IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.212

ITA No.200 of 2015
Date of decision: 04.08.2016

The Commissioner of Income Tax, Gurgaon
....Appellant

versus

Ram Kumar
....Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL

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

Mr. Rohit Sud, Advocate
for the respondent.

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE (ORAL)

This is an appeal against the order of the Income Tax Appellate Tribunal upholding the order of the CIT (Appeals) deleting the addition of about ₹2.12 crores to the income of the respondent-assessee in respect of the block period 01.04.1987 to 18.02.1997.

2. The appeal is admitted on the following substantial question of law:-

> "Whether the learned ITAT has erred in law upholding the deletion of the addition made on account of profit received from M/s Gopal Das Estates & Housing (P) Ltd. in respect of the agreements initially made in the name of family members of the assessee where as it was established that the income is actually

earned by the Sh. Ram Kumar?

3. A search was conducted under Section 132 of the Income Tax Act, 1961 on 18.02.1997 at the premises of the assessee and an order was passed under Section 158 BC assessing total income at ₹5.3 crores after making *inter alia* the said addition of ₹2.12 crores. It is this addition that we are concerned with in this appeal. The addition was made on account of undisclosed income in the original assessment. The appellant's case is that the profit shown to have been made by the various family members in respect of certain land transactions were actually the transactions of the assessee himself. Accordingly, the profits were attributable to the respondent and were liable to be brought to tax in his hands.

4. The assessment order was set aside by the CIT(A) and the matter was remanded to the Assessing Officer. The Assessing Officer accordingly framed a fresh assessment. The assessee contends that the fresh assessment was not in accordance with the directions of the CIT(A). The assessee filed an appeal against the second assessment order. The CIT(A) set aside the said addition. While doing so, the CIT(A) observed that there was no evidence that the income/profit earned by the different members of the family was attributable to the assessee. The family members had declared income under the VDIS Scheme 1997 and paid taxes thereunder. There is a reference to the assessee and one of his brothers having inherited certain properties from their father which were sold to a developer and they having received land in exchange for the same. This land, it was observed was sold to another developer. The CIT(A) further observed that there was no other evidence that the land of the various family members actually belonged to the assessee. There are several other observations to this effect.

5. We are, however, in agreement with the submission of both the learned counsel that the matter ought to be remanded. The main question is whether the amounts received by the assessee and by his various family members which are the subject matter of these proceedings were on account of the transactions pertaining to the land which belonged to or in which the assessee alone had any right or whether the same also belonged to or in which one or more of the other members of his family also had a right. From the orders passed at the various stages it is difficult to ascertain the exact line of reasoning.

6. Had the matter ended there it may not have been necessary to remand the matter. The difficulty is that from the orders it is not even clear as to how the amounts were acquired either by the assessee and/or by any one or more of the members of his family. There is nothing in the orders that indicates the reason why the commission was paid. If the question was only of the sale of land which belonged to the assessee and other members of the family, there would be no question of commission being paid for their own transactions. Further there is nothing to indicate whether the original land was actually purchased by the assessee or the various members of his family. Had they acquired title to the lands they would have transferred the same themselves. On the other hand, had they acquired any other right therein, they would have been only confirming parties to an agreement between the vendor and the purchaser. In either case, remuneration would have been received. However, the question would in either case be as to which of them was entitled to the remuneration.

7. In the circumstances, the impugned order is set aside in respect of the addition of the said amount of ₹ 2,12,68,390/-. The matter be

remanded to the ITAT, who is also a fact finding authority. It is left open to the ITAT to decide the matter itself or to remand the matter to the CIT(A) or to the Assessing Officer if the ITAT deems it appropriate.

The appeal is, therefore, disposed of by remanding the matter to the ITAT, to decide the issue afresh after giving the parties an opportunity of being heard. Any application for additional evidence shall be made before the ITAT.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

August 04, 2016
Jyoti 1

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	No