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

+ ITA 612/2011

+ ITA 668/2011

+ ITA 669/2011

ARUN KUMAR SINHA Appellant

Through: Ms. Anju Jain, Adv.

versus

CIT Respondent

Through: Mr. Deepak Chopra with Mr.
Harpreet S. Ajmani, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

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11.04.2012

We have heard counsel for the appellant in these appeals on the issue/ contention that the order passed by the Tribunal is perverse.

2. Two factual findings recorded in the impugned common order passed by the Income Tax Appellate Tribunal ('Tribunal', for short) dated 10.09.2010 are challenged. These are examined below.

3. Firstly, it is stated that loose sheets pertaining to billing and payments received from M/s. Sunglow Builders Pvt. Ltd. has wrongly been taken as ₹ 29,00,000/- on the basis of a proposal and estimate, instead of ₹ 15,30,000/-.



It is further submitted that at best the total payment for the work undertaken should have been taken as ₹ 22,00,000/- in view of the receipt which was found during the course of search. Secondly, it is submitted that the Tribunal has erred in making addition of ₹ 1,50,000/- on account of monthly retainership of ₹ 25,000/- allegedly received from M/s. Sunglow Builders Pvt. Ltd. It is submitted that this monthly retainership has been brought to tax on the gross amount without reducing any expense.

4. In the present case the search and seizure under Section 132 of the Income Tax Act, 1961 ('Act', for short) was carried out at the premises of the appellant-assessee on 18.11.2005. Thereafter, proceedings under Section 153A were initiated for issue of notice for the assessment years 2004-05, 2005-06 and 2006-07. At the time of search certain loose sheets were found. Loose sheets disclosed various bills had been raised by the appellant-assessee for the work done for M/s. Sunglow Builders Pvt. Ltd. The first loose sheet was a bill which indicated the different work performed along with the area/quantum and the charges for the same. Another loose sheet was bill for payment of work at Mangalam in Module Nos.8, 9 & 7. The third loose sheet was a receipt of payment of ₹ 22,00,000/- in Mangalam Module No.8, 9 & 7. There was another loose sheet dated 11.10.2005 in which total payment of ₹ 15,30,000/- stands recorded. There are also payments thereafter upto 17.11.2005. We may note here that the entire amount mentioned in the loose sheets was treated as undisclosed income of the appellant-assessee, as it was not recorded in the books. The total amount mentioned in the loose sheets added up and gross profit rate of 8% has



treated as undisclosed income earned by the appellant-assessee. The Assessing Officer had applied gross profit rate of 15% but was reduced to 8% by the CIT (Appeals). This has been upheld by the Tribunal. Having considered the contention, we hold that it is a pure finding of fact and reasoning of the Tribunal, which are as under, cannot be treated as perverse:-

“45. We have carefully consider^{13d} (sic.) the rival submissions in the light of the material placed before us. Even till today the assessee has not submitted any evidence to substantiate his contention that the contents of page Nos.53, 54 and 56 were relating to the same transaction. It has categorically been recorded in the order of Ld. CIT (A) that the assessee has failed to produce any documentary evidence to substantiate such contention. It is not the case of the assessee that he has bad relation with the firm M/s Sunglow Builders Pvt. Ltd. If it is so, then the assessee could have got confirmation from them that all these three documents relate to one transaction only and the amount which was initially quoted at Rs.29 lac was reduced to Rs.15,30,000/- in further negotiation. In the absence of any such evidence, we are unable to interfere in the findings recorded by CIT (A). So as it relates to other additions also, we are of the opinion that there is no correlation established by the assessee of these entries with the entries disclosed in the return. Therefore, the request of the assessee that set off of these entries should be given against the disclosed receipts cannot be accepted and it has rightly been rejected by the CIT (A). There is no material with us to interfere with the findings recorded by the CIT (A). We decline to interfere and this ground is dismissed.”

5. With regard to second contention, we note that another loose sheet was found at the time of search. The loose sheet indicated payment made on different dates and for different amounts under separate heads. ₹ 25,000/-



was paid every month with description monthly. The Assessing Officer, the CIT (Appeals) and Tribunal have concurrently held that ₹ 25,000/- was a monthly payment, received by the appellant-assessee. The fact that the payments were “monthly” was specifically mentioned in the lose sheet. It was open to the appellant-assessee to show and establish that he was incurring some expenses and, therefore, this payment was towards reimbursement. No such evidence was led to establish the claim. No substantial question of law arises.

6. At this stage learned counsel for the appellant has raised another contention and submits that the Tribunal has erred by upholding addition of ₹ 1,50,000/- on account of unexplained investment. It is submitted that the appellant-assessee has more than 20 years of experience and, therefore, there was no justification in upholding addition of ₹ 1,50,000/- towards investment. The Tribunal after considering various aspects including the income declared by the appellant-assessee for the assessment year 2001-02, 2002-03 and 2003-04, has upheld to the said addition. The details of taxable income as per returns was as under: -


“Sr. No.	Asstt. Year	Income declared
(a)	2000-01	Rs.57,200
(b)	2001-02	Rs.1,07,000
(c)	2002-03	Rs.45,332
(d)	2003-04	Rs.48,667”

7. The Tribunal observed that the CIT (Appeals) was right in deleting addition to the extent of ₹ 1,00,000/- out of ₹2,50,000/-. Thus addition of ₹



1,50,000/- was sustained. The findings are reasonable and factual. The said finding are not perverse. The appeals are dismissed accordingly.


SANJIV KHANNA, J


R.V.EASWAR, J

APRIL 11, 2012

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