IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 25.10.2018

(i) ITA No. 245 of 2016 (O&M) in/and

Cross objection No.73-CII of 2017

Pr. Commissioner of Income Tax (Central), Ludhiana

.......Appellant

Versus

M/s Silver Oaks Township Ltd., Bathinda

......Respondent

(ii) ITA No. 274 of 2016 (O&M)

Pr. Commissioner of Income Tax (Central), Ludhiana

.......Appellant

Versus

M/s Silver Oaks Township Ltd., Bathinda

......Respondent

(iii) ITA No. 306 of 2016 (O&M) in/and

Cross Objection No.74-CII of 2017

Pr. Commissioner of Income Tax (Central), Ludhiana

.......Appellant

Versus

M/s Silver Oaks Township Ltd., Bathinda

......Respondent

(iv) ITA No. 273 of 2016 (O&M)

Pr. Commissioner of Income Tax (Central), Ludhiana

.......Appellant

Versus

M/s Silver Oaks Township Ltd., Bathinda

......Respondent

(v) ITA No. 361 of 2017 (O&M)

The Pr. Commissioner of Income Tax (Central), Ludhiana

.......Appellant

Versus

M/s K.C. Land & Finance Ltd., Nawanshahar

......Respondent

(vi) ITA No. 400 of 2017 (O&M)

The Pr. Commissioner of Income Tax (Central), Ludhiana

.......Appellant

Versus

M/s K.C. Land & Finance Ltd., Nawanshahar

......Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE

Present: Mr. Rajesh Katoch, Senior Standing Counsel
for the revenue.

Mr. Divya Suri, Advocate
for the assessee.

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AVNEESH JHINGAL, J.

This order shall dispose of six appeals and two cross-objections. In all the cases common issue is involved and hence are being disposed of by a single order.

2. The details of appeals and cross-objections are tabulated below:

Sr. No.	ITA No. before Tribunal	Parties Name	Assessment Year	Order dated
1.	751/Chd/ 2014 Cross objection No.73-CII of 2017	Pr. Commissioner of Income Tax (Central), Ludhiana Versus M/s Silver Oaks Township Ltd.	2009-10	30.03.2016
2.	749/Chd/ 2014	Pr. Commissioner of Income Tax (Central), Ludhiana Versus M/s Silver Oaks Township Ltd.	2006-07	30.03.2016
3.	464/Chd/ 2014 Cross-objection u/s 260A(7) of the Act.	Pr. Commissioner of Income Tax (Central), Ludhiana Versus M/s Silver Oaks Township Ltd.	2008-09	30.03.2016
4.	750/Chd/ 2014	Pr. Commissioner of Income Tax (Central), Ludhiana Versus M/s Silver Oaks Township Ltd.	2007-08	30.03.2016

5.	22(Asr)/2015	The Pr. Commissioner of Income Tax (Central), Ludhiana Versus M/s K.C. Land & Finance Ltd., Nawanshahar	2009-10	21.02.2017
6.	3(Asr)/2015	The Pr. Commissioner of Income Tax (Central), Ludhiana Versus M/s K.C. Land & Finance Ltd., Nawanshahar	2009-10	21.02.2017

3. The facts are being extracted from ITA No. 245 of 2016.

The revenue has filed the appeal under Section 260A of the Income Tax Act, 1961 (for short 'the Act'), against the order dated 30.03.2016 passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (for short 'the Tribunal') passed in ITA No. 751/Chd/2014 The assessment year involved is 2009-10.

4. The appellant has claimed following substantial questions of law:

> "(i) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT has erred in law in deleting the addition of Rs.1,22,57,417/- made on account of disallowance u/s 40A(3) of the IT Act, 1961, in respect of cash payments made to sellers of the agricultural land without appreciating that the assessee's business is of real estate and the land is its stock in trade?
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> (ii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT has erred in law in deleting the addition of Rs.1,22,57,417/- made on account of disallowance u/s 40A(3) of the I.T.Act, 1961 whereas the assessee could not prove the business exigency/exceptional circumstances for making the cash payments?
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> (iii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT has erred in law in allowing the appeal of the assessee by relying on the judgment of Hon'ble Punjab and Haryana High Court in the case of Gurdas Garg Vs. CIT in ITA No. 413 of 2014 whereas the Income Tax Department has filed a review application in that case?"

5. The assessee-company was a real estate developer. A search was

conducted under Section 132 of the Act on 18.02.2011. In response to notice under Section 153A of the Act, the assessee filed return on 10.09.2012 declaring income of Rs.38,47,940/-. During the course of proceedings, the Assessing Officer noticed that the assessee had purchased properties amounting to Rs. 7,12,63,152/-. Out of this amount, cash payments had been made to the sellers to the tune of Rs.1,22,57,417/-. Invoking the provisions of Section 40A(3) of the Act, the deduction on the cash payments made for purchase of land were disallowed, as the assessee failed to furnish any satisfactory explanation and evidence for justifying the cash payments made. The assessment order under Section 153A read with Section 143(3) of the Act was finalised on 25.03.2013.

6. Aggrieved of the assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-I, Ludhiana (for short 'the CIT(A)). The appeal was dismissed vide order dated 23.06.2014. Further, appeal was filed by the assessee before the Tribunal. The Tribunal vide order dated 30.03.2016 following the decision of this Court in the case of **Gurdas Garg. Versus The Commissioner of Income Tax (Appeals), Bathinda and another, ITA No. 413 of 2014 dated 16.07.2015** allowed the appeal and deleted the addition made on account of disallowance under Section 40A(3) of the Act. Hence, the present appeal.

7. Learned counsel for the appellant-revenue argued that the Tribunal had relied upon the decision of this Court in the case of **Gurdas Garg's case** (supra), wherein the revenue had filed a review petition against the said decision and order dated 16.07.2015 has been re-called by this Court vide order dated 30.09.2016.

8. Learned counsel for the assessee-company contended that the Tribunal has rightly allowed the appeal after considering the case as per the provisions of Section 40A(3) of the Act.

9. In view of the changed position and the Tribunal being final fact finding authority, it is necessary that the factual aspect of each case is examined afresh.

10. From the perusal of the order of the Tribunal, it is evident that the Tribunal allowed the appeal following the decision of this Court in **Gurdas Garg's case** (supra). The said order no longer exists as the same has been re-called in a review application filed by the revenue. In such circumstance, it would be appropriate to remand the matter back to the Tribunal to decide the appeals and the cross-objections afresh after examining the facts of each case in detail. Ordered accordingly.

11. The appeals, cross-objections and the questions claimed are disposed of as indicated above.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

25.10.2018
reema

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