



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

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Judgment reserved on: 02 April 2024
Judgment pronounced on: 02 May 2024

+ **ITA 180/2021**

PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL) – 3

..... Appellant

Through: Mr. Abhishek Maratha, Sr.SC.

Versus

M/S GTM BUILDER AND PROMOTERS PVT. LTD.

..... Respondent

Through: Mr. Jai Sahai Endlaw, Adv.

+ **ITA 181/2021**

PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL) – 3

..... Appellant

Through: Mr. Shlok Chandra, Sr.SC with
Ms. Priya Sarkar and Ms.
Madhavi Shukla, Advs.

Versus

M/S GTM BUILDER AND PROMOTERS PVT. LTD.

..... Respondent

Through: Mr. Jai Sahai Endlaw, Adv.

+ **ITA 11/2022**

PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL) – 3

..... Appellant

Through: Mr. Abhishek Maratha, Sr.SC.

Versus

M/S GTM BUILDER AND PROMOTERS PVT. LTD.

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..... Respondent

Through: Mr. Jai Sahai Endlaw, Adv.

+ **ITA 12/2022**

PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL) – 3

..... Appellant

Through: Mr. Abhishek Maratha, Sr.SC.

Versus

M/S GTM BUILDER AND PROMOTERS PVT. LTD.

..... Respondent

Through: Mr. Jai Sahai Endlaw, Adv.

+ **ITA 448/2022**

PR. COMMISSIONER OF INCOME TAX, CENTRAL-3

..... Appellant

Through: Mr. Gaurav Gupta, Sr.SC with
Mr. Shivendra Singh, Jr.SC.

Versus

SH. TUSHAR KUMAR

..... Respondent

Through: Mr. Jai Sahai Endlaw, Adv.

+ **ITA 226/2023**

THE PR COMMISSIONER OF INCOME TAX -7

..... Appellant

Through: Mr. Ruchir Bhatia, Sr.SC.

Versus

SARGAM ESTATES PVT. LTD.

..... Respondent

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

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J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

ITA 180/2021 and ITA 181/2021

1. These appeals under Section 260A of the Income Tax Act, 1961 [“**Act**”] at the instance of the Revenue are against the order of the Income Tax Appellate Tribunal [“**ITAT**”] dated 04.02.2021, whereby, appeal of the Revenue being ITA No. 3797/Del/2010 was dismissed and appeal of the assessee being ITA No. 3577/Del/2010 was allowed for the Assessment Year [“**AY**”] 2006-07.
2. On account of similitude of facts and legal questions, both the appeals are being decided by this common judgment.
3. The respondent-assessee in the instant case is a company whose primary business activity is construction/development of real estate. A search and seizure operation was carried out on the GTM group of companies controlled by its Directors namely, Gautam Kumar and Tushar Kumar on 12.12.2006. In pursuance of the same, the proceedings under Section 153A of the Act were initiated against the respondent-assessee for AY 2006-07.
4. Subsequently, an assessment order was passed on 31.12.2008, whereby, the Assessing Officer [“**AO**”] made additions on account of bogus share application money received by respondent-assessee amounting to Rs.5,34,50,000/- and a sum of Rs.1,92,00,000/- being income on account of cash received by Tushar Kumar on the pretext of one Bhagwanti Co-operative Group Housing Society [“**Bhagwanti CGHS**”], Gurgaon. Resultantly, the assessed income of the respondent-

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assessee shot up to Rs.7,45,81,159/-.

5. Being aggrieved by the order passed by the AO, the respondent-assessee preferred an appeal before the Commissioner of IncomeTax- Appeals [“CIT(A)”]. *Vide* order dated 28.05.2010, the CIT(A) partly allowed the respondent-assessee's appeal by deleting the addition of Rs.1,92,00,000/- on account of cash received from members of Bhagwanti CGHS and confining the addition on account of bogus share capital to Rs.3,34,50,000/-.

6. However, the Revenue and the respondent-assessee both preferred their respective appeals before the ITAT against the order of the CIT(A). *Vide* order dated 04.02.2021, the ITAT deleted the additions made by the AO in entirety.

7. The Revenue, therefore, has preferred the instant appeals and has proposed the following substantial questions of law for our consideration:-

“A. Whether on facts and in the circumstances of the case and also on the prevailing law, Hon'ble ITAT is justified in deleting the addition on account of bogus share application money without considering the facts on record, the overwhelming material gathered by the Assessing Officer, admission of the Director Sh. Tushar Kumar regarding receipt of the accommodation entries by the Respondent and the chronic failure of the assessee to establish the genuineness and creditworthiness of the alleged share applicants?

B. Whether on facts and in the circumstances of the case and also on the prevailing law, Hon'ble ITAT is justified in holding the share application money received from M/s Arha Buildcon Pvt. Ltd. was genuine, in view of the field enquiries conducted by the Assessing Officer and also the decision of this Hon 'ble Court in the case of CIT V Sophia Finance Ltd. 205 ITR 98(Del)?

C. Whether on facts and in the circumstances of the case and also on the prevailing law, Hon'ble ITAT is justified in upholding the order of CIT(A) deleting the addition on account of raising of funds of Rs. 1,92,00,000/- from 48 flats ignoring the incriminating material found

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at the premises of employee of the Respondent's Group and the statements of the office bearers and society members?"

CONTENTIONS

8. The Revenue has challenged the order of the ITAT, firstly, on the ground that the ITAT has failed to appreciate that the Director, Tushar Kumar, had clearly admitted the receipt of the accommodation entries by the respondent-assessee and the respondent-assessee had failed to substantiate genuineness and creditworthiness of the share capital subscription. It was urged that the deletion of Rs.2 crores towards unexplained share application money under Section 68 of the Act made by CIT(A) should not have been confirmed by the ITAT.

