IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-379-2018 (O&M)

Date of Decision: 13.3.2019

Mool Raj Gupta (deceased) through his legal Heirs Smt. Neeraj Gupta, Jatinder Mahajan and Vivek Mahajan

....Appellant.

Versus

Commissioner of Income Tax, Amritsar

...Respondent.

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

PRESENT: Mr. Sachin Bhardwaj, Advocate for the appellant.

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AJAY KUMAR MITTAL, J.

1. Delay of 77 days in refiling the appeal is condoned.

2. This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 31.10.2017 (Annexure A-15) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 553/Asr/2016, for the assessment year 2006-07, claiming the following substantial questions of law:-

I. Whether under the facts and circumstances of the case, Tribunal findings are unreasonable, while declining the grant of claim for capital expenditure u/s 48(ii) r.w. Explanation (iv), Section 49(1)(iv) while arriving at the chargeability of capital gain u/s 45 of the Income Tax Act, 1961?

II. Whether under the facts and circumstances of the case, the principle of law applicable to criminal jurisprudence is distinguishable from law applicable to civil proceedings, since the degree of proof for both the proceedings is distinct pursuant to decision of Iqbal Singh Marwah vs. Meenakshi Marwah (2005) 4 SCC 370 (5 Judges) M.S. Sheriff v. State of Madras AIR 1954 SC 397?

3. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. Shri Mool Raj Gupta filed the return of income for Assessment Year 2006-07 on 28.3.2007 at an income of ₹1,82,480/- as is clear from the income of computation (Annexure A-1). The said return was processed under Section 143(1) of the Act on 17.5.2007. Shri Mool Raj Gupta expired on 24.5.2007 and his wife Smt. Neeraj Gupta also expired. Thus, the property at Railway Link Amritsar was inherited by their sons, namely, Jatinder Mahajan and Vivek Mahajan which was in a very bad depilated shape requiring urgent repairs. The inherited property was purchased in the year 1999 by Shri Mool Raj Gupta, which was sold during the period relevant to the assessment year 2006-07 for an amount of ₹50,00,000/- resulting in a long term capital gain. The deductions on account of cost of acquisition of ₹ 8,93,503/- and indexed cost of construction/renovation amounting to ₹ 13,18,399/- was claimed. The sale consideration was invested in the purchase of NABARD Bonds amounting to ₹ 20,00,000/-; residential house along with legal costs

₹6,54,000/- and ₹ 5,00,000/- on renovation of the purchased house resulting in the negative long term capital gain at ₹ 3,65,902/-. The assessee claimed deduction on account of repair and renovation works undertaken prior to the sale by him amounting to ₹ 10,31,906/- (indexed cost ₹ 13,18,399/-) which had been incurred in accordance with the quotation dated 26.6.1996 (Annexure A-2) issued by the contractor. According to the assessee, the dispute related to the disallowance of claim for repairs and renovation qua the indexed cost of ₹ 13,18,399/- before the sale of the property at Railway road and also relating to exemption for investment towards repair and renovations of ₹ 4,95,000/- which were paid through A/c payee cheques to Sh. Kamal Kishore Gupta, in respect of the newly purchased house, the details of which are as under:-

Date	Cheque No.	Amount
08.12.2005	407807	2,00,000/-
18.08.2005	396971	1,45,000/-
15.10.2005	396980	1,50,000/-
	Total:	**4,95,000/-**

Besides, ₹ 5000/- was paid in cash to Sh. Kamal Kishore Gupta.

4. The Assessing Officer framed the assessment under Section 143(3) of the Act vide assessment order dated 23.12.2008 (Annexure A-3) at an amount of ₹ 16,85,547/- and provisional attachment under Section 281B of the Act was also made. Feeling aggrieved by the order, Annexure A-3, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the "CIT(A)"]. The CIT(A) vide order dated 12.11.2012 (Annexure A-4) upheld the assessment order and dismissed the appeal. Still dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 18.3.2013 (Annexure A-5) dismissed the

