

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

ITA No. 67 of 2016 (O&M)

Date of decision: 14.3.2017

Principal Commissioner of Income Tax-I, Chandigarh

.....Appellant

Vs.

Shri Madan Mohan Mittal

.....Respondent

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

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

Mr. G.S.Sandhu, Advocate for the respondent-assessee in ITA
No.41 of 2016.

Ms. Rinku Dahiya, Advocate for the respondent-assessee in ITA
Nos.67 and 92 of 2016.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos.41, 67 and 92 of 2016 as learned counsel for the parties are agreed that the issue involved in all these appeals is identical. However, the facts are being extracted from ITA No.67 of 2016.

2. ITA No.67 of 2016 has been preferred by the appellant-revenue under Section 260A of the Income Tax Act, 1961 which (in short, "the Act") against the order dated 16.10.2015, Annexure A.5, passed by the Income Tax Appellate Tribunal, Chandigarh (in short, "the Tribunal") in ITA No. 696/CHD/2014, for the assessment year 2007-08, claiming following substantial questions of law:-

- (i) "Whether on the facts and in the 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 and the appeal was pending before the Hon'ble Supreme Court?

(ii) Whether on the facts and in the 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 Pvt. Limited vs. State of Haryana and another?***

(iii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in deleting the whole amount of penalty of ₹ 39,77,450/- levied by the AO in respect of addition made on account of Long Term Capital Gain by taking wrong interpretation of the order of Hon'ble Punjab and Haryana High Court in the case of C.S.Atwal vs. Commissioner of Income Tax dated 22.7.2015 whereas the Hon'ble High Court has held that the sale consideration to the extent of amounts received are exigible to tax in the instant year and the assessee is bound to pay tax on receipt of further amounts?

3. Briefly, the facts as narrated in ITA No.67 of 2016, necessary for adjudication of the controversy involved may be noticed. The respondent-assessee is an individual. He was a member of Housing Society of MLAs, named as Punjabi Cooperative House Building Society Limited Mohali, who was the owner of 21.2 acres of land in Village Kansal, District Mohali. The society entered into a tripartite Joint Development Agreement (JDA) dated 25.02.2007 with Hash Builders Private Limited, Chandigarh (HASH) and Tata Housing Development Company Limited, Mumbai (THDC). Under the JDA, it was agreed that HASH and THDC shall undertake development of 21.2 acres of land owned and registered in the

name of the society in respect of which it would give development rights in lieu of consideration. The assessee being a member of the said society was owning 500 square yards land. The total consideration was settled at ₹ 82,50,000/- plus allotment of one flat of 2250 square feet to the assessee out of which he had received ₹ 15 lacs. The assessee had furnished his return of income on 7.3.2008 for the assessment year 2007-08 declaring income of ₹ 2,12,820/- only. Subsequently, the assessee had filed one more return of income on 13.10.2009 declaring the sale consideration of ₹ 15 lacs and capital gain of ₹ 8,63,976/-. The Assessing Officer noticed that as per the agreement dated 27.4.2007, each of the members of the society including the assessee owning plot of 500 square yards was to receive ₹ 82,50,000/- in cash and a furnished flat of 2250 square feet with market value of ₹ 101,25,000/- calculated at the rate of ₹ 4500 per square feet. Thus, the total consideration or transfer of plot came to ₹ 183,75,000/-. The Assessing Officer computed the income by way of capital gains by adopting this amount as sale consideration. Finally, the assessment was made by taking capital gains income at ₹ 177,21,807/- vide order dated 27.12.2010, Annexure A.1. Penalty proceedings under section 271(1)(c) of the Act were also initiated. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 23.8.2011, Annexure A.2, the CIT(A) dismissed the appeal. Still not satisfied, the assessee filed appeal before the Tribunal which also met the same fate. In the penalty proceedings, the assessee had filed a reply but the Assessing Officer was not satisfied with the explanation and levied minimum leviable penalty of ₹ 39,77,450/-. The assessee filed an appeal before the CIT(A) against the penalty order dated 22.3.2013, Annexure A.3. The CIT(A) deleted the penalty of ₹ 39,77,450/- levied by the Assessing

Officer vide order dated 15.5.2014, Annexure A.4 holding that various issues had still not been resolved and that the construction of the building in which the assessee was to get a flat as a part of sale consideration had not started till date. Aggrieved by the order, the department filed an appeal before the Tribunal. Vide order dated 16.10.2015, Annexure A.5, the Tribunal relying upon its own earlier orders in *ITO vs. Shri Balwinder Singh Dhillon* in ITA No.1140 of 2014 for the assessment year 2008-09 and in view of the decision of this Court in *C.S.Atwal and others vs. The Commissioner of Income Tax, Ludhiana and another*, ITA No.200 of 2013 decided on 22.7.2015 in which the quantum addition stood deleted, deleted the penalty under section 271(1)(c) of the Act. Hence the instant appeals 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 in these appeals 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 raised in these appeals are answered accordingly. Consequently, all the three appeals stand dismissed.

(Ajay Kumar Mittal)
Judge

March 14, 2017
‘gs’
Whether speaking/reasoned
Whether reportable

(Ramendra Jain)
Judge
Yes/No
Yes