9. Secondly, the Revenue has also assailed the findings of the ITAT on the ground that the share application money received from M/s Arha Buildcon Pvt. Ltd. was not genuine, in view of the field enquiries conducted by the AO and therefore, the addition made by the AO in that regard should not have been deleted by the ITAT.

10. Thirdly, it is stated that while upholding the order of CIT(A) deleting the addition on account of raising of funds of Rs. 1,92,00,000/- from 48 flats concerning Bhagwanti CGHS, the ITAT failed to consider the incriminating material found at the premises of employee of the respondent-assessee's Group. According to him, the statements of office bearers and society members of Bhagwanti CGHS were also not considered.

11. It is, therefore, the case of the Revenue that the order of the ITAT suffers from perversity and thus, liable to be quashed.

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ANALYSIS

12. We have heard the learned counsels appearing for the parties and perused the record.

13. With regard to the first contention relating to the genuineness and creditworthiness of the share capital subscription, the ITAT has noticed that the CIT(A) had duly recorded its satisfaction relating to identity, genuineness and creditworthiness of the amounts received along with confirmations, address, cheque number and PAN and therefore, the ITAT declined to interfere with the order of CIT(A) in deleting the addition of Rs.2 crores.

14. In this context, we may allude to the order of ITAT, wherein, in paragraph no.23, while affirming the deletion of additions carried out by CIT(A) towards unexplained share application money under Section 68 of the Act, it has been held as under:-

“20. We have gone through the statement and also the ledger account and the bank accounts of the various parties from whom the amounts have been received. In the case of the Bic Consultants Pvt. Ltd. while the amount of Rs.7 lacs has been received on 31.12.2005, the same has been refunded on 17.11.2007. In the case of Chinpurni Credit & Leasing Pvt. Ltd., the amount received was Rs.15 lacs on 02.01.2006, the amount repaid on 15.09.2006 was to the tune of Rs.12.5 lacs and Rs.2.5 lacs on 19.09.2006. In the case of CVH Sea Life Ltd., the amount received has been refunded by 24.09.2007. Similarly, in the case of E-Dynamics Solution Pvt. Ltd., the amount of Rs.5 lacs which was received on 03.01.2006 has been refunded on 19.09.2006. In the case of Enpol Pvt. Ltd., out of the amount received of Rs.15 lacs an amount of Rs.7 lacs has been paid by 25.09.2006 and an amount of Rs.7 lacs has been paid on 23.10.2007. In the case of Funtime Travel Pvt. Ltd., the amount of Rs.5 lacs received on 03.01.2006 is outstanding. Similarly, the amount received on 31.12.2005 from Ganga Infin Pvt. Ltd. and the Garg Finvest Pvt. Ltd. has been refunded on 28.09.2006 and by 10.10.2006. Similar is the case with other entities namely, Hillridge Investment Ltd., the payment received in January has been refunded in September 2006. Similarly, in the case of Rakesh Kumar, the amount received of Rs.4

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lacs in January 2006 has been refunded on 28.04.2006. The same is in case of Sehdev Kandol, Rightway Network Pvt. Ltd. Thus, we find that except Sparrow Marketing Pvt. Ltd. of Rs.5 lacs, SDLW Spinning Mills Pvt. Ltd. and Sri Nawas Leasing & Finance Pvt. Ltd. totaling to an amount of Rs.21 lacs, the remaining amounts have been either refunded within the year, within two years or adjusted against the bookings. Under these circumstances, it cannot be said that the amounts have been accommodation entries solely based on the statement of Shri Mahesh Garg.

XXX

XXX

XXX

22.Thus, we find that while a valiant attempt have been made by the ld. CIT DR, there has not been any tangible facts to treat these amounts u/s 68 especially when there is no premium involved, the parties have not been inquired into revenue, addition has been made solely on the basis of Shri Mahesh Garg, amounts have refunded at various intervals or adjusted against the bookings, we hold that the action of the Assessing Officer cannot be held to be valid. Appeal of the assessee on this ground is allowed.

23. Regarding the appeal of the revenue, we find that the ld. CIT (A) has duly satisfied himself as the assessee and the parties could provide documents relating to identity, genuineness and creditworthiness of the amounts received along with confirmations, address, cheque number and PAN. Hence, we decline to interfere with the order of the ld. CIT (A) on this issue.”

15. With respect to the second contention relating to the finance received from M/s Arha Buildcon Pvt. Ltd., the ITAT, in our view, has correctly delved into the facts to come to the conclusion that there have been direct finance arrangements between M/s Arha Buildcon Pvt. Ltd. and the respondent-assessee.

16. For reference, the relevant extract from the order passed by the AO in paragraph no.52, wherein, it was held that the details of payments and receipts with respect to M/s Arha Buildcon Pvt. Ltd. were not furnished by the assessee, is culled out as under:-

“the assessee was not above to provide any details of cheques that

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was issued by the assessee and how many of these cheques have actually not been presented for payment or whether any real payments were ever made”.

17. The ITAT had rendered a finding of fact with respect to the above statement and held it to be factually incorrect observing that the bank statement of the assessee reflects the amounts received and paid with regard to M/s Arha Buildcon Pvt. Ltd. The relevant extract from the order of the ITAT reads as under:-

“M/s Arha Buildcon Pvt. Ltd.

