
(2015) 01 P&H CK 0188
In the Punjab And Haryana At Chandigarh
Case No : ITA-176-2013 (O&M)

Joginder Lal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Income Tax Act, 1961 — Section 132(4), 133A, 139(1), 143(1), 143(3)

Citation : (2015) 01 P&H CK 0188

Hon'ble Judges : Rajive Bhalla, J;B.S. Walia, J

Bench : Division Bench

Advocate : Pankaj Jain, Senior Advocate and Divya Suri, for the Appellant;
Rajesh Katoch, Advocates for the Respondent

Judgement

B.S. Walia, J.

CM-15124-CII-2013 in ITA-176-2013

1. Prayer in this application is to condone delay of 134 days in refiling the appeal.
 2. Heard.
 3. In view of averments in the application and arguments addressed, application is allowed and delay of 134 days in refiling the appeal is condoned.
 4. By way of this order, we shall dispose of ITA-176-2013 and ITA-177-2013. For the sake of convenience, facts are being taken from ITA-176-2013
- ITA-176-2013 (O&M) 5. The appellant challenges order dated 09.07.2012, passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as the "Tribunal").
6. The appellant is the wife of late Joginder Lal, the assessee. The assessee purchased a plot measuring 61 square yards from Sh.Dig Vijay, in February, 1999, vide a registered sale deed for a consideration of Rs. 3,70,000/-, paid by cheque. A survey was conducted, under Section 133A of the Income Tax Act,

1961 (hereinafter referred to as the "Act"), against the vendors, who thereafter filed a revised return on 31.03.2001, declaring a sale consideration of Rs. 38 lacs. The assessee filed a return of income of Rs. 1,26,108/- on 16.11.1999 which was processed under Section 143(1) of the Act but pursuant to notices issued under Section 148 of the Act, re-assessment proceedings were concluded on 30.03.2006 under Section 143(3) read with Section 147 of the Act at an amount of Rs. 35,56,110/-.

7. Aggrieved by this order, the assessee filed an appeal which was dismissed by the Commissioner of Income Tax (Appeals) (hereinafter referred to as the "CIT(A)") on 23.04.2007. The assessee filed an appeal before the Tribunal. The appeal was allowed and the matter was restored to the assessing officer for adjudication afresh. The assessing officer recorded the statements of Prem Lata and Dig Vijay, the vendors and granted an opportunity for cross-examination to the assessee. The assessment was framed at an amount of Rs. 35,56,110/- vide order dated 01.09.2008. The assessee thereafter filed an appeal which was dismissed by the CIT(A) on 15.10.2010. An appeal filed before the Tribunal was dismissed on 09.07.2012.

8. Counsel for the appellant submits that statements by Prem Lata and Dig Vijya, the vendors, disclosing a ridiculously high consideration for the sale, cannot be read against the assessee particularly as there is no other material on record. The absence of any evidence, regarding the sale consideration, apart from the aforesaid statements, renders the impugned order illegal and void. The sale consideration as reflected in the registered sale deed, has been discarded on mere presumptions that are not only erroneous but unreasonable. Counsel for the appellant further submits that as the statements by the vendors were not recorded during search proceedings, the presumption available under Section 132(4) read with Section 292(C) of the Act, cannot be raised without corroboration, by reference to some cogent and independent evidence. The onus to prove the value of the property lies upon the revenue. The revenue having failed to discharge its onus, the impugned finding as to the value of the property purchased by the appellant may be set aside. It is further submitted that the primary question relates to the nature and the evidentiary value of the statements made by the vendors, which may be answered in the context of the following substantial questions of law namely:-

"i. Whether under the facts and circumstances of the case the Tribunal order is unreasonable, while accepting the surrender of income through the revised return in the hands of the seller after the initiation of the detection of concealment resultantly a paradoxical stand in the hands of the assessee?

ii. Whether under the facts and circumstances of the case, the Tribunal order is sustainable, whereby the inferences drawn relying on the uncorroborated and unilateral statement recorded after the survey and not as a consequence return u/s 139(1) of the Income Tax Act, 1961?

iii. Whether under the facts and circumstances of the case the Tribunal order is unreadable, while applying the rule of thumb on the "doctrine of presumption" qua the contents of the statements recorded considering the same as sacrosanct without a concrete third party evidence in survey proceedings?

iv. Whether there is a lack of jurisdiction and erroneous assumption thereof u/s 133A for recording the statement resultantly abuse and misutilization of the powers in pursuance of CBDT Instruction No. 286/2/2003-IT (Inv.) dated 10.03.2003?"

