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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 1/2023

PR. COMMISSIONER OF INCOME TAX, DELHI -04 ..... Appellant

Through: Mr. Gaurav Gupta, Senior Standing Counsel with Mr. Shivendra Singh, Mr. Puneet Singhal, Ms. Mahima Garg and Ms. Deepika Goyal, Advocates.

versus

SH. PICHESWAR GADDE ..... Respondent

Through: Mr. Ved Jain, Advocate.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **03.04.2024**

PER: PURUSHAINDRA KUMAR KAURAV, J.

1. The present appeal filed by the Revenue impugns the order dated 13.01.2021 passed by the Income Tax Appellate Tribunal [**"ITAT"**] for the Assessment Year [**"AY"**] 2013-14.

2. The facts of the case exhibit that the respondent-assessee alongwith his wife are key promoters of the Lingaya Group. On 30.06.2014, a survey operation was conducted on the said group under Section 133A of the Income Tax Act, 1961 [**"Act"**].

3. The respondent-assessee's case was picked up for limited scrutiny and a notice dated 01.09.2014 was issued under Section 143(2) of the Act for the concerned AY. Subsequently, bearing in mind the revenue impact, a permission to conduct a complete scrutiny was obtained by the Revenue as against the initial selection for a limited scrutiny.

4. Pursuant to the said scrutiny, the Assessment Officer [**"AO"**] *vide* assessment order dated 31.03.2016, made an addition of Rs.21,62,30,000/- under the following heads:-

a. An addition of Rs.8,71,55,000/- on account of unexplained cash credits, appearing as unsecured loans, under Section 68 of the Act.

b. An addition of Rs.8,50,000/- under Section 69C of the Act as the Respondent could not justify the source of his living expenses from the claimed household withdrawals.

c. An addition of Rs.7,75,000/- on account of unexplained cash deposited in bank account.

d. Addition of Rs.11,17,50,000/- on account of short-term capital gain, being the understatement of amount received as cash consideration on sale of immovable property.

e. Addition of Rs.1,57,00,0001/- on account of unexplained cash investment made in immovable property.

5. Being aggrieved by the order passed by the AO, the respondent-assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [**"CIT(A)"**], whereby, *vide* order dated 29.03.2019, the appeal of the respondent-assessee was partially allowed *inter alia*, making the following findings:-

i. An addition of Rs.8,71,55,000/- was confirmed on account of unexplained cash credits, appearing as unsecured loans.

ii. An addition of Rs.11,17,50,000/- relating to short-term capital gain was confirmed as being under statement of amount received as cash consideration on sale of the immovable property.

6. Against the said confirmation of additions made by the CIT(A), the respondent-assessee preferred an appeal before the ITAT, which came to be allowed in his favour *vide* the impugned order.

7. It is in the aforesaid context that the Revenue has proposed the following substantial questions of law for our consideration in the present appeal:-

> "A. Whether on facts and circumstances of the case and also on prevailing law, the ITAT was justified in deleting an addition of Rs.8,71,55,0001- made by AO on account of unexplained unsecured loan and ignoring the fact that the assessee failed to discharge the primary onus placed on him under Section 68 of the Act?
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> B. Whether on facts and circumstances of the case and alsoon prevailing law, the ITAT was justified in deleting anaddition of Rs.11,17,50,0001/- made by AO on the basis of evidence regarding cash payments made for property transaction which were found and impounded during survey operation in the premises of the assessee?"

8. Learned counsel for the Revenue submits that the ITAT has failed to appropriately appreciate the material available on record. While drawing our attention to the order of the AO for the concerned AY, he submitted that the actual sale consideration of the property sold by the respondent-assessee is much beyond the amount of Rs.2.26 crores, as has been claimed by the respondent-assessee. According to him, a document was found during survey which would reflect that the said consideration was understated, as the same was equivalent to Rs.24.61 crores. He further submitted that since the respondent-assessee is in possession of 50 percent share of the property, the addition in question was rightly made by the AO.

9. Learned counsel, therefore, submitted that the bank transactions carried out by the respondent-assessee for the concerned sale can be duly verified through the seized document, however, the said

document fails to corroborate cash transactions undertaken by the respondent-assessee with the buyer namely, Mr. Pavan Gupta. It is his contention that though the document in question may show that the cash transactions were undertaken after the sale of the property but bearing in mind the *modus operandi* used for evasion of taxes, the said dates might have been tampered.

10. With regard to the addition made in the case of unsecured loans, learned counsel contended that the ITAT has failed to consider that the repayment of loans does not necessarily confer genuineness to such transactions. He further submitted that none of the alleged lenders appeared in compliance of the summons issued during the remand report proceedings, except Mr. Pavan Gupta, who confirmed only an amount of Rs.1,13,00,000/- as opposed to Rs.4,70,00,000/- claimed by the respondent-assessee. He, therefore, submitted that the ITAT has failed to consider the statements and has erred in reaching conclusions on the basis of mere assumptions.

11. On the contrary, learned counsel appearing for the respondent-assessee, while opposing the submissions advanced by the learned counsel for the Revenue, submitted that there is no perversity in the findings of the ITAT. According to him, the additions in question were rightly deleted by the ITAT and therefore, there arises no case for any interference with the ITAT order.

