IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Income Tax Appeal No.3509 of 2018
Date of Decision: 12.09.2023

Navneet Jhamb ... Appellant

Versus

Assistant Commissioner of Income Tax,
Central Circle, Faridabad ... Respondent

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

Argued by: Ms. Radhika Suri, Senior Advocate,
with Mr. Siddhant Suri, Advocate,
for the appellant.

Mr. Saurabh Kapoor, Advocate,
for the respondent.

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MANISHA BATRA, J.

1. This appeal has been preferred under Section 260-A of the Income Tax Act, 1961 (For short "Act") by the appellant-assessee challenging the order dated 25.06.2018 (Annexure A-8) passed by the Income Tax Appellate Tribunal, Delhi Bench (For short "Tribunal") in ITA No.1609/Del/2011 whereby the appeal filed by the appellant challenging the order passed by Commissioner of Income Tax (Appeals), Ludhiana (For short "CIT (A)") dated 28.11.2011 had been upheld and the appeal of the appellant had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this appeal are that on 04.08.2005, a search and seizure operation was conducted at the residential premises of the appellant who is a partner in

M/s Reliance Estate Agency which is a Real Estate Broker Concern. Certain documents/loose papers were seized from his residential premises. Certain documents were also impounded from the business premises of M/s Reliance Estate Agency. On 08.05.2006, a notice under Section 153A of the Act was issued in response to which, the appellant filed his return of income declaring a total income of Rs.2,16,650/- from house property and business. Subsequently, notices under Sections 143 (2) and 142 (1) of the Act were issued against him. A questionnaire along with another notice dated 11.05.2007 was served upon the assessee on 15.02.2007. During the course of search, a document detailed/marked as Annexure A-1 was recovered from the assessee which was in the nature of MOU containing terms of Understanding between the buyer and seller regarding sale/purchase of a Plot No.42, Sector-6, Faridabad. On making inquiries, it was revealed that two sale deeds were executed for sale of total area of 10083 square yards of the abovesaid plot for sale consideration of Rs.38 lacs by the owner and the said property was purchased through the appellant-assessee. It was also revealed that the total transaction was struck at Rs.1,68,38,610/- out of which Rs.38 lacs had been paid by cheque and remaining in cash. It was also revealed on calculation that out of the profit of Rs.50,88,610/-., 50% had been shared with the seller and the remaining had been paid to the appellant which meant that an amount of Rs.1,42,94,305/- had been paid to the vendor by the purchaser and an amount of Rs.25,44,305/- had been paid to the appellant as his share of profit on account of sale of Plot No.42, Sector-6, Faridabad. By giving opportunity to the appellant to furnish documents and give explanation and after considering the same, an addition of a sum of Rs.25,44,305/- was made in his income for the assessment year

(A.Y.) 2000-01 vide order dated 24.12.2007. Penalty notice was also ordered to be issued separately. The appellant filed an appeal under Section 250 (6) of the Act against the order dated 24.12.2007 which was dismissed by CIT (A) vide order dated 28.01.2011.

3. Dissatisfied with the same, the appellant filed ITA No. 1609/Del/2011 before the Tribunal which too was dismissed vide order dated 25.06.2018 and the instant appeal has been filed against the said order.

4. Learned counsel for the appellant vehemently argued that the impugned order as passed by the Tribunal was not sustainable in the eyes of law and was liable to be reversed as the Tribunal had committed a grave error in ignoring the fact that the appellant was neither buyer nor seller of the Plot bearing No.42, Sector-6, Faridabad and simply by being a broker for facilitating sale/purchase of this property, he could not be assumed to have derived huge profit to the tune of Rs.25,44,305/- which was considered as undisclosed income of the appellant. The Tribunal had also ignored the fact that the additions made in case of the buyer of the abovestated property had been deleted by CIT (A) and no addition of income had been proved to be made qua the vendor also who could be the only person gaining the profit from the sale of the plot in question, if at all. It was further argued that the CIT (A) and the Tribunal had wrongly considered against him the documents alleged to have been recovered from his premises though he was neither a party to the Memorandum of Undertaking dated 24.12.1997 nor this document could be interpreted to mean in any manner whatsoever that the appellant had shared profit to the extent of 50% from the amount of Rs.50,88,610/-. Nothing was revealed from the documents so recovered that

any profit was derived by the appellant by sale of the Plot No.42. The transactions recorded in the seized documents could not be considered to be unexplained and undisclosed income of the appellant in any manner whatsoever.

5. Learned counsel for the appellant further argued that only on the basis of rough documents seized from his premises, no inference could be drawn that the amount of money as shown therein had been received by the appellant. The documents produced on record as Annexure A-1 had no sanctity in the absence of any independent evidence. The assessing officer and the revenue had failed to discharge the burden of proving that the documents allegedly recovered proved the allegation of receipt of any amount of money by the appellant. The addition in the income of the appellant made on the basis of figures mentioned therein, could at best be said to be tentative or estimated amount as the MOU and figures shown at page 55 of Annexure A-1 were shown to be bearing date 24.12.1997 whereas the sale deeds qua the Plot No.42 had been executed only in the year 2000. With these broad submissions, it was urged that the impugned order was not sustainable and was liable to be set aside and it was submitted that the appeal deserved to be allowed.