9. Counsel for the respondents submits that it is no doubt true that the burden of proving actual consideration lies upon the revenue but in this case, the vendors have made a statement admitting a total sale consideration of Rs. 38 lacs. The assessing officer has recorded the statements of the vendors, afforded an opportunity to the assessee to cross examine the vendors and as the vendors maintained their earlier statements, the impugned orders and the findings cannot be faulted. The mere fact that the sale deed records a consideration of Rs. 3,70,000/-, is irrelevant as the assessee did not adduce any evidence to show the probable value of the property on the date in question.

10. We have heard counsel for the parties and perused the impugned order.

11. The question, that calls for an answer, relates to the value to be placed upon statements made by a vendor as to the actual consideration for a transaction and whether a statement that discloses a sale consideration different from the sale consideration recorded in the sale deed, is sufficient to raise an inference that the sale price recorded in sale deed does not reflect the true market value of the transaction.

12. A perusal of the facts reveals that the assessee's vendors made a statement, during a search, that the sale transaction was hopelessly under valued as they had received a sale consideration of Rs. 38 lacs instead of the Rs. 3,70,000/- recorded in the sale deed. The assessing officer based his opinion on the aforesaid statements and added Rs. 34,30,000/- as undisclosed income by way of unexplained investment in the purchase of property. The CIT(A) dismissed the appeal filed by the assessee but the Tribunal set aside the order and restored the matter to the assessing officer for adjudication afresh by affording an opportunity to the assessee to cross-examine the vendors.

13. The assessing officer, thereafter, issued notices to the vendors, recorded their statements and granted an opportunity to the assessee to cross-examine the vendors. The assessee duly cross- examined the vendors who maintained their stand that they had received Rs. 38 lacs as sale consideration. The assessee also produced photocopies of sale deeds to assert that consideration shown in the sale deed is fully justified. After considering the statements, the cross-examination of the vendors and the sale deeds produced by the assessee, the assessing officer held that as even sale deeds relied by the assessee show that consideration varies from sale deed to sale deed depending upon the size and

location of the plot and the Punjab Urban Development Authority (PUDA) had auctioned a plot @ Rs. 10,000/- per square yards and the property in question is situated opposite the railway station and can be used for a hotel site, the sale consideration disclosed by the vendors is the true consideration. The assessing officer, therefore, proceeded to add Rs. 34,30,000/- as undisclosed income by way of unexplained investment in purchase of property. The CIT(A) as well as the Tribunal have affirmed these findings of fact.

14. The onus to prove that the valuation of a transaction, is other than that recorded in a registered sale deed, necessary falls to the revenue but where the revenue is possessed of sufficient material that raises a presumption that consideration reflected in a registered instrument, is incorrect, the burden to rebut this presumption, shifts to the assessee. The revenue has in its attempt to discharge onus recorded the statements of the assessee's vendors, who were duly cross-examined by the assessee and maintained that the true value of the transaction was Rs. 38 lacs. The assessing officer has not only relied upon these statements but has also relied upon other sale deeds and a sale by the PUDA reflecting a sale consideration of Rs. 10,000/- per square yard. The statements are clear, categoric and as they do not suffer from any contradictions are sufficient when read alongwith the other sale deeds and the nature and location of the land to rightly infer that the revenue has discharged its onus. The situation would have been different if the statements by vendors did not inspire confidence being contradictory or vague or there was no other evidence or the assessee had produced evidence to rebut these statements. The assessee apart from his bald statement is unable to refer to any contradiction in the statements of his vendors or any evidence to rebut the material on record. The questions posed before us, also came up for consideration in *Shashi Kiran Vs. Commissioner of Income Tax*, (2010) 195 TAXMAN 332 and were answered in favour of the revenue by holding that though onus to prove lies upon the revenue but as statements made by the sellers remain un rebutted, the onus placed upon the revenue stands discharged. The factual situation in the present case is identical.

15. In view of what has been recorded hereinabove, we answer the questions of law against the assessee by holding that in the facts and circumstances of the present case, the revenue has discharged its onus of proving that sale consideration reflected in the sale deed is incorrect and the true value of the transaction disclosed in the statements by the assessee's vendors, remain un rebutted. Finding no merit in the appeals or in the substantial questions of law, the appeals are dismissed.