IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-362-2018 (O&M)

Date of Decision: 14.3.2019

The Principal Commissioner of Income Tax-3, Ludhiana

....Appellant.

Versus

Shri Harinder

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Rajesh Katoch, Sr. Standing Counsel for the appellant.

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing ITA Nos.362 and 385 of 2018 as according to learned counsel for the revenue, similar issue is involved therein. For brevity, the facts are being extracted from ITA-362-2018.

2. ITA-362-2018 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 13.12.2017 (Annexure A-VI) passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 1092/CHD/2017, for the assessment year 2006-07, claiming the following substantial question:-

Whether upon the facts and in the circumstances of the case, the Hon'ble Tribunal was right in deleting penalty of ₹ 31,76,819/- of AY 2006-07 without appreciating the facts?

3. A few essential facts in ITA-362-2018 as narrated therein may be noticed. The assessee had filed his return of income for the assessment year 2006-07 declaring the income at ₹ 95,750/-. The assessee had purchased land in partnership with Shri Suresh Kumar and Shri Sahibjit Singh, Directors of M/s Basera Realtors Pvt. Ltd. during the assessment year 2006-07 vide agreement dated 5.10.2005 for the development of a residential colony. In the assessment year 2006-07, the assessee had paid a sum of ₹ 93,63,000/-. The Assessing Officer framed the assessment under Section 143(3) of the Act vide order dated 30.3.2013 (Annexure A-I) making addition of ₹ 93,63,000/- along with ₹ 55,000/- (for not maintaining books of account) on account of undisclosed income under Section 69 of the Act on account of investment in purchase of land in partnership with Shri Suresh Kumar Khanna and Shri Sahibjit Singh, both Directors of M/s Basera Realtors Pvt. Ltd. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [in short "the CIT(A)"]. The CIT(A) vide order dated 24.2.2014 (Annexure A-II) dismissed the said appeal. Consequentially, the Assessing Officer vide order dated 30.3.2015 (Annexure A-III) levied penalty under Section 271(1)(c) of the Act @ 100% of the tax sought to be evaded, i.e. ₹ 31,76,819/- for the assessment year 2006-07. Against the quantum order, Annexure A-II, the assessee filed appeal before the Tribunal. The Tribunal vide order dated 18.12.2015 (Annexure A-V) allowed the appeal and deleted the addition made by the Assessing Officer and upheld by the CIT(A) on account of unexplained

investments in the purchase of land. The income was held to be taxable in the hands of the Company-M/s Basera Realtors Pvt. Ltd. instead of the asesee. The assessee assailed the penalty order dated 30.03.2015 by filing an appeal on 27.4.2015 before the CIT(A). The CIT(A) vide order dated 13.4.2017 (Annexure A-IV) quashed the penalty as the addition made in the income of the assessee was held to be belonging to the Company-M/s Basera Realtors Pvt. Ltd. and the Tribunal had deleted the addition in the case of the assessee vide order dated 18.12.2015 (Annexure A-V). The revenue filed an appeal before the Tribunal against the order dated 13.4.2017 (Annexure A-IV) deleting the penalty under Section 271(1)(c) of the Act. The Tribunal vide order dated 13.12.2017 (Annexure A-VI) upheld the order of the CIT(A) and dismissed the appeal. Hence, the present appeals by the revenue.

4. We have heard learned counsel for the revenue.

5. The CIT(A) had deleted the penalty levied under Section 271 (1)(c) of the Act amounting to ₹ 31,76,819/- for the assessment year 2006-07 and ₹ 1,45,18,829/- for the assessment year 2008-09 as the Tribunal had deleted the entire addition on the basis of which the said penalties were levied. The said order of the CIT(A) was upheld by the Tribunal by observing that once the additions stand deleted, the appeal of the revenue has no merit and accordingly dismissed the appeal. Further, once the quantum additions have been deleted by the Tribunal vide order dated 18.12.2015 (Annexure A-V) and the same having been upheld by this Court vide orders dated 10.5.2018 passed in ITA Nos. 163 and 186 of 2016, no case for penalty is made out.

6. No illegality or perversity could be pointed out by the learned

counsel for the revenue in the findings recorded by the CIT(A) and affirmed by the Tribunal which may warrant interference by this Court. No question of law arises in this appeal. Consequently, finding no merit in the appeals, the same are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

March 14, 2019 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned	**Yes/No**
Whether Reportable	**Yes/No**