12. We have heard the learned counsel appearing on behalf of the parties and perused the record.

13. It is seen that so far as the issue of understatement of amount received as cash consideration on sale of immovable property is concerned, the Revenue has laid its challenge primarily on the basis of a piece of paper highlighting transactions, which was found during the

course of survey. The findings of the ITAT with respect to the said document are mentioned in paragraph no.20 of the impugned order, which reads as under:-

> "20. A careful perusal of these noting on impounded document would show that the alleged cash transactions are dated 09.11.2012, 15.11.2012 and 22.01.2013. TheRegistered sale deed of the land sold to Pavan Gupta was executed on 18.10.2012 and the possession of the land was also provided at the time of execution of the sale deed. These facts are verifiable from the exhibits at page 94 to 111 of the paper book."

14. The above findings of the ITAT would manifest that the alleged cash transactions were carried out on 09.11.2012, 15.11.2012 and 22.01.2013, whereas the registered sale deed of the land sold to Mr. Pavan Gupta was executed on 18.10.2012. It was further noted by the ITAT that the possession of the land was also provided to the purchaser at the time of execution of the sale deed itself. It also records that neither the purchaser of the property had admitted to have paid a consideration of alleged amount of Rs.24.61 crores nor the AO had been able to allude to any evidence which would suggest that the fair market value of the concerned land is much higher than the sale value. Thus, based on these facts and considerations, the ITAT went on to record the following conclusions:-

> **24. The entire addition have been made on the basis of the rough noting exhibited elsewhere and on the statement of the employee Neha Kukreja. As mentioned elsewhere, the dates mentioned in the rough noting are post sale deed and is against the human probability because if there is some under hand dealing by which cash is taken over and above by cheque value then cash transactions preceeds the cheque transactions. However, in the present case, since the sale deed was executed on 18.10.2012 and on the same date a quite possession was given to the buyers, no sane person would accept cash and no sane person would pay cash after getting possession of the property.** In our considered view, the entire addition has been made on suspicion which cannot be a basis for making the impugned additions. As no demonstrative evidence have been brought on

record to show that the assessee has actually received Rs.24.61 Crores. We do not find any merit in the addition and the AO is directed to delete the addition of Rs.11,17,50,000/-."

15. Considering the above findings, we find merit in the view taken by the ITAT which logically follows that there was no reason to conceive as to why the buyer would be interested in making additional payments once the land has been registered and the requisite possession of the property thereof had been provided. It is thus seen that the Revenue has not been able to corroborate the allegation of ITAT travelling beyond its mandate or omitting any appreciation of requisite evidence with any cogent material, which could signify any perversity on the part of the ITAT.

16. With respect to the other question mooted by the Revenue which pertains to the addition on account of unsecured loans, it is necessary to reproduce the following findings of the ITAT:-

> "11. If the CIT(A) had gone through the evidences then he would have found that almost entire loan has been repaid. Not only, these transactions are reflected in the bank statement but have also been duly confirmed by the parties and the documents are exhibited from pages 111 to 117 of the paper book.
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> 12. We further find that during the course of remand proceedings, the AO had issued summons under section 131 of the Act to the aforementioned parties and all the summons were duly served, which means that the names and addresses of the parties are genuine. Merely because the parties did not appear before the AO would not lead to the inference that the loans are not genuine. Moreover, the year in which the summons was served upon the parties, their loans have been repaid by the appellant. We find that the AO has not taken any further step after serving the summons under section 131 of the Act."

17. In essence, the contentions raised by the Revenue are essentially findings of fact, which, in our opinion, do not warrant any interference. The Revenue in the present proceedings ostensibly seeks

to canvass a re-appreciation of evidence on the basis of which the conclusions have been arrived at by the ITAT, which is impermissible as per the mandate of Section 260A of the Act. Reliance can be placed upon the decision of this Court in ITA No.146/2021 titled as **CIT v. M/S Shagun Chandra Kothari Trust,** wherein, it was held as under:-

> "6. In any event, it is settled law that an appeal under Section 260A of the Act is to be entertained only when it directly and substantially affects the rights of the parties or is not free from difficulty or call for discussion of alternative views or the factual finding is perverse. **It is further settled law that any interference with the finding of the fact is not warranted if it involves re-appreciation of evidence."**
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> [Emphasis supplied]

18. It is also beneficial to refer to the decision of the Hon'ble Supreme Court in the case of **K. Ravindranathan Nair v. CIT** [(2001) 1 SCC 135], wherein, the Court envisaged the contingency where the findings of the Tribunal on the facts can be said to be perverse. The relevant paragraph of the said decision is reproduced herein below:-

> "7. The High Court overlooked the cardinal principle that it is the Tribunal which is the final fact-finding authority. **A decision on fact of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal.** In this case, there was no such question before the High Court. Unless and until a finding of fact reached by the Tribunal is canvassed before the High Court in the manner set out above, the High Court is obliged to proceed upon the findings of fact reached by the Tribunal and to give an answer in law to the question of law that is before it."

19. In our considered opinion, in the present case, the ITAT cannot be said to have acted beyond its mandate. In fact, the conclusions

drawn by the ITAT lucidly resonate with any inference which could have been drawn by a reasonable person or authority.

20. In view of the aforesaid, the questions of law raised by the appellant do not warrant any interference. Consequently, the instant appeal is dismissed alongwith the pending application(s), if any.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 03, 2024/MJ