18. The assessee has received amounts varying from Rs.5 lacs to Rs.67 lacs from various periods from 07.12.2005 to 25.02.2006 and an amounts have been refunded from 27.04.2006 to 19.05.2006 of amounts varying from Rs.5 lacs to 30 lacs. There has been an agreement between Arha Buildcon and the assessee regarding booking of 60 flats in the project GTM Forest at Dehradun. This shows that there have been direct finance arrangements between the M/s Arha Buildcon Pvt. Ltd. and the assessee. In the search & seizure operation, an Indemnity Bond has been seized wherein the Arha Buildcon has arranged Rs.3.75 Crores for the assessee after calculation of cost of 60 flats each of 1650 sq. ft. @ Rs.1100 per sq. ft. As per the agreement, Rs.2 Crores is to be paid before 10.12.2006 and from the records it can be found that the assessee has already paid Rs.67 lacs till 19.05.2006 which gives a credence to the reliability of the agreement. The Indemnity Bond, the amounts received and paid against the bookings cannot be suspected in the absence of any other contrary finding by the revenue..... The said lender has been existence for 10 years and assessed to tax. While making the addition, the Assessing Officer mentions that “the assessee was not above to provide any details 0of cheques that was issued by the assessee and how many of these cheques have actually not been presented for payment or whether any real payments were ever made”. **The statement is factually wrong as the bank statement of the assessee maintained at HDFC Bank A/c No. 1322000007148, Palam, New Delhi clearly shows the amounts received and paid with regard to M/s Arha Buildcon Pvt. Ltd. Hence, in view of the facts are unable to agree with the contentions of the Id. CIT (A). The addition on this account is directed to be deleted.”**



from each of 48 flats concerning Bhagwanti CGHS amounting to Rs.1,92,00,000/-, the ITAT has made a categorical finding that the addition was made on theoretical premise on the basis of presumptions and there was no evidence gathered, collected or investigated by the Revenue to support the addition.

19. We, hereby, take note of the observations made by the ITAT in its order in paragraph no.32, wherein, it was held as under:-

“31. From the record, we find that Shri Tushar Kumar might have played some role but the society confirmed that initially each flat was estimated in the year 2003 at Rs.17 lacs and Rs.21 lacs for category A and category A1 type of flats. It was also confirmed by the society that since there was a rise in the price of steels, cement and bricks, the cost escalation was worked out to be Rs.44,800/- which was duly approved by the members of the society in the AGM. The society cannot be said a benami concern of Shri Tushar Kumar/GTM since it is a separate legal entity and is a registered society under the Haryana cooperative society Act. The scope of its activities, objectives is governed by its Memorandum and Articles of the association and nothing else. The society takes its decisions through its governing body which are given such powers through General Body. It is also to be noted that all the legal, financial documents relating to the society, the minutes of its meetings, its members, its accounts etc. are kept with the society and no one else. **The mere fact that some of the documents information pertaining to its members were found at the premises of Mr.Tushar Kumar/GTM did not make it a concern of Mr.Tushar Kumar/GTM.** From the above it is clear that the society is an independent legal entity and is not a benami concern of Mr. Tushar Kumar/GTM.

32. **Adverting to the evidences as to whether the assessee has received Rs.4 lacs from each of 48 flats. We do not find any such reference or evidence gathered, collected or investigated by the revenue. The addition made was on theoretical premise on the basis of presumptions.** Even the statement recorded from the members of the society did not point to any amount paid to the assessee or the Director in his personal capacity. The society has also clarified that an amount of Rs.17 lacs each for category A and Rs.21 lacs for category A1 type. The cost escalation of Rs.44,800/- has been approved in the AGM. There was absolutely no evidence of payment of Rs.4 lacs by each flat owner to the assessee. Hence, the addition made by the AO cannot be sustained. The appeal of the revenue on

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this ground is dismissed.”

20. A perusal of the abovesaid would indicate that the ITAT has examined the facts in great detail. It may be noted that the ITAT is the final arbiter of the facts and appeal can be entertained by the High Court only if any substantial question of law arises. A conspectus of the proposed substantial questions of law signify that they only relate to the findings of fact and the order of the ITAT cannot be construed in any manner to be *ex-facie* perverse.

21. It would be apposite to refer to the decision of the Supreme Court in the case of **K. Ravindranathan Nair v. CIT** [(2001) 1 SCC 135], wherein, the Court has propounded the parameter to determine the findings of the Tribunal to be perverse. The relevant paragraphs of the said decision are extracted hereunder for reference:

“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.

8. The only jurisdiction of the High Court in a reference application is to answer the questions of law that are placed before it. It is only when a finding of the Tribunal on fact is challenged as being perverse, in the sense set out above, that a question of law can be said to arise.”

Conclusion

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22. Thus, for the foregoing reasons, we are of the opinion that no substantial question(s) of law arises for our consideration.

23. Accordingly, the appeals stand dismissed and are disposed of alongwith the pending application(s), if any.

ITA 11/2022 and ITA 12/2022

1. These appeals are filed at the instance of the Revenue, against the order of the ITAT dated 10.02.2021, whereby, appeal of the revenue being ITA No. 3783/Del/2010 was dismissed and appeal of the assessee being ITA No. 3578/Del/2010 was allowed for AY 2007-08.

2. On account of similitude of facts and legal questions, both the appeals are being decided by this common judgment.

3. For the relevant AY, an assessment order came to be passed on 31.12.2008, whereby, the AO made the following additions:-

- a. Addition of Rs.6,84,50,134/- on account of the cash component of the consideration paid by the respondent-assessee for the GTM Forest and Hills Project, Dehradun.
- b. Addition of Rs.90,34,300/- on account of cash component of the consideration paid by the respondent-assessee for the GTM Kashipur-II project.
- c. Addition of Rs.1,25,00,000/- was made in the hands of the respondent-assessee on substantive basis on account of investigation material which revealed that Tushar Kumar had received cash amounting to Rs.1,25,00,000/- on account of M/s.Haryana Citizens Cooperative Group Housing Society [“Haryana CGHS”].

