchase consideration had been shown at ₹ 2,15,90,000/- on which stamp duty was affixed of ₹ 24,10,000/- totalling ₹ 2,40,00,000/-. It was concluded after examining the matter that the assessee actually paid ₹ 2,37,45,000/- as market value of 7 kanals 17 marlas and registration deed had been executed under hand to the extent of ₹ 21,55,000/-. Thus, addition of ₹ 21,55,000/- was made to the income of the assessee. On appeal before the CIT(A) by the assessee, it was recorded that once the price of the land had been shown to be confirmed by the sellers and there was no evidence of payment in excess of that recorded in the conveyance deed, there was no case for making addition of ₹ 21,55,000/- on the allegation that the assessee had executed the conveyance deed underhand to the extent of ₹ 21,55,000/-. Thus, the addition was deleted. The findings were upheld by the

Tribunal with the following observations:-

“7. We have heard the rival contentions and perused the records. The assessee during the year under consideration had purchased a plot of land for a total consideration of ₹ 2,15,90,000/-. However, the market value of the said land was taken at ₹ 2,37,45,000/- by the registering authorities. The seller of the property had reflected the sale price i.e. ₹ 2,15,90,000/- in their hands and the same was accepted while assessment order passed under section 143(3) of the Act. The assessee has furnished on record the information sought by the Assessing Officer in the case of the seller under section 133(6) of the Act which are placed at pages 20 to 22 of the paper book. The CIT(A) has observed that price of the land as mentioned in the sale deed and not the market price has been confirmed by the seller in response to the queries raised by the Assessing Officer directly to them. Further, there is no evidence of payment of any amount over and above the sale consideration recorded in the sale deed. In the absence of the same, we are in conformity with the order of the CIT(A) in deleting the addition of ₹ 21,55,000/-. In any case, the addition, if any, under the provisions of section 50C of the Income Tax Act are attracted in the hands of the seller and not in the hands of the purchaser.”

The approach of the Tribunal was not shown to be against the record warranting interference by this Court.

6. In respect of third addition of ₹ 24,10,000/- on account of alleged unexplained payment of stamp duty etc. for the purchase of land, it may be noticed that during the assessment proceedings, the assessee was asked to produce the source of payment of ₹ 24,10,000/- of stamp duty on the purchase of land. It did not furnish any evidence to justify the source of investment. Thus, addition of ₹ 24,10,000/- was made by the Assessing officer to the returned income of the assessee. On appeal by the assessee before the CIT(A), it was observed that the books of account were produced by the assessee before

the Assessing Officer also which showed that all the payments had been made through cash book of the assessee. It was recorded by the CIT(A) that once all the credits on account of unsecured loans etc. taken by the assessee had been separately considered, the payments made through cash book could not be said to be out of the sources unexplained. On this ground, the addition of ₹ 24,10,000/- was deleted. The Tribunal concurred with the findings recorded by the CIT(A) and held that since the assessee had also explained the source of cash in hand and established the availability of cash, addition was rightly deleted by the CIT(A). The relevant findings recorded by the Tribunal read thus:-

“11. We have heard the rival contentions and perused the records. The CIT(A) had deleted the addition in view of the source being established by the assessee. The assessee claims that the said stamp duty has been paid out of the cash available in its books of account. The learned DR for the revenue had not controverted the findings of the CIT(A). In the absence of any contrary findings, we are in conformity with the order of CIT(A) in deleting the addition of ₹ 24,10,000/-. The source of credit also stands explained being out of the unsecured loans raised by the assessee which in turn were looked into by the Assessing Officer that since the assessee has also explained the source of the cash in hand and established the availability of cash, we uphold the order of CIT(A) in deleting the addition of ₹ 24,10,000/-. The ground No.3 raised by the revenue is dismissed.”

The findings recorded could not be shown to be result of any misreading or mis-appreciation of material on record on the basis of which it could be urged that the same were unsustainable.

7. Adverting to the fourth issue with regard to addition of ₹ 1,30,000/- on account of alleged unexplained deposits in the bank account of

the assessee, it was noticed by the Assessing Officer that in the absence of any explanation by the assessee with regard to the source of the cash deposits in the bank account, the addition was made to the income of the assessee. On appeal before the CIT(A), it was recorded that the amount was shown to be paid through cash book of the assessee and thus, the deletion was made. While upholding the findings recorded by the CIT(A), it was recorded by the Tribunal that the assessee had also furnished copy of the bank statement of Shri Gulshan Arora from whom a sum of ₹ 90,000/- was received by cheque and the balance ₹ 40,000/- were deposited out of cash in hand available with the assessee. The relevant findings recorded by the Tribunal read thus:-

“13.The said explanation was available on record and the assessee had also furnished the copy of bank statement of Shri Gulshan Arora, from whom a sum of ₹ 90,000/- was received by cheque and the balance ₹ 40,000/- was deposited out of cash in hand available with the assessee and the photocopy of relevant pages of cash book was furnished on record. The CIT(A) deleted the addition of ₹ 1,30,000/-. We are in conformity with the order of CIT(A) in view of the explanation of the assessee wherein a sum of ₹ 90,000/- has been received vide cheque from Shri Gulshan Arora, who in turn has confirmed the same. The balance ₹ 40,000/- is claimed by the assessee to have been deposited in cash out of the cash available, which is evidenced by the entries in the cash book. In the absence of any contrary findings, we uphold the order of CIT(A) and dismiss the ground No.4 raised by the revenue.”

No perversity was demonstrated in the aforesaid findings on the basis of which it could be concluded that the said findings were unsustainable.

8. The findings recorded by the CIT(A) and the Tribunal are based on appreciation of entire material and evidence on record. Learned counsel for the appellant-revenue has not been able to show any error in the

said findings. The substantial questions of law are, thus, answered against the appellant-revenue. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

April 21, 2016
'gs'

(Raj Rahul Garg)
Judge