IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-569-2008 (O&M)

Date of Decision: 12.11.2018

Commissioner of Income Tax, Faridabad

....Appellant.

Versus

Shri Swaroop Singh, HUF

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Tajender K. Joshi, Sr. Standing Counsel for the appellant.

Mr. Sanjay Bansal, Senior Advocate with
Mr. Amit Parshad, Advocate and
Mr. B.M. Monga, Advocate for the respondent.

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing ITA Nos.569 and 879 of 2008 as according to learned counsel for the parties, the facts and issues involved therein are relating to the same assessment year. ITA-569-2008 concerns the merits of the addition whereas ITA-879-2008 is regarding imposing of penalty under Section 271(1)(c) of the Act. For brevity, the facts are being extracted from ITA-569-2008.

2. ITA-569-2008 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 29.1.2008 (Annexure A-III) passed by the Income Tax Appellate Tribunal, Delhi Bench 'F', New Delhi (hereinafter referred to as "the Tribunal") in ITA No. 3891/Del/2003, for the assessment year 1997-98,

claiming the following substantial questions of law:-

i) Whether on the facts and circumstances of the case, the Hon'ble ITAT was right in law in holding that the assessment framed by the Assessing Officer u/s 143(3)/147 of the Income Tax Act is invalid and is annulled without appreciating the fact that the assessee filed his return in the status of HUF and acquired lands were ancestral properties devolved by inheritance and coming by mutation from one generation to another and there is no evidence on record suggesting partition of HUF?

ii) Whether on the facts and circumstances of the case and also in the light of the provisions of Section 292B of the Income Tax Act, 1961, the Hon'ble Tribunal was right in law in holding, in contravention of Jurisdictional High Court's judgment in the case of CIT Vs. Rajbir Singh (HUF) 233 ITR 126 (P&H), that notice issued under Section 148 of the Act was invalid, especially when the assessee had consciously and intentionally waived his right to object to the defect in the notice?

iii) Whether on the facts and in the circumstances of the case and also in the light of clarificatory provisions of Section 292BB of the Income Tax Act, when the assessee has appeared in all the proceedings and cooperated in all enquiries relating to assessment/reassessment including proceedings before the Ld. CIT(A), was the Hon'ble Tribunal right in law in holding that the assessment framed by the Assessing Officer u/s 143(3)/147 of the Income Tax Act is invalid and void?

3. A few facts necessary for adjudication of the instant appeal as

narrated therein may be noticed. On 7.2.1997, the assessee sold his agricultural land situated at village Sukhrali to M/s Pal Motors Limited for a sale consideration of ₹ 2,75,62,500/-. The other land belonging to the father of the assessee was acquired on 20.3.1989 by the Haryana Urban Development Authority. Due to death of his father, the assessee received total enhanced compensation of ₹ 70,75,934/- including interest of ₹ 29,69,570/- on 26.10.1996 and 16.3.1998 for the period from 20.3.1989 to 15.10.1996. Since the assessee had filed his return of income voluntarily, a notice under Section 148 of the Act was issued. In response thereto, the assessee filed his return of income on 11.3.2003 claiming his status as 'HUF'. The Assessing Officer taking the status of the assessee as 'HUF' framed the assessment under Section 143(3)/147 of the Act vide order dated 28.3.2003 (Annexure A-I) by making additions/disallowances at ₹ 2,50,25,890/-. The Assessing Officer computed the total income of the assessee as under:-

“i)	Long Term Capital Gain	₹ 2,24,22,000/-
ii)	Interest received from HUDA	₹ 254,26,944/-
iii)	Bank interest as declared	₹ 89,943/-
	Total	₹ 2,50,37,887/-
Less:	Deduction u/s 80L	₹ 12,000/-
Total Income		₹ 2,50,25,887/-
Rounded off		₹ 2,50,25,890/-”

4. The penalty proceedings under Section 271(1)(c) for concealment of income were also initiated against the assessee. Feeling aggrieved by the assessment order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity “the CIT(A)”]. The CIT(A) vide order dated 27.6.2003 (Annexure A-II), dismissed the appeal.

Still dissatisfied, the assessee filed an appeal before the Tribunal. The assessee took a new ground before the Tribunal that the assessment framed by the Assessing Officer under Section 143(3)/147 of the Act was without jurisdiction and not sustainable in law as the notice issued under Section 148 of the Act was against the assessee as an individual whereas the reassessment was framed under Section 143(3)/147 of the Act against Swaroop Singh 'HUF'. The Tribunal vide order dated 29.1.2008 allowed the appeal and set aside the order of the CIT(A) holding that the assessment framed under Section 143(3)/147 of the Act was invalid and is annulled. Accordingly, the levy of penalty was also held to be unsustainable. Hence, the present appeals by the revenue.

5. We have heard learned counsel for the parties.

6. The Tribunal had held that as the notices under Section 148 of the Act had been issued to the assessee in individual capacity and the reassessment under Section 143(3)/147 of the Act had been framed in the capacity of 'HUF', the assessment framed by the Assessing Officer was not in accordance with the statutory provisions of the Act and the Assessing Officer had no jurisdiction to tax the assessee, Shri Swaroop Singh- HUF. On the aforesaid premise, the Tribunal held the assessment framed under Section 143(3)/147 of the Act to be invalid and annulled the same.

7. The fact that the assessee himself had filed the return in the status of 'HUF' coupled with the provisions of Section 292BB of the Act, the Tribunal was not right in declaring the assessment as invalid and annulling the same in view of judgment of this Court in **CIT, Faridabad v. Shri Mangal Singh, ITA-84-2009** decided on 01.09.2015.

8. Learned counsel for the assessee did not dispute that the matter

is required to be re-examined by the Tribunal. However, it was urged that the Tribunal while re-examining the issue be also directed to decide regarding assumption of jurisdiction under Section 148 of the Act by examining the records whether sufficient reasons and sanction of appropriate authority had been obtained before issuance of notice under Section 147/148 of the Act.

9. In view of the above, the substantial questions of law are answered in favour of the revenue and against the assessee. The appeal is allowed and the order dated 29.1.2008 (Annexure A-III) is set aside. As a consequence thereof, the order dated 29.1.2008 (Annexure A-VIII) regarding the penalty levied under Section 271(1)(c) of the Act challenged in ITA-879-2008 is also set aside. The matters are remanded to the Tribunal to adjudicate all the issues arising in the appeal after affording an opportunity of hearing to the parties in accordance with law. Needless to say anything observed hereinbefore shall not be taken to be an expression of opinion on the merits of the controversy.

(AJAY KUMAR MITTAL)
JUDGE

November 12, 2018 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**