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- d. Addition of Rs.1,80,00,000/- on account of the consideration paid by the Respondent to one Ajay Jain for taking control over the housing society, namely Wings Cooperative Group Housing Society [**“Wings CGHS”**].
 - e. Addition of Rs.34,78,000/- was made on account of unexplained investment in the shares of M/s. Sargam Estate Pvt. Ltd.
 - f. Addition of Rs.34,65,559/- on account of unexplained advertising expenditure.
 - g. An addition of Rs.4,27,22,971/- on account of undisclosed investment in the stock of jewellery pertaining to M/s. GTM Jewellery Mart.
4. Resultantly, the assessed income amounted to Rs.16,19,04,640/-.
5. Aggrieved by the order passed by the AO, the respondent-assessee preferred an appeal before the CIT(A). *Vide* order dated 28.05.2010, the CIT(A) partly allowed the respondent-assessee’s appeal by upholding only the following two additions and deleting the remaining additions:-
- i. Addition to the extent of Rs.3,01,00,000/- was upheld from Rs.6,84,50,134/- on account of cash component of the consideration paid by the respondent-assessee for the GTM Forest and Hills Project, Dehradun;
 - ii. An addition of Rs.4,27,22,971/- on account of undisclosed investment in the stock of jewellery pertaining to M/s.GTM Jewellery Mart was confirmed.
6. Aggrieved by the said order, the Revenue and the respondent-assessee both preferred their respective appeals before the ITAT. *Vide*

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order dated 10.02.2021, the ITAT deleted the additions made by the AO in entirety.

7. The Revenue, therefore, being aggrieved by the order of the ITAT, preferred the instant appeals and has proposed the following substantial questions of law for our consideration:-

“A. Whether on facts and in the circumstances of the case and also on the prevailing law, Hon'ble ITAT is justified in deleting the addition of Rs.6,84,50,134/- made on account of cash component while purchase of property, ignoring the corroborative material found at the premises of assessee company duly supported by the affirmation of its Director, Sh. Tushar Kumar?

B. Whether on facts and in the circumstances of the case and also on the prevailing law, Hon'ble ITAT is justified in holding the order of CIT(A) deleting the addition of Rs.90,34,300/- on account of unexplained investment in GTM Kashipur-II, ignoring that though the land was purchased by M/s Sargam Estates Pvt. Ltd. the cheque payments were made by the assessee company on its behalf and this fact was later confirmed from the fact that M/s Sargam Estates was acquired by the assessee company?

C. Whether on facts and in the circumstances of the case and also on the prevailing law, Hon'ble ITAT is justified in deleting the addition of Rs.1,25,00,000/- towards undisclosed cash receipts on sale of flats ignoring the documents seized during search in GTM Group and impounded survey u/s 133A in Haryana Citizen Co-operative Housing Society also ignoring the provisions of section 132 (4A) and 292-C of the Income Tax Act?

D. Whether on facts and in the circumstances of the case and also on the prevailing law, Hon'ble ITAT is justified in deleting the undisclosed expenditure of Rs.1,80,00,000/- for acquiring certain rights in wings CGHS Ltd. ignoring the provisions of Section 132 (4A) and 292-C of the Income Tax Act?

E. Whether on facts and in the circumstances of the case and also on the prevailing law, Hon'ble ITAT is justified in holding that the addition of Rs. 4,27,22,971/- on account of unaccounted stock of jewellery cannot be made in the hands of the assessee in the instant year and the GTM Jewellery Mart is a separate entity when the source of funds for expansion of new business were arises from the assessee company?

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F. Whether on facts and in the circumstances of the case and also on the prevailing law, Hon'ble ITAT is justified in holding that the AO should use the provision of section 153A r.w.s 153C when there is direct jurisdiction available u/s 153A?

G. Whether on facts and in the circumstances of the case and also on the prevailing law, Hon'ble ITAT is justified in deleting the addition of Rs.34,78,000/- towards undisclosed investment in M/s Sargam Estate Pvt. Ltd. without appreciating that it was acquired by the assessee company later on?

H. Whether on facts and in the circumstances of the case and also on the prevailing law, Hon'ble ITAT is justified in deleting the addition of Rs.34,65,559/- towards unexplained advertisement expenses without granting the opportunity to AO to examine the correct claim recorded in the books of accounts by the assessee?"

CONTENTIONS

8. The Revenue has challenged the order of the ITAT, firstly, on the ground that the ITAT has failed to appreciate that the material seized during the course of search, recorded in Tushar Kumar's own handwriting specified the total purchase consideration at Rs.27,14,20,134/-, while the consideration recorded in the books for purchase of land in Dehradun was Rs.20,30,27,000/-. It was urged by the Revenue that the ITAT also erred in concluding that that there was no corroborative material, as there was identity in the particulars of the land mentioned in the seized papers. According to the Revenue, the order of the ITAT considering the seized diary notings as mere estimates of cost of lands and cost of sale value area has no basis in the facts of the case.

9. Secondly, the Revenue has also assailed the findings of the ITAT on the ground that confirmation of deletion by CIT(A) of Rs.90,34,300/- on account of cash component of the consideration paid

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by the respondent-assessee for the GTM Kashipur-II project is contrary to the respondent-assessee's own admission that the said land was purchased by making a cash payment. As per Revenue, this aspect has not been considered by the ITAT and hence, the impugned order is erroneous.

