385 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.113 of 2000 (O&M)
Date of decision : 13.02.2020

Shri Madan Lal Bassi
.... Appellant

versus

Commissioner of Income Tax, Ludhiana & anr.
...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE AVNEESH JHINGAN
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Present :- Mr. Pankaj Jain, Sr. Advocate with
Mr. Divya Suri, Advocate
for the appellant.

Mr. Rajesh Katoch, Sr. Standing Counsel with
Ms. Pridhi Jaswinder Sandhu, Jr. Standing Counsel
for the respondents.

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AJAY TEWARI, J. (Oral)

1 The present appeal has been filed against the orders of the Income Tax Appellate Tribunal upholding action of the Assessing Officer whereby the following additions were made :-

1. Rs.76,66,115/-
2. Rs.5,09,480/-
3. Rs.3,00,000/-
4. Rs.3,00,000/-

2 Though the substantial questions of law were framed as (a) to (k) in appeal but at the time of arguments the learned counsel for the appellant pressed questions No. (c), (g), (i) and (j). The substantial

questions of law are reproduced below :-

> *"(a) Whether in the facts and circumstances of the case, orders Annexures P-1 and P-2 are legally sustainable?*
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> *(b) Whether in the facts and circumstances of the case, the regular assessment can be framed inspite of violation of mandatory provisions of not seeking the prior approval of Commissioner of Income Tax as provided under the Income Tax Act, 1961?*
>
> *(c) Whether in the facts and circumstances of the case, the addition of Rs.76,66,115/- on account of alleged unexplained investments in purchase of land at Village Kohara is legally sustainable the same being based on mere presumptions and surmises without there being any independent evidence on record to corroborate the same?*
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> *(d) Whether in the facts and circumstances of the case, the confirmation of the addition of Rs.76,66,115/- on account of alleged unexplained investment in the purchase of land at Village Kohara by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh can be sustained at law where the agreement was not a valid agreement in law, the same having never being **signed** by the assessee-appellant?*
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> *(e) Whether in the facts and circumstances of the case, the sustaining of the addition of Rs.76,66,115/- on account of unexplained investment made by the assessee-appellant based upon deposits made by the alleged sellers in their bank accounts can be legally sustained in view of the fact that the sellers have not been confronted about the same ignoring the evidence put forth by the assessee-appellant in this regard?*
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> *(f) Whether in the facts and circumstances of the case, the addition of Rs.76,66,115/- made on account of unexplained investment in land at Village Kohara by the assessee-appellant can be sustained at law in as much as the Broker was never confronted that the same as being the*

consideration for the alleged sale of land?

(g) Whether in the facts and circumstances of the case, the addition of Rs.5,09,480/- on account of alleged undisclosed investment in purchase of other land in village Kohara is legally sustainable the same being based on mere presumptions and surmises without there being any independent evidence on record to corroborate the same?

(h) Whether in the facts and circumstances of the case, the proceedings u/s 132 of the Income Tax Act were legal and valid and consequently the issuance of notice u/s 156 BC can be legally sustained?

(i) Whether in the facts and circumstances of the case, the addition of Rs.3,00,000/- on account of unexplained investment in household expenses and household goods is legally sustainable the same being based on mere presumptions and surmises without there being any independent evidence on record to corroborate the same?

(j) Whether in the facts and circumstances of the case, the addition of Rs.3,00,000/- on account of unexplained foreign gifts is legally sustainable the same being based on mere presumptions and surmises without there being any independent evidence on record to corroborate the same?

(k) Whether in the facts and circumstances of the case, the addition of Rs.75,400/- being 20 percent of the amount for alleged cash purchases made after 25.7.95 u/s 40A Sub Clause 3 of the Act is legally sustainable the same being based on mere presumptions and surmises without there being any independent evidence on record to corroborate the same?"

3 Two of these i.e. the amount of Rs.76,66,115/- and Rs.5,09,480/- related to unexplained investment and purchase of land at Village Kohara while the first amount of Rs.3,00,000/- related to the unexplained investment in household goods/expenses while the second

amount of Rs.3,00,000/- was unexplained foreign gifts.

