

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

I.T.A. No. 387 of 2015

DATE OF DECISION : 12.02.2018

The Pr. Commissioner of Income Tax, Rohtak

.... APPELLANT

Versus

Ram Kumar Duhan

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Inderpreet Singh, Advocate,
for the appellant.

Mr. Amit Kumar Jain, Advocate,
for the respondent.

* * *

AVNEESH JHINGAN, J.

This is an appeal against the order of the Income Tax Appellate Tribunal confirming the order of the CIT (Appeals) whereby the order of the Assessing Authority making the addition of undisclosed income was quashed.

2. The matter pertains to the assessment year 2009-10.
3. According to the appellant, the following substantial question of law arises in this appeal :-

Whether on the facts and circumstances of the case the Hon'ble ITAT has erred in law and facts in dismissing the appeal of the revenue and deleting the addition of ₹ 1,13,02,000/- made by

the A.O. on account of investment from undisclosed sources by holding the same as explained ignoring the fact that the assessee was unable to furnish any sustainable documentary evidence with regard to his contention of being a farmer and that the purchase consideration was out of his agricultural income though his returns did not reflect any agricultural income. Also the sale deeds No. 3535/2008 and 3536/2008 clearly showed payment of ₹ 22,35,000/- and ₹ 84,28,000/- by the assessee to Sh. S.N. Thakur?”

3. The Assessing Officer (for short, 'the AO') finalised the assessment under Section 143 (3) of the Income Tax Act, 1961 (for short, 'the Act'), vide order dated 28.11.2011. The AO made an addition of ₹ 1,13,02,800/- of the investment made to purchase land from undisclosed source of income.

4. The CIT (Appeals) allowed the assessee's appeal vide order dated 19.07.2012. The CIT (Appeals) took into consideration that transfer of land in favour of assessee was to facilitate conversion of agricultural land to non-agricultural land as per the State laws. The land though in the name of the assessee was shown in the balance sheet of the Company. The MOU entered between M/s KTC Developers Pvt. Ltd. (for short, 'the Company') and its Directors was that property will be in name of Directors but it will remain property of the Company. The stamp duty was paid by the Company for transfer of land. Sale proceeds of the land were received by the Company. On the above basis, the CIT (Appeals) held that no investment had been made by the assessee for purchase of the agricultural land in the said year.

5. The Tribunal confirmed the reasonings given by the CIT (Appeals) and dismissed the appeal by the impugned order dated 17.02.2015. The order is based on an appreciation of the facts. It cannot be said to be perverse or irrational. The appeal therefore does not raise a substantial question of law.

6. The assessee filed the return during the relevant year declaring his income from the salary. The case was taken up for scrutiny. The AO had information that the assessee had purchased immovable property in Maharashtra and the sale deed was in the name of the assessee. The source of income was asked for. It was explained by the assessee that the Company was incorporated on 25.10.2006 with three promoter Directors, one of them being Shri Niwas Thakur. The assessee joined the Company on 15.04.2007. The Company had already purchased certain land in the name of Shri Niwas Thakur. He had status of a farmer. The Company wanted to convert the agricultural land to a non-agricultural land, as its business was of developing a residential township. As per the laws in the State of Maharashtra, the transfer of land in the name of a Company was only possible, if the land was in the name of at least of its two Directors who had farmer status. It was for this reason that some of the land in the name of Shri Niwas Thakur was transferred in the name of the assessee without any consideration.

7. Addition was made of undisclosed income invested in purchasing the land, considering the facts that the sale deed showed

payment of full amount of consideration, in the revenue record the assessee was shown as an ultimate owner and there was no proof showing that the assessee was a farmer or having agricultural income.

8. Copies of the return for the assessment year 2009-10 and 2010-11 showed that the agricultural income was declared. As per the Maharashtra State laws, agricultural land can be acquired only by farmers. The transfer was without consideration as per Frokt khat. The stamp duty and registration fee was paid by the Company. The land in the name of the assessee and Shri Niwas Thakur was shown in the audited balance sheet of the Company. Shri Niwas Thakur filed an affidavit dated 01.10.2010 to the effect that transfer of land was without consideration and for administrative reasons. MOU was entered between the Company and its Directors that the land bought in the name of the Directors shall be the sole property of the Company. The sale deed dated 16.10.2010, vide which the land under consideration was sold to M/s Oracle Realty Developers, showed that the consideration is to be paid to the Company. Even the AO in its remand report admitted that the sale proceeds were received by the Company. The bank statement of the Company fortified the said fact. The assessment of the Company was framed vide order dated 08.11.2011 under Section 143 (3) of the Act. On analysing the above mentioned evidence and fact, the addition was deleted.

9. The question raised by the Revenue in the appeal is a question of fact and not a question of law, much less a substantial question of law.

10. The issue has been decided on appreciation of evidence. The

conclusion arrived at is a logical conclusion. This Court under jurisdiction of Section 260-A of the Act cannot re-appreciate the evidence, especially when no perversity is established. There is no warrant for interference with the order passed by the Tribunal.

11. The appeal is, therefore, dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

February 12, 2018
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No