10. Thirdly, it is stated that the ITAT has failed to consider the nature of association between the respondent-assessee and the Haryana CGHS. It is submitted that ITAT's finding that there is no link between the Haryana CGHS and the respondent-assessee is contrary to the record that documents like application forms, correspondence between members and society, letterheads, copies of cheques paid by the members were found in the possession of the respondent-assessee.

11. Fourthly, the Revenue has assailed the finding of the ITAT on the ground that the deletion of Rs.1,80,00,000/- on account of the consideration paid by the respondent-assessee to one Ajay Jain for taking control over Wings CGHS is totally erroneous. It is submitted that the ITAT has failed to appreciate that ownership of a co-operative society cannot be transferred as such and therefore, the respondent-assessee had devised an MoU with Ajay Jain for taking control over Wings CGHS.

12. Fifthly, it was canvassed before us that the ITAT erred in confirming the CIT(A)'s deletion of Rs.34,78,000/- made on account of unexplained investment in the shares of M/s. Sargam Estate Pvt. Ltd. It was submitted that neither the CIT(A) nor the ITAT considered that during assessment proceedings, the respondent-assessee had failed to offer any justification for treatment of Rs. 34,78,000/- being the share

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application money of M/s. Sargam Estate Pvt. Ltd. prior to its acquisition by the respondent-assessee. Further, both authorities did not examine the genuineness of the respondent's claim that the said money had been returned.

13. Sixthly, it was submitted that the ITAT has erred in confirming the CIT(A)'s deletion of Rs.34,65,559/- made on account of undisclosed advertisement expenditure. It is submitted that the undisclosed portion of the advertisement expenditure was discovered by the AO through independent enquiries.

14. Seventhly, it is stated that the findings of the ITAT that the addition on account of undisclosed investment in jewellery cannot be sustained merely because GTM Jewellery Mart Pvt. Ltd. is a separate assessable entity, is completely erroneous. According to the Revenue, it is an admitted position that GTM Jewellery Mart Pvt. Ltd. is a unit of the respondent-assessee company and also that the respondent-assessee had surrendered a sum of Rs.4.57 crores on account of undisclosed investment in jewellery and therefore, the addition made by the AO and confirmed by the CIT(A) should not have been deleted by the ITAT.

ANALYSIS

15. We have heard the learned counsels for the parties and perused the record.

16. With regard to the first contention relating to the addition made by the AO on account of unexplained investment in properties in Dehradun, the ITAT has held that there was no scope to treat the amount as paid in cash to be brought under unexplained investment under Section 69 of the Act and came to a conclusion that there was no

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material to corroborate the addition as made by the AO.

17. In this context, we may allude to the order of the ITAT, wherein, in paragraph no.20, it was held as under:

“20. Page no. 9 of Annexure A 21 reflects writing “cheques to be paid” to Rs.2,27,50,000/- and “cash 2,53,98,497 below that is a figure of 18,27,12,497. On the back side of page no. 9 (page 143 of paper book) mentions above cost per bigha @ Rs.43,62,416/- which amounts to Rs.27,14,20,137/- including registration and other amounts. The page shows Rs.3,01,00,000/- and a total of Rs.20,48,71,637/-. We also find that the total consideration for purchase of land at Dehradun was Rs.20,30,27,000/-. **Hence, it cannot be said that the amount of Rs.3.01 Cr. has been paid in cash. Had Rs.3.01 Cr. been paid in cash, the total cost of purchase paid in cheque as per the four sale deed should be Rs.17,47,71,637/- whereas in reality the total amount of Rs.20,30,27,000/- has been paid in cheque. Hence, there is no scope to treat the amount as paid in cash to be brought under unexplained investment u/s 69. Regarding the addition made by the AO of Rs.3,84,00,000/-, we find no material to come to such a conclusion.**The AO has merely subtracted the amount of Rs.27,14,20,134/- mentioned in the seized material which are the estimates of cost of lands and cost of sale value area, average rate, car parking and mall from Rs.20,30,27,000/- paid by the assessee in cheque to the farmers for purchase of the land. There was no material to corroborate such an addition, the Assessing Officer merely went back the Annexure A 21 page no. 1 to make such addition. **Hence, the action of the Assessing Officer cannot be supported. The appeal of the assessee on this ground is allowed and appeal of the revenue is dismissed.**”

18. With respect to the second contention relating to the addition made by the AO on account of unexplained investment in Kashipur land for the project designated as GTM Kashipur-II, the ITAT, in our view, has correctly delved into the facts to come to the conclusion that the nature and contents of the seized material do not reflect any unexplained investment in the land purchased at Kashipur and the addition has been made on a presumptive basis.

19. For reference, the relevant extract from the order passed by the

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ITAT, wherein it declined to interfere with the order of the CIT(A) is as under:-

“26. We have gone through the issue de novo and find that the Assessing Officer has made addition based on the seized material of Annexure A 20 page no. 19 wherein it was mentioned that “Kashipur -10 acres @ Rs.19,30,000 per acre”. On page no. 20, it was mentioned Kashipur new land Mr. Shishir @ Rs.19,30,000/- land 9.81 acres.....

27. On going through the entire factum and orders of authorities below, we find that the addition has been made on a presumptive basis. There was no evidence on record reflecting any payment of cash. Further, while the land has been purchased that Sargam Estate Pvt. Ltd. and reflected in the balance sheet of Sargam Estate pvt. Ltd., no addition is called for in the case of the assessee. It cannot be said that while the cheque has been paid on behalf of Sargam Estate Pvt. Ltd. cash has been paid by the assessee. The nature and contents of the seized material do not reflect any unexplained investment in the land purchased in Kashipur. Hence, we decline to interfere with the order of the Id. CIT (A) on this issue. The appeal of the revenue on this ground is dismissed.”.