appeal for non-prosecution. The assessee moved an application dated 8.5.2013 under Section 254(2) before the Tribunal for recalling the order dated 18.3.2013. The Tribunal vide order dated 30.9.2014 restored the case of the assessee and remanded the case to the Assessing Officer to examine the two issues, i.e. (i) cost of improvement of ₹ 10,31,906/- for the property sold and (ii) cost of renovation/improvement of ₹ 4,95,000/- of the newly purchased house property. Pursuant thereto, notice under Section 143(2) of the Act was issued to the assessee on various dates. The Assessing Officer vide order dated 16.12.2015 (Annexure A-9) rejected the claim of the assessee and framed the assessment at ₹ 17,14,382/- under Section 143(3) of the Act. The assessing officer rejected the claim of the assessee relating to the issue of expenditure of ₹10,31,906/- and also ₹5,00,000/- alleged to have been paid to Sh. Kamal Kishore Gupta for improvement/renovation of the newly purchased house. Feeling aggrieved by the order, Annexure A-9, the assessee filed an appeal before the CIT(A) on 22/23.12.2015 (Annexure A-10). The assessee also furnished written pleadings dated 1.9.2016 (Annexure A-11) before the CIT(A). The CIT(A) vide order dated 8.9.2016 (Annexure A-12) partly allowed the appeal by deleting the addition of ₹ 1,00,000/- out of ₹ 5,00,000/- on account of renovation. Against the order, Annexure A-12, the assessee filed an appeal before the Tribunal on 23.11.2016 (Annexure A-13). The assessee also submitted the written pleadings dated 26.7.2017 (Annexure A-14) before the Tribunal. The Tribunal vide order dated 31.10.2017 (Annexure A-15) upheld the order of the CIT(A) and dismissed the appeal. Hence, the present appeal.

5. After hearing learned counsel for the assessee, we do not find any merit in the appeal.

6. The Assessing Officer framed the assessment at ₹ 17,14,382/- under Section 143(3) of the Act. On appeal, the CIT(A) upheld the order of the Assessing Officer except deleting the addition of ₹ 1,00,000/- out of ₹ 5,00,000/- on account of renovation. The assessee is stated to have spent ₹ 5 lakhs for renovation through Shri Kamal Kishore Gupta, contractor. The said contractor in his statement recorded under Section 131 of the Act had stated that very petty renovation was made and white washing etc. was got done and about ₹ 90,000-95,000 was spent on renovation. The plea of the assessee that he had made the payment for renovation through A/c payee cheques was also rejected by the CIT(A) in the absence of any supportive material. However, the CIT(A) held that Sh. Kamal Kishore Gupta, had conduced renovation of ₹ 1,00,000/- only. The Tribunal held that no substantive or corroborative material was produced by the assessee with regard to the renovation works done and, therefore, upheld the order of the CIT(A).

7. Adverting to the addition of ₹ 10,31,906/-, it may be noticed that the Assessing Officer made the addition of ₹ 10,31,906/- on account of repair and renovation of the property by recording that mere furnishing of quotation was not sufficient to prove that actual renovation was made and the amount had actually been spent. The CIT(A) confirmed the said addition of ₹ 10,31,906/- by observing as under:-

> "I have considered the submission of the appellant and the assessment order. The appellant had made out a case that, *inter alia,* original bills of the renovation expenses claimed at ₹ 10,31,906/- were stolen during the theft and filed the copy of the FIR dated 14.07.2008 in support of

his claim. For this reason the bills could not be produced before the AO during assessment proceedings.

Further, the appellant relied upon the certificate from architect whose copy was submitted in the paper book. However, the perusal of working of the architect given on page 14 to 16 of the paper book reveals that the said report of the architect dated 26.6.1999 was only a 'quotation for renovation work' at building known as Hotel Pegasus, Opp. Railway Station, Amritsar belonging to Sh. Mool Raj Gupta and which was valued at ₹ 10,31,906/-. The said quotation dated 26.6.1999 is not an evidence of the actual expenditure incurred on renovation work of the hotel which was carried out much later by the appellant. Accordingly, the said quotation of the architect cannot be accepted as an evidence of renovation expenditure incurred by the appellant and is dismissed.

In absence of any evidence in the form of bills of material and labour or any other proof of having incurred renovation expenditure on the hotel building by the appellant before the AO or before the undersigned, the AO was justified in rejecting the claim of the appellant of renovation expenditure of ₹ 10,31,906/- and the addition of ₹ 10,31,906/- is confirmed.

8. Further, The Tribunal upheld the addition of ₹ 10,31,906/- made on account of repair and renovation of the property by concluding that

from the documents available on record, nowhere it was specified by the assessee as to when the renovation of hotel and from whom the same was done. The assessee had only relied upon quotation dated 26.6.1999 which was rejected by the Assessing Officer and the CIT(A) that the said quotation was not an evidence of actual expenditure incurred on renovation works in the hotel. In the absence of the bills of material and labour or any proof of having incurred renovation expenditure on the hotel building, the claim of the assessee was rightly rejected by the CIT(A). The Tribunal had further observed that the assessee got various opportunities to substantiate his claim, but he failed to establish his case.

9. In view of the above, no illegality or perversity could be pointed out by learned counsel for the assessee in the findings recorded by the CIT(A) and affirmed by the Tribunal which may warrant interference by this Court. No question of law, much less, substantial question of law arise in the appeal.

10. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

March 13, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**