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

ITA No. 08 of 2011 (O&M)
Date of decision: 10.05.2018

Commissioner of Income Tax, Panchkula.

……Appellant

Vs.

M/s Mahashakti Royalty Co. Burj Kotian, Tehsil Kalka, Panchkula

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Yogesh Putney, Senior Standing counsel for the appellant- revenue.

None for respondent-assessee

Ajay Kumar Mittal,(ACJ)

1. The appellant-revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 28.04.2010, Annexure A.3, passed by the Income Tax Appellate Tribunal, Chandigarh Bench, 'B', (in short, "the Tribunal") in I.T.A. No.782/Chd/2008 for the assessment year 2003-04, claiming following substantial questions of law:-

> "i. Whether on the facts and circumstances of the case, the Ld. ITAT is right in law in passing a second order dated

28.04.2010 on the appeal filed by the assessee against the order of CIT(A) dated 15.11.2006 upholding the quantum addition made by the A.O., without recalling its earlier order passed in ITA No. 782/Chandi/2008 dated 24.10.2008 wherein the appeal filed by the assessee before the Ld. ITAT against the order of Ld. CIT(A) dated 15.11.2006 was dismissed?

ii. Without prejudice to the first question of law, whether on the facts and circumstances of the case, the Ld. ITAT was right in law in appraising the evidence produced before the Ld. CIT(A) during the penalty proceedings on the issue regarding unexplained investments amounting to ₹ 1,00,40,000/- whereas it is matter of record and also noted by Ld. ITAT that no supporting evidences were filed before the Assessing Officer or the CIT(A) in the quantum proceedings?

iii. Whether on the facts and circumstances of the case and in law, the Ld. ITAT was right in restoring the addition of ₹ 8,30,122/- under Section 40A(3) of the I.T. Act, 1961 on account of cash payments to the file of the AO in its second order dated 19.07.2010 on the appeal filed by the assessee against the order of CIT(A) dated 15.11.2006 upholding the quantum addition made by the A.O., without recalling its earlier order passed in ITA No. 782/Chandi/2008 dated 24.10.2008 wherein the appeal filed by the assessee before the Ld. ITAT against the order of Ld. CIT(A) dated 15.11.2006 was dismissed?"

2. A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The assessee filed its return declaring loss of ₹ 1,17,95,015/- on 1.12.2003. The assessment was finalised by the Assessing Officer under Section 143(3) of the Act vide order dated 14.12.2005, Annexure A.1 determining total income of ₹ 1,10,54,160/-. The additions made by the Assessing Officer inter alia

included addition of ₹ 1,00,40,000/- on account of investments by the members of AOP in the capital account and addition of ₹ 11,56,780/- under the provisions of Section 40A(3) of the Act. The assessee filed appeal before the Commissioner of Income Tax (Appeals), [CIT(A)], which was dismissed vide order dated 15.11.2006. The assessee filed appeal ITA No.782/Chd/2008 impugning the order of CIT(A) dated 15.11.2006 which was dismissed for non-prosecution vide order dated 24.10.2008, Annexure A.6. Thereafter, consequent to the addition made by the Assessing Officer, penalty of ₹ 38,00,580/- was imposed by the Assessing Officer under Section 271(1)(c) of the Act vide order dated 25.3.2008, Annexure A.4. The assessee filed an appeal before the CIT(A). The assessee furnished evidence/supporting documents in support of the investments made by the members totalling ₹81.25 lacs. The CIT(A) vide order dated 15.12.2008 accepted the evidence and directed the Assessing Officer to exclude the amount of ₹81.25 lacs and recompute the penalty with reference to the balance addition. The revenue filed appeal no. ITA 176/Chd./2009 laying challenge to order of CIT(A) dated 15.12.2008 relating to penalty under Section 271(1)(c) of the Act before the Tribunal. Though the ITA No. 782/Chd./2008 had been dismissed for non-prosecution on 24.10.2008, yet the Tribunal passed composite order on 28.04.2010 in ITA No. 176/Chd./2009 and in ITA No. 782/Chd./2008. The assessee filed affidavits of the members alognwith supporting documents to the extent of investment totalling ₹81.25 lacs in appeal before the Tribunal. It was pleaded that the said evidence could not be produced before the Assessing officer because of disputes between the partners. However, the same was produced subsequently during penalty proceedings before CIT(A) and relief was allowed on this account. It was categorically recorded by the Tribunal that

after considering the explanation of the assessee and perusing the evidence filed, the CIT(A) had deleted penalty on an investment of ₹81.25 lacs. Thus, the Tribunal deleted the addition of ₹81.25 lacs vide order dated 28.4.2010, Annexure A.3. Hence the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the appellant-revenue.

4. Learned counsel for the revenue submitted that the assessee had challenged the order of CIT(A) dated 15.11.2006 passed in quantum proceedings by filing ITA No.782/Chd/2008 which was dismissed for non-prosecution on 24.10.2008 (Annexure A/6). It was urged that the Tribunal without recalling the said order dated 24.10.2008 has again passed order on 28.04.2010 (Annexure A/3), partly accepting the appeal and allowing certain deductions to the assessee. According to the learned counsel for the revenue, the matter requires to be re-examined by the Tribunal, as in view of valid order dated 24.10.2008 still on record, the decision recorded on 28.04.2010 in ITA No.782/Chd/2008 could not be sustained.

5. We find merit in the submission of the learned counsel for the appellant as the appeal of the assessee against the order dated 15.11.2006 pertaining to the additions made under Section 143(3) of the Act had been dismissed for non-prosecution on 24.10.2008 (Annexure A/6) by the Tribunal. There is nothing on record or from the perusal of the impugned order dated 28.04.2010 to suggest whether the order dated 24.10.2008 passed by the Tribunal was ever recalled by it.

6. In view of the above, the order dated 28.04.2010, Annexure A.3, is set aside and the matter is remanded to the Tribunal to decide it afresh after hearing the parties in accordance with law and considering the

entirety of facts and appreciating the legal position in that regard. The appeal stands disposed of accordingly.

(Ajay Kumar Mittal)
Acting Chief Justice

May 10, 2018
'gs'

(Tejinder Singh Dhindhsa)
Judge

Whether speaking/reasoned **Yes**
Whether reportable **Yes**