20. Regarding the third contention relating to the amounts received from Haryana CGHS and the alleged illegal link between the respondent-assessee and Haryana CGHS, the ITAT, after analysing the facts has held that there was no link between the respondent-assessee and Haryana CGHS and it was not a benami concern of the respondent-assessee company.

21. We, hereby, take note of the observations made by the ITAT in its order in paragraph no.31, wherein, while declining to interfere with the order of the CIT(A), it held as under:-

“31. We have gone through the details of the survey conducted by the revenue. Shri K.G. Rastogi was a construction supervisor at the site. The AO held that from the diary of Shri K.G. Rastogi , the order payments “appear to be made in cash”. There was no evidence that cash has been paid to the assessee company or to the Director of the assessee company. Even the cheque entries were not proved to be

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encashed in the bank account of the assessee or the Director. The presence of share certificate, application forms and correspondence at the premises of Shri Tushar Kumar and Shri Mohan Vohra swerved the Assessing Officer to make the addition. The society clearly submitted before the AO that he was neither a member nor office bearer of the society. He was a work supervisor for few contractors of HCCGHS and also to other societies. **No link with the society has been found as per the statement of the society. The allegation of the revenue that the HCCGH society is a benami of the assessee company cannot be held to be a valid statement as the society is a separate distinct entity and registered with Registrar of Cooperative Societies, Chandigarh. There was no proof that the society has given money in cash to the company or is Director. In the absence of any material depicting or indicating payment of cash to the assessee, no addition is called for. Hence, we decline to interfere with the order of the Id. CIT (A) on this ground. The appeal of the revenue on this ground is dismissed.**

22. Regarding the fourth contention relating to the undisclosed investment in Wings CGHS for taking its control *via* an MoU, the ITAT, after carefully analysing the facts, held that the MoU cannot be treated as executed since during the search itself, it was conveyed that Tushar Kumar did not want to enter into an agreement with Ajay Jain as per the MoU and the said MoU was also not signed by Tushar Kumar.

23. In this context, we may refer to the order of the ITAT, wherein, it had declined to interfere with the order of the CIT(A) and came to a conclusion that there was no evidence of payment of cash by the respondent-assessee for taking control of the Wings CGHS. The relevant extract is reproduced as under:-

“38. We have gone through the entire material on record and the orders of the authorities below. We find that the Assessing Officer has made addition by holding that the MoU mentions about payment of amount by Shri Tushar Kumar to Shri Ajay Jain whereas the facts speak otherwise. During the search itself, it was conveyed that Shri Tushar Kumar did not want to enter into an agreement with Shri Ajay Jain as per the MoU. The said MoU was also not signed by Shri

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Tushar Kumar. The MoU cannot be treated as executed. There was no evidence of payment of cash. The seized material did not mention any payment of cash. Hence, it cannot be held that the assessee has paid an amount of Rs.1.80 Cr. for taking the control of the WCGHS which is a Co-operative Society registered with Registrar of Cooperatives. Hence, we decline to interfere with the order of the Id. CIT (A). The appeal of the revenue on this ground is dismissed.”

24. With regard to the fifth contention relating to the deletion of Rs.34,78,000/- made on account of unexplained investment in the shares of M/s. Sargam Estate Pvt. Ltd., the ITAT concurred with the findings as returned by the CIT(A) in deleting the additions and held as under:-

“42. We have gone through the facts on record and balance sheet of M/s Sargam Estate Pvt. Ltd., the share capital of Rs.1,00,000/- remained constant as at 31.03.2007 and as at 31.03.2006. The share application money as at 31.03.2006 was Rs.32,18,000/- which was refunded to the assessee company after receipt of fresh share application money of Rs.53,86,000/- by M/s Sargam Estate Pvt. Ltd. Instead of enquiring, the source of application money, the AO brought to tax the amount of share application money refunded to the assessee by M/s Sargam Estate Pvt. Ltd. Hence, the addition made has been rightly deleted by the Id. CIT (A).”

25. With regard to the sixth contention relating to the CIT(A)'s deletion of Rs.34,65,559/- made on account of unexplained advertisement expenditure, the ITAT, after perusing the facts, again concurred with the findings rendered by the CIT(A) in deleting the additions and held as follows:

“45. The Id. CIT (A) deleted the addition on the grounds that all the expenses on account of advertisement have been made by account payee cheques and duly recorded in the books of account maintained by the assessee. No cash payment has been made on this account. Relevant copies of account in this regard were produced. In the profit and loss account, the total debit of Jewellery division is Rs.2,85,12,704/- besides in the builders divisions there is a advertisement expenditure of Rs.3,92,29,402/- as per schedule 19

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under the head “Direct Expenses” (Schedule 19) which has been ignored by the Assessing Officer.

46. The Id. CIT (A) further held that the expenditure on advertisement was debited in two division of jewellery and building amounting to Rs.28512704/- and Rs.39229402/- respectively as per the books of account of the assessee. During the assessment proceedings the AO has not considered the amount debited in the building division of the company. The total details of expenditure collected by AO is of Rs 3,19,78,263/- whereas the total expenses debited by assessee is much more at Rs 6,77,42,106/- (2,85,12,704 + 3,92,29,402). Therefore, on the facts of the case since no additions can be made on this account, the AO was therefore directed to delete the addition on this account.

