IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

229 **ITA-511-2017**
Date of Decision : 20.8.2019

The Pr. Commissioner of Income Tax, Gurgaon
...... Appellant

Versus

Shri Amit Gupta ...... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present : Mr.T.K.Joshi, Senior Standing Counsel
for the appellant.

Mr. Pankaj Jain, Senior Advocate with
Mr. Sachin Bhardwaj, Advocate
for the respondent.

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<u>AJAY TEWARI, J. (Oral)</u>

1. This appeal has been filed by the Revenue against the judgment and order dated 10.3.2017 passed by the Income Tax Appellate Tribunal, (Delhi Benches: 'F' New Delhi) in ITA No. 190/Del/2016 whereby the appeal filed by the assessee was allowed on the preliminary ground of maintainability (without touching issue on merits).

2. Brief facts are that the respondent sold the property called 'Gupta House' situated at Kherki Daula, NH-8, Gurgaon on 24.2.2009. He filed his return on 12.10.2012 for A.Y 2009-10 declaring income of Rs.56,74,539/- under the heads 'income from house property', Rs.2,93,704/- as 'income from other sources' and Rs.10,67,16,676/- as 'long term capital gain' totaling Rs.11,26,84,919/- . He claimed to have

sold an immovable property for a consideration of Rs. 21.5 crores and further claimed that the cost of acquisition and cost of improvement after indexation came to Rs. 5,99,74,218/-. Thus, he claimed deduction of Rs. 4,83,09,106/- under Section 54 of the Income Tax Act, 1961 (for the short 'the Act') on the pretext that it was a residential building and after the sale thereof, the proceeds were reinvested in residential building and consequently, he was entitled to set off the capital gain. The return was processed under Section 143 (1) of the Act and subsequently, it came to the notice of the Assessing Officer that in fact the property which was named as 'Gupta House' was actually an 'industrial plot' and not a 'residential house' and consequently, the Assessing Officer issued notice under Section 147 (1) of the Act bringing to the notice of the respondent that deduction under Section 54 of the Act was not allowable and recorded the reasons to believe that income chargeable to tax had escaped assessment for AY 2009-10.

3. The respondent filed an appeal before the CIT (Commissioner of Income Tax) in which the following grounds were raised :-

> *"1. That the appellant denies his liability to be assessed at total income of Rs. 16,09,94,025/- and accordingly denies his liability to pay tax interest, surcharge and education cess demanded thereon.*
>
> *2. That having regard to the facts and circumstances of the case, Ld. A.O, has erred in law and on facts in framing the impugned order without assuming jurisdiction as per law.*
>
> *3. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in framing the impugned assessment order and that too without complying the mandatory conditions Sections 147 to 151 of the Income Tax Act*

1961 and reasons recorded are invalid in the eyes of law and reopening of the case and framing the impugned assessment order is bad in law and beyond the jurisdiction.

4. That in my case and in any view of the matter, the action of Ld. AO in framing the impugned assessment order us 14" and that too without complying with mandatory conditions of Section 147 to 151 is had to law and against the facts and circumstances of the case.

5. That having regard to the facts and circumstances of the case. Ld. A.O. has erred in law and on facts. In denying the benefit deduction of Rs. 4,83,09,106/- u/s 54 of the Income Tax Act 1961 and that too by recording incorrect facts and findings and without giving adequate opportunity to the assessee.

6. That in any case and in any view of the matter, the action of Ld. A.O. in denying the benefit of deduction of Rs.4,83,09,16/- u/s 54 and in framing the impugned assessment order is illegal, bad in law, contrary to law and facts and beyond jurisdiction, by recording incorrect facts and findings and the same are not sustainable on various legal and factual grounds.

7. That having regard to the facts and circumstances of the case, Ld. A.O, has erred in law and on facts in charging interest u/s 234B and 2134C of Income Tax Act, 1961.

8. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time or hearing and all the above grounds are without prejudice to each other."

4. The CIT dismissed the appeal and thereafter, the respondent filed the second appeal before the Income Tax Appellate Tribunal (for short 'the Tribunal'). The Tribunal allowed the appeal on the preliminary ground that the proceedings under Section 147 (1) of the Act were wrongly initiated since as per the Tribunal the Assessing Officer did not have 'reasons to believe' that income chargeable to tax had escaped assessment and remand back the case to CIT for fresh adjudication. The

Tribunal has recorded the following reasons of the Assessing Officer :-

> *"Perusal of records of the assessee revealed lire assessee had sold an industrial property consisting of property named - `Gupta House' at 42 Rri Milestone, Village Kherki Daula, for Rs.21.5 crores. The indexed cost of acquisition of this property was claimed at Rs.5,99,74,218/-. Net capital gain for the year under consideration as per the return of the assessee is Rs.15.50 crore.*
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> *The assessee is also holding 8 flats in his name, out of which, 7 are in DLF Park Place. DLF City, Phase-V, Golf Course Road; Gurgaon and 1 flat in The Belaire, DLF City Phase-V, Golf Course Road, Gurgaon.*
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> *Further, the assessee has claimed deduction u/s 54 of the I.T. Act, 1961 on the basis of amount invested in two flats, viz Flat No.D-153. DLF City and Flat No.B-1916, DLF City, Gurgaon, total investment amounting to Rs.4,85,16,233/-. However perusal of records has revealed that the Flat No.D-153, DLF City, Gurgaon is in the name of Smt. Nirmala Gupta, mother of assessee. Hence claim u/s 54 regarding Flat No.D-153, DLF City cannot be allowed. Further, the deduction claimed u/s 54 of the Act by the assessee on the property named `Gupta House' situated at Kherki Daula, N.H. 8, Gurgaon is not permissible as the same was an Industrial property. Therefore, the assessee's claim as to entitlement for benefit of deduction u/s 54 needs to be examined.*
>
> *Therefore, capital gain amounting to Rs.15.50 crores chargeable to tax has escaped assessment for the AY 2009-10 by reasons of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment."*

5. It is apposite to mention here that the Assessing officer further found that in the sale deed of 'Gupta House' it was mentioned as follows :-

> *"After purchasing the aforesaid piece of land the vendor had applied to the state govt, for seeking necessary*

> *permission to set up an industry over the said piece of land. The Director Town and Country planning, Haryana, Chandigarh, granted the required permission vide his letter Memo No. G-1239 10DP-99/9666 on 18.7.1999...After obtaining the necessary permission of change of land use, the vendor constructed an industrial building consisting of Ground, First, Second, Third, Fourth floors, Mumty and machine room on the terrace having total covered area 1988.948 sq. meters. The industrial land and building known as "Gupta House"."*

6. Learned Senior counsel appearing for the respondent is not in a position to deny the extract from the same.

7. In this view of the matter, it is clear that an illegal set off was sought to be claimed by the respondent (which probably succeeded because of the misleading appellation of the property in the dispute viz. 'Gupta House'). We set aside the finding of the Tribunal that there were no reasons for Assessing Officer to believe that income chargeable to tax had escaped assessment.

8. Facing this, learned Senior counsel for the respondent has argued that in the penultimate paragraph of the impugned order, the Tribunal had noticed that it was deciding appeal on the preliminary questions and had consequently, not decided other questions and has prayed that the matter should be remanded back to the Tribunal so that the other questions can be urged.

9. In our considered opinion, once the recitals made in the sale deed are not disputed, the other questions do not arise.

10. In these circumstances, the appeal stands allowed and the judgment of the Tribunal is set aside and the orders of the Commissioner and the Assessing Officer are upheld.

11. Since the main case has been decided, the pending CM., if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

20.8.2019
anuradha

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No