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

Sr. No.102

ITA No.163 of 2016 (O&M)
Date of decision: 10.05.2018

The Pr. Commissioner of Income Tax-3, Ludhiana ....Appellant

versus

Harinder ....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Rajesh Katoch, Advocate
for the appellant.

* * *

RAJESH BINDAL, J.

Revenue is in appeal against the order passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (for short – 'the Tribunal') passed in ITA No.505/CHD/2014 dated 18.12.2015 for the assessment year 2006-07, raising the following substantial questions of law:-

i) Whether on the facts and in circumstances of the case and in law, the Hon'ble ITAT was right in deleting addition of Rs.93,63,000/- made by the Assessing Officer u/s 69 of the Income Tax Act.

ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in granting relief to the assessee holding that same addition has been made in the case of M/s Basera Realtors Pvt. Ltd. without appreciating that the Assessing Officer has formed opinion based on evidences gathered during assessment proceedings in the form of statement of sellers and submission of the directors of M/s Basera Realtors Pvt. Ltd.

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> before the DCIT, Central Circle and without appreciating that the assessment in the case of M/s Basera Realtors Pvt. Ltd. has not attained finality.”

Learned counsel for the revenue submitted that search was conducted on the premises of Basera Realtors Pvt. Ltd. During the course of assessment proceedings, Managing Director of Basera Realtors Pvt. Ltd. made a statement that 50% of unexplained investment belong to the respondent-assessee. The information was passed on to the Assessing Officer. Assessment proceedings under Sections 147/148 of the Income Tax Act, 1961 (for short – 'the Act') were completed. The present proceedings arise out of those assessment orders. At the time of framing of assessment after search in the case of Basera Realtors Pvt. Ltd. 50% of the unexplained investment which belonged to the respondent-assessee was not taken into account. Order passed by the Assessing Officer was revised by the Commissioner of Income Tax (Central), Ludhiana, in exercise of powers under Section 263 of the Act. It was opined that the entire undisclosed investment is to be assessed at the hands of Basera Realtors Pvt. Ltd. In appeal filed by Basera Realtors Pvt. Ltd. before the Tribunal order passed by the revisional authority was upheld. It has been so recorded in para 18 of the order passed by the Tribunal. There is no further appeal filed by the Basrea Realtors Pvt. Ltd. challenging the aforesaid order passed by the revisional authority directing assessment of the entire unexplained investment in its hands.

The matter was remitted back to the Assessing Officer only for the purpose of calculation of the quantum.

As per the information available with the Department, Basera

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Realtors Pvt. Ltd. has not challenged the order passed by the Tribunal upholding the order passed by the Commissioner of Income Tax (Central), Ludhiana, under Section 263 of the Act.

In view of the aforesaid factual matrix, learned counsel for the revenue submitted that once the entire undisclosed investment has been assessed in the hands of Basera Realtors Pvt. Ltd., the assessment of the same amount in the hands of the assessee will not be justified.

Keeping in view of the aforesaid facts, no substantial questions of law arise in the present appeal and the same is, accordingly, dismissed.

(Rajesh Bindal)
Judge

May 10, 2018 **(Deepak Sibal)**
Jyoti 1 **Judge**

Whether speaking/reasoned Yes
Whether reportable Yes/No

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