

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA No.365 of 2013 (O&M)

Date of decision:21.05.2015

Commissioner of Income Tax (Central) Ludhiana

....Appellant

Versus

Parminder Singh

....Respondent

ITA No.368 of 2013 (O&M)

Commissioner of Income Tax (Central) Ludhiana

....Appellant

Versus

Parminder Singh

....Respondent

**CORAM : HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA**

Present: Mr.Ravi Shankar, Advocate, for the appellant.

Mr.Rohit Kaura, Advocate, for the respondent.

G.S.Sandhawalia J.

1. This judgment shall dispose of ITA Nos.365 & 368 of 2013, since the questions of law are common between the parties. However, to dictate orders, facts have been taken from ITA No.365 of 2013 titled *Commissioner of Income Tax (Central), Ludhiana Vs. Parminder Singh*.

2. Challenge in the present appeal, filed under Section 260A of the Income Tax Act, 1961 (for short, the 'Act'), is to the order of the Income Tax Appellate Tribunal, Chandigarh (for short, the 'Tribunal'), passed in ITA No.453/CHD/2012 dated 14.06.2013, for the assessment year 2008-09.

3. The following substantial questions of law have been sought to be raised in the present appeal:

“1.(a) Whether the ITAT is right in directing the Assessing Officer to make any addition of Rs. 15 lacs on account of expenditure on undisclosed construction instead of Rs.49,43,391/- as sustained by the Ld. CIT(A).

1.(b) Whether the ITAT, not being an authority expert in valuation of property, is right in directing the AO to make an addition of Rs. 15 lacs ignoring the expert opinion of the Valuation Officer.

2. Whether the ITAT is right in ignoring the facts that there is no provision to refer the case for valuation to the Valuation Cell to apply PWD rates as the Income Tax is a Central Govt. department and CPWD rates have to be applied by the Valuation Cell attached with the department.

3. Whether the ITAT is right in ignoring the facts mentioned in the assessment order that the assessee was given reasonable opportunity of being heard and the objection raised by the assessee regarding rate of construction, allowance for builder efforts and rebate for incomplete construction etc. were duly forwarded to the Valuation Cell and the Valuation Cell after giving a thoughtful consideration had not accepted the objections of the assessee.”

4. A search was conducted under Section 132 of the Act by the Revenue upon the respondent-assessee, who is a builder, on 11.09.2007 and loose papers/documents were found. The assessee filed a return on 26.03.2009 declaring total income at ₹55,25,000/- in response to the notice under Section 142 of the Act, after claiming deduction under Section 80C to the tune of ₹1 lac. The income included the surrendered income. Various properties were under construction which had been purchased by the respondent and his brother, who has been arrayed as respondent in the other appeal. The 10 properties were referred for valuation. On the report being received from the Valuation Cell, they were confronted with the same. The assessee filed their written objections which were not accepted and the rebate for incomplete work was also not granted and the Assessing Officer

assessed the amount of income at ₹1,12,25,326/- after giving the benefit of the amount disclosed.

5. The respondent-assessee filed an appeal before the Commissioner, Income Tax (Appeals) (for short, the 'CIT') who vide his order dated 13.03.2012 (Annexure A2), took into account the valuation done with respect to one property at 153-A, Model Town, Ludhiana only by coming to the conclusion that the issue involved in respect of other properties were on the same lines. The CIT only gave the benefit of 5% of the total cost for the purchase of the material as the builder was doing the business of construction and was expected to get cheaper products from the market and confirmed the addition made by the Assessing Officer to the extent of ₹49,43,391. The matter was taken up in appeal to the Tribunal by both the brothers taking the plea that the valuation has been done as if the houses were complete and some of the houses were sold as semi-finished houses and were completed by their respective buyers and the addition had been made in the hands of the assesses.

6. The Tribunal noticed that the Departmental Valuation Officer had adopted the CPWD rates rather than the PWD rates and secondly a builder was able to get material at a cheaper rate, especially when he was constructing a large number of houses on account of wholesale purchase and also expected that very little margin were given for the semi-furnished houses. Accordingly, keeping in mind that ₹1.05 crores was already surrendered by both the brothers, the orders were modified by making further addition of ₹15 lacs each towards expenditure on the undisclosed income in case of both the assesseees and thus, a benefit of ₹40 lacs roughly was given to both the brothers.

7. A perusal of the paperbook would go on to show that the houses were situated at different places in the town of Ludhiana and as noticed, the construction was also at various stages and the Tribunal had rightly granted the benefit of the margin that some houses were half complete whereas the valuation had been done for the finished houses and additions were made accordingly. Thus, the questions which are sought to be raised for consideration are not questions of law, as such, but are pure questions of fact. The Tribunal being the final forum for deciding such issues, has rightly exercised this discretion by adding a sum of ₹15 lacs each, to both the brothers, over and above the income which was declared and in the opinion of this Court, no substantial question of law, thus, arises for consideration.

8. Accordingly, both the appeals are dismissed.

(S.J.Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
JUDGE

21.05.2015
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