

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

**ITA No. 175 of 2016 (O&M)
Date of decision: 22.02.2017**

The Principal Commissioner of Income Tax-I, Chandigarh

.....Appellant

Vs.

Sh. Balwinder Singh Bhunder

.....Respondent

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

Present: Ms. Urvashi Dhugga, Advocate for the appellant.

Ms. Radhika Suri, Sr. Advocate, with
Ms. Rinku Dahiya, Advocate and Mr. Manpreet Singh,
Advocate (in ITA Nos. 175 & 176 of 2016)

Mr. Jagmohan Bansal, Advocate (in ITA No. 213 of 2016)
for the assessee.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos. 175, 176 and 213 of 2016 as according to the learned counsel for the parties, the issue involved in all these appeals is identical. However, the facts are being extracted from ITA No. 175 of 2016.

2. ITA No. 175 of 2016 has been preferred by the appellant-revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 8.12.2015, Annexure A.7, passed by the

Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (in short, “the Tribunal”) in ITA No. 27/Chd/2015 for the assessment year 2007-08, claiming following substantial questions of law:-

- (i) “Whether on the facts and circumstances of the case, the Hon’ble ITAT was right in deleting the penalty when the assessee had not fully disclosed the accrued capital gain even in income tax return filed under Section 148 and the appeal in the issue of quantum addition was pending before the Hon’ble Supreme Court?
- (ii) Whether on the facts and circumstances of the case and in law, the Hon’ble ITAT was right in deleting the penalty when the assessee had not fully disclosed the accrued capital gain and thereby furnishing inaccurate particulars of income especially in view of the decision of the Hon’ble Apex Court in the case of Suraj Lamp & Industries Private Limited Vs. State of Haryana and another?

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The respondent-assessee is one of the members of the Punjabi Cooperative House Building Society Limited consisting of 95 members present and Ex MLAs of Punjab Legislative Assembly who was the owner of 21.2 acres of land in Village Kansal, District Mohali (Punjab). The society entered into the tripartite Joint Development Agreement with M/s HASH Builders Private Limited (HASH) and M/s Tata Housing Development Company Limited Mumbai (THDC) which was agreed upon among these parties that the society shall transfer its land to THDC in lieu of monetary consideration and consideration in kind. As per the agreement each member of the society having a plot of 500 square yards in the society shall receive ₹82,50,000/- as monetary consideration and as consideration in kind each member owning plot of 500 square yards shall receive one furnished flat measuring 2250 square feet to

be constructed by THDC. The cost of such furnished flat was of ₹ 1,01,25,000/- The members owning plot of 1000 square were to get two such flats apart from the money as entire consideration. The assessee was the owner of 500 square yards of plot and as per the agreement, the total consideration accruing to the assessee came to ₹ 1,83,75,000/-. The total capital gain on such transaction came to ₹ 1,77,74,258/- out of which the assessee showed an amount of ₹ 11,11,785/- as long term capital gain in his return of income. The balance amount of ₹ 1,66,62,473/- was added back to the income of the assessee by the Assessing Officer vide his order dated 30.12.2010, Annexure A.1. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 01.08.2011, Annexure A.2, the CIT(A) upheld the decision taken by the Assessing Officer and dismissed the appeal filed by the Assessee. The assessee filed further appeal before the Tribunal. Vide order dated 29.07.2013, Annexure A.3, the Tribunal dismissed the appeal of the assessee. The assessee thereafter filed an appeal before this Court. This Court in a common judgment dated 22.07.2015 in ITA No. 200 of 2013 *C.S. Atwal Vs. The Commissioner of Income Tax, Ludhiana and another* decided the case in favour of the assessee. The Assessing Officer imposed penalty of ₹ 35,87,962/- under Section 271(1)(c) of the Act, vide order dated 05.02.2014, Annexure A.5, for concealment of income and furnishing inaccurate particulars of income. Not satisfied with the order. The assessee filed an appeal before the CIT(A). Vide order dated 21.10.2014, Annexure A.6, the CIT(A) allowed the appeal of the assessee and deleted the penalty imposed by the Assessing Officer holding that the assessee had furnished all the material facts which were required to compute the correct capital gain which establishes his bonafides. Aggrieved by the order, the revenue filed an

