

Neutral Citation No.2023:PHHC:121795-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**ITA No.392 of 2018 (O&M)
Date of Decision: 24.08.2023**

Horizon Builders & Developers ... Appellant

Versus

PR. Commissioner of Income Tax-II,
Amritsar (Punjab) ... Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Argued by: Mr. Divya Suri, Advocate,
for the appellant.

Mr. Vaibhav Gupta, Junior Standing Counsel,
for the respondent.

MANISHA BATRA, J.

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (For short “Act”) by the appellant against the order dated 08.02.2018 passed by the Income Tax Appellate Tribunal, Amritsar (for short “Tribunal”) in ITA No.399/Asr. Of 2015.

2. The brief facts relevant for the purpose of disposal of this appeal are that the appellant-firm had been constituted vide a partnership deed dated 17.06.2006 for the purpose of conducting business of working as a contractor for construction of houses of third parties in and around the area of Amritsar. It had three partners having equal shares namely, Madhav Khanna, Sahil Pawa and Satish Kapoor. On 05.02.2009, a search under Section 132 of the Act was conducted in the residential

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premises of Pardeep Khanna, father of Madhav Khanna one of the partners of the appellant firm, which related to M/s Khanna Pawa and Associates. Survey under Section 133A of the Act was also done in the business premises of M/s Khanna Pawa Group. Some documents were recovered and assessment proceedings were initiated by the authorities under the Act against Pardeep Khanna and Sunil Pawa. In pursuance to the search, the abovesaid Pardeep Khanna and Sunil Pawa filed affidavits before the authorities swearing therein that the loose papers and documents recovered from their residential as well as business premises were infact bills of construction material from different suppliers of the appellant-firm and pertained to the firm though the same were issued in their individual names. Since the appellant and its partners were not within the jurisdiction of the concerned authorities that had conducted search, therefore, there was change/transfer of the jurisdiction.

3. As submitted by the appellant, notices under Section 153C of the Act was issued to it on 18.03.2011 by the jurisdictional officer for the relevant assessment year (A.Y.) 2007-08 after recording satisfaction. Subsequently, a notice under Section 142 (1) and then show cause notice under Section 143 (2) of the Act was issued against the appellant requiring it to explain the expenditure shown to have been incurred by it in the documents/papers recovered pursuant to the search. The appellant filed written explanation and also took objections as to legality of proceedings under Section 153C of the Act. However, the assessing officer by invoking the provisions of Sections 69 and 69A of the Act, treated the expenses incurred by the appellant to the tune of Rs.9,92,211/- for purchase of construction material etc. as shown in the documents recovered during the

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search, as its deemed income and assessed its income at the amount of Rs.11 lacs by passing an order of assessment dated 30.12.2011.

4. The further case of the appellant is that it had filed an appeal against the order dated 30.12.2011 before the Commissioner of Income Tax (Appeals), Amritsar (for short “CIT (A)”) who deleted the addition of Rs.1 lac and Rs.7,789/- from the addition of Rs.10 lacs as made by the assessing officer and confirmed the addition of Rs.9,92,211/- thereby partly allowing the appeal vide order dated 28.05.2015. Aggrieved by the same, the appellant-firm filed an appeal before the Tribunal challenging the order dated 28.05.2015. While confirming the addition of Rs.9,92,211/-, the said appeal was partly allowed by the Tribunal on 08.02.2018.

5. Feeling dissatisfied by the order of the Tribunal, the appellant- assessee firm filed the instant appeal challenging the order dated 08.02.2018. The first limb of argument as raised by learned counsel for the appellant was that the Tribunal had gravely erred in considering the amount of Rs.9,92,211/- as additional income of the appellant by invoking provisions of Sections 69 and 69A of the Act though the same were not applicable as the amount in question was expenditure which did not fall within these sections. The learned Tribunal observed that the addition of the aforementioned amount was covered under Section 69A as not only the appellant was found to have incurred expenditure during the relevant year but the same also stood incurred by making payment in cash and infact those cash payments on account of their being unexplained as to source thereof, were to be brought to tax as income of the appellant. We do not see any reason to come to a different conclusion in view of the fact that the well settled proposition of law is that the scheme of Sections 69, 69A, 69B and

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69C of the Act is that in cases where the nature and source of investments made by the assessee and the nature and source of acquisition of money, bullion, jewellery or valuable article or the source of expenditure incurred by the assessee is not explained at all, or not satisfactorily explained and shown in the books of account of the relevant year, then the value of such investments, money, value of articles not recorded in the books of account or the unexplained expenditure are deemed to be income of the assessee. In this regard, reliance can be placed upon the ratio of law as laid down in **Fakir Mohmed Haji Hasan v. Commissioner of Income-Tax**, 2001 (247) ITR 290 and **Kim Pharma (P) Ltd. v. Commissioner of Income Tax**, 2013 (258) CurTR 454, wherein similar observations had been made. In the instant case, the appellant had not disclosed the amount of Rs.9,92,211/- in its books of account and this amount was not recorded and was unaccounted expenditure. The Tribunal had dealt with this question in detail and had found that since the assessee was found to have incurred expenditure during the relevant year by making payments in cash and it were only those cash payments and not the total expenditure actually incurred that were brought to tax as income on account of its source being unexplained and had accordingly treated the same as deemed income of the appellant, therefore, in our opinion, the findings given by the learned Tribunal on this point being well reasoned could not be faulted with in any manner whatsoever. Accordingly, the same are upheld.

6. The next argument raised by the appellant was that since the partners of the appellant-firm had surrendered huge amount of money at the time of search, which was Rs.23 lacs + Rs.23 lacs + Rs.8 lacs i.e. Rs.54 lacs, therefore the amount of Rs.9,92,211/- deserved to be adjusted from the

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amount so surrendered and was to be set off. In our opinion, the learned Tribunal had rightly rejected this contention of the appellant as during the course of assessment proceedings, no claim whatsoever had been made by the appellant for seeking adjustment of the amount surrendered by its partners against the expenditure of Rs.9,92,211/- which was unrecorded and unaccounted one. Hence, the amount in question could not be set off against the surrendered amount and the Tribunal had rightly observed so.

7. Learned counsel for the appellant had laid much stress on the argument that the books of account revealed that the appellant had received a sum of Rs.12,05,000/- from one Sh. Anil Seth for raising construction of his house and had infact spent an amount of Rs.14.15 lacs in that construction and had incurred losses and, therefore, it was argued that the said amount was to be considered as capital loss and was to be set off/adjusted as such. The Tribunal had rejected this contention of the appellant also on the ground that no co-relation between the expenditure incurred and the payments in cash had been proved at any stage by the appellant and rather the fact that the appellant claimed that higher expenditure was incurred implied that the same was unexplained and was all the more required to be treated as additional income of the assessee. In our opinion, the Tribunal had rightly observed so and after taking all aspects into consideration, the Tribunal had granted a part relief to the appellant to the extent to which duplication of some amount of money while calculating the figure of Rs.9,92,211/- as additional income of the appellant, had been made from the seized documents. On an overall assessment, we see no reason to come to any different conclusion. As a result, it is held that no such substantial question of law has arisen in this case which can be

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answered in favour of the appellant. Accordingly, finding no merit, the appeal is dismissed.

8. All miscellaneous application(s), if any, also stand disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

24.08.2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No