47. Having heard the arguments of both the sides, we have perused the facts on record available before us and find that the Id. CIT (A) has rightly deleted the addition as the total expenditure debited on account of advertisement was Rs.3.19 Cr. as against Rs.2.85 Cr. alleged by the Assessing Officer. Hence, we decline to interfere with the order of Id. CIT (A) on this ground.”

26. Regarding the seventh contention relating to the addition on account of undisclosed investment in jewellery, the ITAT, after thoroughly analysing the factual position, deleted the addition made by the AO which was also confirmed by the CIT(A), and held as follows:

“51. Having heard the arguments of both the sides who relied on the respective orders and submissions, we have perused the facts on record available before us and find that,

1. A panchanama has been prepared by party A-4 showing warrant in the case of : M/s GTM Jewellery Mart Pvt. Ltd. (showroom GTM house, G-5, Pushkar Enclave, Outer Ring Road, Paschim Vihar, New Delhi)
2. M/s GTM jewellery Mart Pvt. Ltd. has been incorporated on 04.08.2006 relevant to the assessment year 2007- 08.
3. Date of search in the case of the assessee - 12.12.2006
4. The other valuable articles or things as per Annexure – 2 &3 consists of 25 sheets have been inventorised during the search in the case of M/s

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GTM Jewellery Mart Pvt. Ltd.

5. The valuation was done as per the price prevalent on the date of search instead of the cost price. The business of gold and diamond ornaments, the prices vary on day to day basis.
6. Shri Gautam Kumar stated that no stock of M/s GTM Jewellery Mart Pvt. Ltd. was lying outside the premises.
7. The record shows that the G.P. was 19% as against the 17% allowed by the Assessing Officer.
8. Statement of Shri Gautam Kumar recorded on the date of search clearly mentioned about two distinct entities M/s GTM Jewellery Mart Pvt. Ltd. and M/s GTM Builders & Promoters Pvt. Ltd.
9. There has not been any quantitative difference between the book stock and the physical stock in comparison with the items.
10. The difference in the value is only because of the different price taken by the valuer, the pricing existing on the date of search instead of historical cost of the goods.
11. Further, the labour charges have been added up twice in certain instances while computing the aggregate value.
12. The revenue could not repudiate the quantities tallying with the book stock during the search or even during the assessment proceedings. Reliance is being placed in the judgment of Hon'ble Supreme Court in the case of CIT Vs Hindustan Zinc Ltd. 291 ITR 391.
13. The Assessing Officer also acknowledges that a separate company by the name of M/s GTM Jewellery Mart Pvt. Ltd. has been found from 26.07.2006.
14. The addition made was based on the statement of the Director of that company Shri Gautam Kumar wherein due cognizance was taken of the factum of the separation of jewellery business from that of the assessee business of building activity.
15. The panchanama of the copy prepared after executing the warrant in the case of M/s GTM Jewellery Mart Pvt. Ltd. has been served on Shri Gautam Kumar, Director of the company wherein the jewellery was treated as stock-in-trade.

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16. Even, if the jewellery is to be assessed in the assessee's hands it can be done only after recording a satisfaction of such items not belonging to the person from whose position they have been seized.
17. It is only after recording a satisfaction such items not belonging to the person from whose position they have been seized that the entity for the assessment can be shifted.
18. In the instant case, there has been no denial by the M/s GTM Jewellery Mart Pvt. Ltd. with respect to their ownership of the items. M/s GTM Jewellery Mart Pvt. Ltd. never mentioned in the statement that the jewellery do not belong to them but belong to the assessee.
19. The AO ignored this fact and without visiting the M/s GTM Jewellery Mart Pvt. Ltd. for obtaining explanation and elucidation as well as discharge of onus on that entity regarding the ownership of the jewellery straight away and made addition in the hands of the assessee which cannot be held to be legally valid as per Section 132(4A).

52. Keeping in view these facts, since there is a panchnama drawn in the case of M/s GTM Jewellery Mart Pvt. Ltd., stock inventory was made in the said company and keeping in view the fact that M/s GTM Jewellery Mart Pvt. Ltd. is a separate assessable entity, keeping in view the fact that the difference is due to difference in price but not in quantity, we hold that the addition cannot be made in the hands of the assessee in the instant year.”

27. A perusal of the abovesaid would indicate that the ITAT has minutely examined and marshaled the facts. It cannot be gainsaid that the proposed substantial questions of law are merely based on the findings of fact by the ITAT. The order of the ITAT on the concerned issues which stand raised before us, in our opinion, does not suffer from any perversity as claimed by the Revenue.

Conclusion

28. Thus, for the foregoing reasons, we are of the opinion that no

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substantial question of law arises herein, which would warrant our interference.

29. Accordingly, for the aforesaid reasons, the appeals stand dismissed.

ITA 448/2022

1. This is an appeal under Section 260A of the Act filed at the instance of the Revenue, against the order of the ITAT dated 10.02.2021, whereby, appeal of the Revenue being ITA No. 3780/Del/2010 is dismissed for AY 2007-08.

2. The respondent-assessee is a Director of GTM Builders and Promoters Pvt. Ltd. An assessment order dated 30.12.2008 came to be passed *qua* the respondent-assessee, whereby, the AO made additions on account of the following heads:-

- a) An addition of Rs.12,04,311/- was made on account of the respondent-assessee's failure to explain the nature of credits in its bank accounts.
- b) An addition of Rs.1,25,00,000/- was made in the hands of the respondent-assessee on substantive basis on account of investigation material which revealed that Tushar Kumar had received cash amounting to Rs.1,25,00,000/- on account of Haryana CGHS.
- c) An addition of Rs.1,80,00,000/- on account of the consideration paid by the respondent-assessee to one Ajay Jain for taking control over the housing society namely, Wings CGHS.