4 The Tribunal has dealt with the additions in detail and the relevant paras are quoted below. With regard to addition of Rs.76,66,115/- it was held as follows :-

> *"10. We have considered rival submissions as also the material on record to which our attention was invited during the course of the hearing. The main thrust of the arguments of the ld. Counsel is that the agreement of sale is an invalid one for various reasons but in our opinion all his arguments in this respect are of no avail. Without going into the question of validity it is not in dispute that the agreement has been acted upon by the parties, the land transferred and sale consideration passed and furthermore the assessee himself accepted the signing of the agreement by some of the co-owners and not all as in apparent from answer to Q.No.18 by Shri Bhagwan Singh on cross-examination by assessee's counsel. There is also merit in the submission of the ld. D.R. that the agreement was found from the possession of the assessee and nothing prevented him from signing it himself.*
>
> *10.1 Further, the statements of the "sellers" were recorded and they admitted selling the land and receiving a specified amount of money which they deposited in their bank accounts the latter being further substantiated by the receipts found from the assessee's premises. As noted by the AO at page 9 of the assessment order, receipts signed by Satwant Singh and Bhagwan Singh totalled Rs.80 lakhs and which tallied with the configuration of numbers appearing at page 27 of diary No.6 seized during the raid. It is a matter of record that the AO gave opportunity of cross-examination to the assessee and on doing so in the case of Bhagwan Singh the assessee could not dislodge any fact stated and it would be out of place*

to state that the revenue's case in fact became stronger by the following :-

(1) Agreement was got typed by the assessee and brought for the signatures of the co-owners at their home (Qn.2).

(2) Stamp papers for the separate registration deeds were purchased by the assessee (Qn.8).

(3) Objection of non-signing by some of the co-owners given up by the assessee (Qn.20) and further Bhagwan Singh had PA POA on behalf of some of the co-owners.

(4) Sellers admitted receiving cash as per registration deeds as also the balance amount (Qn.26) and further stating that there was no fresh agreement for Rs.60 lakhs as against the agreement found showing sale consideration of Rs.80 lakhs and odd (Qns.28, 40 and 41).

On re-examination of Shri Bhagwan Singh by the AO, the following emerged :-

(1) He confirmed signing the agreement, receiving Rs.7 lakhs initially and total consideration of Rs.60 lakhs as also signing receipts for the consideration (Q.47 to 50).

(2) He confirmed signing against a sum of Rs.80 lakhs but maintaining these were rough calculations (Qn.53).

(3) He confirmed selling the entire land (Qn.54) but stated that Registration Deed No.29032 was cancelled by the assessee who confirmed receiving back the sum of Rs.16,4000/- on 9.1.95 (the AO in the assessment order has observed that the amount alleged to have been returned does not find place in the books of accounts of assessee).

(4) Fresh registration in the name of Mr.Bharat Bhushan Jindal was done at the behest of the assessee (Qns.55 to 57).

(5) Entire amount pertaining to the fresh registration was received by the sellers by Feb., 1995 (Qn.58) (Ld. counsel

has argued that sale of land to B.B.Jindal was in January, 1996 i.e. outside the block period and therefore no addition could be made.).

10.2 Taking up the arguments of the parties in respect of registration of land in the name of B.B.Jindal, it becomes quite clear that the said person has acted at the behest of the assessee and in fact he is the "benami" of the assessee. In his statement recorded he has categorically stated that he is the close friend of the assessee who carried out the transaction of purchase of land in his name (B.B>Jindal's). Further, B.B.Jindal has portrayed himself as the "owner of land of papers". As already noted earlier copy of statement recorded was given to the assessee with an opportunity to cross-examine but not availed off. It is further noted from the statement of B.B.Jindal that he never met the sellers (Qn.7) and he denied any connection with the transaction except to oblige the assessee and Qn.8 further reveals that the document was brought to B.B.Jindal by the assessee who asked him to affix his photograph and sign it to complete the "statutory requirement".

10.3 As regard the stand of the assessee's counsel that the amount mentioned in the registration deeds be treated as the investment in the land and alternatively the amount of Rs.35 lakhs be taken as admitted by Haripal Singh, the second alternative being that the addition in any case should not exceed Rs.60 lakhs which the sellers admitted having received and the sum of Rs.80 lakhs alleged to have been paid by the assessee for the purchase of land to the sellers being an incorrect figures and representing calculations only, in our opinion, the receipts and other documents pertaining to the payments copies of which have been placed on record do not lead to the conclusion that these are mere calculations and as *noted by the AO the figure of Rs.80 lacs stands proved by the notings in the seized diary vis-a-vis the receipts for payments found with the assessee during the course of the search. There is no material on record to show that the original agreement for Rs.80 lakhs and odd was modified to a lower figure and this has categorically been stated during the course of cross-examination of the parties. Further, even if the alternative pleas were taken into account, one cannot loose sight of the fact that the assessee was offering Rs.60 lakhs for assessment before the CIT but which she (the CIT) refused to accept nothing that the agreement was for Rs.80 lakhs and odd and receipts to this extent had been found at the premises of the assessee. In the light of these clear facts, we really cannot understand as to how the assessee can succeed on any of its arguments, whether main or alternative, advanced before the Tribunal. The other arguments of counsel do not advance assessee's case.*

10.4 In the final analysis, taking note of the ample evidence brought on record by the tax authorities, the conclusion drawn from the statements recorded of the alleged sellers, the assessee and B.B.Jindal and the assessee either not availing of the facility of cross-examination given by the AO or wherever availed of making no dent in the case made out by the revenue, we uphold the addition of Rs.76,66,115/- in respect of the purchase of land at village Kohara."