appeal before the Tribunal. Vide order dated 8.12.2015, Annexure A.7, the Tribunal relying upon its order in the case of *ITO Vs. Shri Balwinder Singh Dhillon* in ITA No. 1140/Chd/2014 and *Shri Tej Parkash Singh* in ITA No.491/Chd/2015 dismissed the appeal of the revenue. Hence, the instant appeal by the revenue.

4. We have heard learned counsel for the appellant.

5. The matter is no longer res integra. In *C.S. Atwal's* case (supra) in ITA No. 200 Of 2013 decided on July 22, 2015, the issue involved regarding taxability of capital gains in such circumstances in the hand of the assessee stands decided by this Court. In the said case, the following issues emerged for consideration:-

- (i) Scope and legislative intent of Section 2(47)(ii), (v) and (vi) of the Act;
- (ii) The essential ingredients for applicability of Section 53A of 1882 Act;
- (iii) Meaning to be assigned to the term “possession”?
- (iv) Whether in the facts and circumstances, any taxable capital gains arises from the transaction entered by the assessee?

After considering the relevant statutory provisions and the case law, the following conclusions were drawn:-

- “(1) Perusal of the JDA dated 25.02.2007 read with sale deeds dated 2.03.2007 and 25.04.2007 in respect of 3.08 acres and 4.62 acres respectively would reveal that the parties had agreed for pro-rata transfer of land.
- (2) No possession had been given by the transferor to the transferee of the entire land in part performance of JDA dated 25.02.2007 so as to fall within the domain of Section 53A of 1882 Act.

- (3) The possession delivered, if at all, was as a licensee for the development of the property and not in the capacity of a transferee.
- (4) Further Section 53A of 1882 Act, by incorporation, stood embodied in section 2(47)(v) of the Act and all the essential ingredients of Section 53A of 1882 Act were required to be fulfilled. In the absence of registration of JDA dated 25.02.2007 having been executed after 24.09.2001, the agreement does not fall under Section 53A of 1882 Act and consequently Section 2(47)(v) of the Act does not apply.
- (5) It was submitted by learned counsel for the assessee-appellant that whatever amount was received from the developer, capital gains tax has already been paid on that and sale deeds have also been executed. In view of cancellation of JDA dated 25.02.2007, no further amount has been received and no action thereon has been taken. It was urged that as and when any amount is received capital gains tax shall be discharged thereon in accordance with law. In view of the aforesaid stand, while disposing of the appeals, we observe that the assessee appellants shall remain bound by their said stand.
- (6) The issue of exigibility to capital gains tax having been decided in favour of the assessee, the question of exemption under Section 54F of the Act would not survive any longer and has been rendered academic.
- (7) The Tribunal and the authorities below were not right in holding the assessee-appellant to be liable to capital gains tax in respect of remaining land measuring 13.5 acres for which no consideration had been received and which stood cancelled and incapable of performance at present due to various orders passed by the Supreme Court and the High Court in PILs. Therefore, the appeals are allowed.”

6. Learned counsel for the appellant has not been able to controvert the applicability of the decision in *C.S. Atwal's* case (supra) and that quantum proceedings have been adjudicated in favour of the assessee. Once that is so, no penalty under Section 271(1)(c) of the Act would be exigible. The substantial questions of law claimed in these appeals are answered accordingly. Consequently, the appeals stand dismissed. In view of dismissal of the main appeal, CM No. 3773-CII of 2017 also stands dismissed.

(Ajay Kumar Mittal)
Judge

February 22, 2017
'gs'
Whether speaking/reasoned
Whether reportable

(Ramendra Jain)
Judge
Yes/No
Yes