3. Resultantly, the assessed income shot up to Rs.3,56,55,811.

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4. Aggrieved by the order passed by the AO, the respondent-assessee preferred an appeal before the CIT(A). *Vide* order dated 28.05.2010, the CIT(A) allowed the respondent-assessee's appeal and deleted the additions made by the AO.

5. Aggrieved by the said order, the Revenue preferred an appeal before the ITAT. It is pertinent to note here that the Revenue had challenged the order of the CIT(A) only with respect to the deletions made on account of Haryana CGHS and Wings CGHS. *Vide* order dated 10.02.2021, the ITAT dismissed the appeal filed by the Revenue.

6. The Revenue, therefore, being aggrieved by the order of the ITAT, preferred the instant appeal and has proposed the questions of law for our consideration which are reproduced as under:

“A. Whether on facts and in the circumstances of the case and also on the prevailing law, Hon'ble ITAT is justified in deleting the addition of Rs.1,25,00,000/- towards undisclosed cash receipts on sale of fact flats ignoring the documents seized during the search in GTM group and impounded during survey under Section 133A in the case of Haryana Citizen Cooperative Housing Society, also ignoring the provisions of section 132(4A) and Section 292C of the Income Tax Act, 1961?

B. Whether on facts and in the circumstances of the case and also on the prevailing law, Hon'ble ITAT is justified in deleting the addition of Rs. 1,80,00,000/- for acquiring certain rights in Wings CGHS ignoring the provisions of section 132(4A) and Section 292C of the Income Tax Act, 1961?”

ANALYSIS

7. The Revenue has impugned the order of the ITAT, which has relied upon its own decision in the case of GTM Builders and Promoters Pvt. Ltd. in ITA No. 3783/Del/2010 in dismissing the appeal of the Revenue. It is seen that the issue in this appeal pertains to the undisclosed income on sale of flats of Haryana CGHS and Wings

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CGHS, which has already been settled above to be merely findings of fact and which do not warrant any interference by this Court. Paragraph nos. 30 to 38 of the ITAT order in ITA No. 3783/Del/2010 make a detailed reference with respect to the unwarranted addition with respect to the issue at hand and the said factual findings does not seem to be perverse from any angle.

8. In view of the findings rendered by us in the aforesaid appeals being ITA 11/2022 and ITA 12/2022 for the AY 2007-2008, no substantial question of law arises and hence, the appeal stands dismissed.

ITA 226/2023

1. This is an appeal under Section 260A of the Act, filed at the instance of the Revenue, against the order of the ITAT dated 10.02.2021, whereby, appeal of the Revenue being ITA No. 3782/Del/2010 is dismissed for AY 2007-08.

2. During the course of search on GTM Group of companies, certain documents relating to the respondent-assessee company were found and seized. Return of income was filed by the respondent-assessee declaring nil income. Proceedings under Section 153A of the Act were initiated against the respondent-assessee for AY 2007-08. *Vide* assessment order dated 30.12.2008, the AO made additions on protective basis on the ground that substantial additions were made in the hands of GTM Builders and Promoters Pvt. Ltd. on account of the following:-

a. Addition of Rs.6,84,50,134/- being income from undisclosed

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sources for purchase of land at Dehradun.

b. Addition of Rs.90,34,300/- being income from undisclosed sources for purchase of land at Kashipur.

3. Resultantly, the assessed income shot up to Rs.7,74,84,430/- on protective basis.

4. Aggrieved by the order passed by the AO, the respondent-assessee preferred an appeal before the CIT(A). *Vide* order dated 28.05.2010, the CIT(A) partly allowed the respondent-assessee's appeal by upholding only the following addition and deleting the rest of the additions:

i. Addition to the extent of Rs.3,01,00,000/- was upheld from Rs.6,84,50,134/- by following its own decision in the case of GTM Builders and Promoters Pvt. Ltd wherein it was held that AO failed to bring on record any corroborative evidence to establish the payment of the balance cash paid for the GTM Forest and Hills Project, Dehradun;

5. Aggrieved by the said order, the Revenue preferred an appeal before the ITAT. *Vide* order dated 10.02.2021, the ITAT dismissed the appeal filed by the revenue.

6. The Revenue, therefore, being aggrieved by the order of the ITAT, preferred the instant appeal and has proposed the questions of law for our consideration which are reproduced as under:

“A. Whether the Id. ITAT was justified in deleting the addition made on account of cash component while purchase of property, ignoring the corroborative material found at the premises of assessee company duly supported by the affirmation of its Director, Sh.Tushar Kumar?

B. Whether Id. ITAT was justified in upholding the order of CIT(A) deleting the addition on account of unexplained investment in GTM

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Kashipur-II, ignoring that though the land was purchased by Assessee company, the Cheque payment were made by the GTM Builders & Promoters (P) Ltd. on its behalf and this fact was later confirmed from the fact that assessee company was acquired by GTM Builders & Promoters (P) Ltd.?”

ANALYSIS

7. The subject matter of challenge relates to the protective addition on account of unexplained investment in properties in Dehradun and unexplained investment in GTM Kashipur-II project. The said issues have already been discussed above and held to be mere findings of fact which do not require any interdiction by this Court.
8. In view of the findings rendered by us in the aforesaid appeals being ITA 11/2022 and ITA 12/2022 for AY 2007-2008, no substantial question of law arises herein. Consequently, the instant appeal stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J.

YASHWANT VARMA, J.

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