5 So far as addition of Rs.5,09,480/- is concerned the relevant portion is as follows :-

"12. We have considered the rival submissions and have also perused the material on record to which our attention was invited during the course of the hearing. The Ld. Counsel, as already noted, contended before us that the

lower value was paid because the land was adjacent to a grave yard but no such submission was made before the AO and this therefore is considered to be an after-thought. Even in the agreement filed before us, no such fact is mentioned. The AO has recorded a finding to the effect that the land in question is adjacent to the earlier land purchased and which has been the subject matter of the immediately preceding ground. It definitely creates substantial doubt as to how the land in the same area can be sold at two different figures showing such large variation. We have already noticed that the affidavit of Shri Sajjan Singh confirming the sale at Rs.40,000/- was left in the office of the AO on her table and she very fairly issued summons u/s 131 which were served but nobody chose to appear. In otherwords the assessee cannot now say that no opportunity was given by the AO to substantiate the sale consideration of Rs.40,000/- and while deciding the earlier ground we have held that the figure shown in the books of accounts as the purchase of the land at Kohara does not depict the correct state of affairs and a substantial money has been paid outside the books of accounts. As against a figure of few lakhs disclosed in respect of the earlier ground we have confirmed an addition of Rs.76,77,115/- which has been treated to be the amount paid outside the books of accounts and which fact has been amply proved by the AO. The ld. counsel during the course of the hearing has also drawn our attention to the land rates prevailing but arguments in this direction do not advance the assessee case and in the final analysis we uphold the addition of Rs.5,09,480/- made by the AO in respect of the other land at Kohara."

6 With regard to addition of Rs.3,00,000/- for household expenses it was held as follows :-

"In that case, the Bench found as a fact that the AO

had failed to bring on record any material whereas in the case before us the assessee at the outset conceded expenditure outside the books of accounts to the tune of Rs.61,700/- and the AO in the assessment order made a reference to the seized material which showed further expenditure outside the books of accounts. The CIT in the hearing before her took into account all the relevant submissions made by the assessee and scaled down the expenditure outside the books of accounts to Rs.3 lakhs. As noted in the assessment order the assessee's stand that some of the items found were kept for demonstration purposes was completely demolished when the AO summoned the person to whom these goods were stated to have belonged and even after being confronted the assessee kept quiet. Similarly, in the other decision of the Ahmedabad Bench, Supra, relied upon by the assessee, the Tribunal did sustain some addition and noted as a fact that there were sufficient withdrawals and addition on account of low household expenses was to be deleted. In other words, whatever relief the assessee got in that case his withdrawals made were taken into account and in the present case the AO has recorded as a finding that the withdrawals during the block period were on the lower side. In none of these two decisions relied upon by the assessee do we find a proposition of law settled by the Tribunal to the effect that in a block assessment such type of addition cannot be made. In the final analysis, we uphold the addition made by the AO in respect of household expenses."

7 With regard to addition of Rs.3,00,000/- for foreign gifts, it was held as follows :-

"21.1 During the course of the hearing of the appeal the ld. counsel for the assessee was specifically confronted with the aforesaid documents but other than contending that the

> *assessee did not know Rajender Ji or that the letter-head of the hotel had nothing to do with the assessee, no other cogent explanation or submission came forth. In this view of the matter, we have to consider the issue taking into account the totality of the facts and circumstances as also the fact that on being confronted even at the assessment stage no cogent explanation came forth from the assessee. We are also of the view that the addition of Rs.3 lakhs pertains to the notings, calculations and entries made in the various documents discussed earlier and we, therefore, need not go into the question about the nexus of any gifts being received by assessee's wife. If necessary, this aspect of the matter can be taken care of while disposing off the appeal of the assessee's wife and which has already been heard and awaiting disposal.*
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> *21.2, In the final analysis, we uphold the addition of Rs.3 lakhs made in the hands of the assessee vis-a-vis the purchase of dollars out of unaccounted funds."*

8 All the four issues are pure questions of fact and the conclusion drawn by the Assessing Officer and the Tribunal are based on the evidence and documents recovered during a search operation conducted at the premises of the appellant. Counsel for the appellant has not been able to show us that the findings of fact are based either on no evidence or based on such a perverse mis-reading of evidence so as to justify the interference of this Court.

9 No question of law, much less any substantial question of law, arises in this appeal. Appeal stands dismissed.

12 Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(AVNEESH JHINGAN)
JUDGE

February 13, 2020
pooja sharma-I

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