6. Per contra, learned counsel for the revenue resisted the various contentions as raised by learned counsel for the appellant by arguing that the documents seized from the premises of the appellant proved that he was the broker for transaction of sale of Plot No.42, Sector-6 and apart from receiving commission amount, he had earned 50% out of the profit amount which was shown to be calculated @Rs.50,88,610/- in document which was page marked as 52 and was recovered from his premises. He submitted that

the said addition made in the case of buyer was deleted only on technical grounds and that was having no consequence in favour of the appellant. Hence, it was urged that the appeal being devoid of any merit was liable to be dismissed.

7. Having heard learned counsel for both the parties and on giving due deliberations to the contentions respectively raised by them, we are of the considered opinion that the appeal deserves to be allowed due to the reasons as explained hereinafter.

8. Admittedly, the appellant was neither owner/vendor nor buyer of the Plot No.42. It has come on record that this plot was originally owned by M/s Gallant Engineering Enterprises Pvt. Ltd. who through its Managing Director namely, Sudhir Kumar Bahl had sold the same to M/s Avon Tubetec Pvt. Ltd. by executing two registered sale deeds dated 29.03.2000 and 21.06.2000 respectively. It is not in dispute that the appellant was one of the partners of M/s Reliance Estate Agency through whom the transaction of sale of the plot No.42 had taken place and that in the sale deeds, the total amount of sale consideration was shown as 38 lacs. According to the revenue, apart from the said amount of Rs.38 lacs which as per the record was paid by way of cheque by the buyer to the seller, certain other transactions in cash had also taken place as on the basis of the documents seized during search from the premises of the appellant, it was revealed that a total amount of Rs.1,68,38,610/- had been paid by the buyer. First of all, it may be mentioned at the cost of repetition that addition was made in the income of the buyer, but a perusal of orders passed by CIT (A) as well as by the Tribunal reveals that the said addition had been ordered to be deleted. No material had been placed on record by the revenue to show

that the said deletion was on any technical ground and as to what was that technical ground. Further, the revenue also failed to produce any material on record to show that any addition of income at all qua the same transaction had been made in the income of the vendor of Plot No.42 who was obviously the main person who could have derived profits from the same. The documents seized from the premises of the appellant were relied upon by the revenue as transaction of money in respect of sale/purchase of Plot No.42. However, for the purpose of coming to the conclusion that the transaction shown therein was qua the appellant also, no specific reasons had been recorded by the assessing officer.

9. Further, neither the statement of the vendor had been recorded to the effect that the amount of money as reflected in these papers which was over and above the sale consideration amount as shown in the sale deed was received by him or any part was shared by him with the appellant, nor any other material had been placed on record to show that the figures as shown therein were conclusive proof of transaction of money having taken place with the appellant by the purchaser or vendor. These figures though reflected some tentative/estimated transaction regarding purchase of property but did not prove that the vendor had obtained the amount of money shown therein or had shared any profit with the appellant. The burden of proving all this lied heavily on the revenue, but nothing could be brought on record to prove the allegation that there was concealment in the consideration amount as reflected in the sale deeds of the Plot No.42 and, therefore, in our considered opinion, on the basis of these documents which are part of Annexure A-1 and are rather loose rough papers only, no reasonable conclusion could be drawn that any amount of money what to

say of Rs.25,44,305/- had been received by the appellant.

10. Further, in the absence of any material forthcoming on record to show that any addition was made by the revenue in the hands of the vendor-Company or its Managing Director for receiving any unaccounted for cash amount of money in respect of the transaction of sale of Plot No.42, in our opinion, the appellant who was only a broker could not be saddled with any addition of money because the documents seized which were shown to be signed on 24.12.1997 i.e. much before the sale deeds were executed in favour of the purchaser of Plot No.42, were only tentative or estimated amounts of money and that too in favour of the vendor and not in favour of the present appellant. Any transaction of unaccounted transaction of money having taken place in favour of the appellant on the basis of these the loose papers could not be assumed. It was not a case of finding any unaccounted cash from the premises of the appellant. The burden of proving concealment on the part of the appellant of receiving the amount of Rs.25,44,305/- was on the revenue. The failure on the part of the appellant to prove the transaction as shown in Annexure A-1 cannot be stated to be a ground to add the income as shown there in the income of the appellant especially when no addition was proved to have been made in the income at the hands of owner of the property i.e. vendor and addition made in the income of buyer had also been deleted. The appellant being a broker at the most was an intermediary who could be presumed to have earned some profit apart from the commission amount but only on that basis, the case of the revenue could not be enhanced for the purpose of holding that he was liable to pay the addition as made in his income by way of the impugned order. No sufficient reasons had been recorded by the assessing officer

while making addition in the income of the appellant. As such, the observations made by the assessing officer, CIT (A) and the Tribunal cannot be stated to be based on correct appreciation and understanding of facts. Accordingly, we are inclined to hold that the impugned order is not sustainable and is liable to be reversed, hence the appeal is allowed and the order passed by the Tribunal is set aside.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

12.09.2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No