

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

% Judgment delivered on: 08.05.2014

+ **ITA 955/2011**

COMMISSIONER OF INCOME TAX ... Appellant

versus

GIAN GUPTA ... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Balbir Singh, Sr Standing Counsel
with Mr Abhishek Singh Baghel and
Mr Arjun Harkauli

For the Respondent : Mr Ashish Rana

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal under Section 260A of the Income Tax Act, 1961 is directed against the order dated 16.12.2010 passed by the Income Tax Appellate Tribunal in ITA 2775/Del/2010 pertaining to the assessment year 2006-07.

2. The Assessing Officer had made an addition of Rs 1 crore on account of alleged unexplained investment in land at village Samalkha. The Assessing Officer had also made an addition of Rs 57 lacs on



account of alleged unexplained investment in land at Udyog Vihar. Both these additions were deleted, in appeal by the assessee, by the Commissioner of Income Tax (Appeals). The said deletions have been confirmed by the Income Tax Appellate Tribunal by virtue of the impugned order dated 16.12.2010. The revenue, being aggrieved by the said decision, is before us by way of this appeal.

3. During survey operations conducted on 24.01.2006 a document (MoU) between Mr Gian Gupta (the assessee) and one Mrs Jind Singh, resident of C-34, Sujan Singh Park, New Delhi was found. The said MoU was in respect of land measuring 13 bighas and 5 biswas situated at village Samalkha. According to the said MoU, Mrs Jind Singh had agreed to sell the said property to the assessee for a total sum of Rs 10 crores. Out of the said sum of Rs 10 crores, a sum of Rs 2 crores was to be paid by way of earnest money. We may point out at this stage itself that the MoU was unsigned. Another document was impounded during the survey and that was an unsigned receipt indicating receipt of Rs 2 crores by Mrs Jind Singh. Rs 1 crore was said to have been received through cheque and the other Rs 1 crore by cash. Statements of the assessee were recorded on oath and questions were put to him. Question



Nos. 10 and 11 are relevant for our purposes and they are reproduced herein below:-

“Q.10 Was there any agreement for purchase of the land at Village smalkha with Mrs. Jind Singh and if yes whether you have given any amount by way of cheque and also by way of cash?

Ans. Yes, I have paid originally a cheque of Rs. 1 crores for the purpose vide cheque no 191004 dated 23.12.2005 drawn on IDBI Bank But since the transaction did not materialise this cheque was cancelled I am filing the copy of account in this connection from my ledger showing both the entries. I have not paid any amount in cash.

Q.11. I am showing you Page 46, annexure A-1, Party GG-1. Please explain?

Ans. This is unsigned receipt. No cash was paid and this is not a genuine receipt and it was not acted upon. Even the receipt shown to us does not contain the signature either of the party or any of the witness. Hence, this is only a dumb paper, having no meaning”.

From the above, it is apparent that while the assessee accepted the position that a cheque of Rs 1 crore was given to Mrs Jind Singh, it is also clear that the transaction did not go through. As a result, the said sum of Rs 1 crore was returned to the assessee. From the statement of the assessee, it is also clear that he had denied having made any payment in cash. It may be relevant to note that Mrs Jind Singh was also examined



and she had denied having received cash of Rs 1 crore from the assessee.

However, the Assessing Officer took the following view:-

“From the statement of Sh. Gian Gupta it becomes amply clear that what was contained in the receipt was correct as Sh. Gian Gupta has given a cheque of Rs. 1 crore to Mrs. Jind Singh and it was later returned to him. Both purchaser as well as seller have endorsed the execution of part of the document. The argument of Sh. Gian Gupta that there was no exchange of cash is not tenable on the ground that when one half of the document holds good then other half is presumed to be correct unless prove otherwise. From the financial statements of Sh. Gian Gupta, it is quite evident that Sh. Gian Gupta has been dealing in cash transactions and in financial transactions pertaining to lands component of cash cannot be ruled out. Since the assessee has failed to disclose the source of making cash payment of Rs. 1 crore, an addition of Rs.1 crore would be made on account of unexplained investment while computing the income of the assessee. I am satisfied that the assessee has furnished inaccurate particulars of income which attracts the provisions of section 271(1)(c), penalty proceedings u/s 271(1)(c) are being initiated.”

4. The Commissioner of Income Tax (Appeals) examined this issue and concluded as under:-

“It would be relevant to mention that the land in reference has never been registered or transferred in the name of the assessee. The document relied upon is unsigned. The other party of the document Mrs. Jind was examined and she denied to have received any cash amount of Rs. 1 crore from the assessee. The AO has also not brought out any material on record to prove the transfer of Rs. 1 crore by the assessee to Jind particularly when both have denied the transfer and also the purchase and sale of such land as mentioned in such document which is only a performa document. The performa document does not contain



the signatures of both and besides it does not contain the signature of any witnesses. No evidence has been brought on record by the AO that there is any investment and there is any transfer of cash. There is no question of investment when the land has not been transferred and registered in the name of Gian Gupta. On the contrary, the AO himself admits in the assessment order that the addition was made on the basis of assumption. Therefore in my considered opinion the addition made by the AO on this ground is not tenable and therefore, the appeal of the appellant is allowed and the AO has directed to delete the addition of Rs.1 crore made on this account.”

5. The Income Tax Appellate Tribunal also examined this issue once again and came to the conclusion that as the transaction itself never took place, there would be no question of investment and, therefore, no question of any unexplained investment. The amount of Rs 1 crore, which was paid by cheque, was returned as the transaction had fallen through. The Tribunal also took the view that the onus was on the Assessing Officer to establish that an investment of Rs 1 crore in cash had been made. That onus was not discharged and, therefore, it could be concluded that an unexplained investment of Rs 1 crore in cash had been made by the assessee. The exact findings of the Tribunal are as under:-

“5. On due consideration of the above facts, we are of the opinion that the Assessing Officer Assessing Officer has given unnecessary weightage to the copy of MoU. The factum of transfer of a capital asset by Mrs Jind Singh in



favour of the assessee was not established. The case of the assessee is that he has not purchased any land. The alleged MoU is a document exhibiting the negotiation of the purchase of land, but it never materialized. The Assessing Officer has erroneously observed that it is for the assessee to establish that land was not purchased. In our opinion, for charging the assessee with tax on account of unexplained investment, it is the Assessing Officer who ought to have established that land was purchased by the assessee and he failed to disclose the source of such purchase. Instead of discharging this onus, learned Assessing Officer treated a document as gospel truth and tried to put an onus upon the assessee to prove a negative fact which is not permissible in law. Learned First Appellate Authority has rightly considered this aspect and deleted the addition.”

6. After having heard the counsel for the parties on this issue of the deletion of the addition of Rs 1 crore on account of the alleged unexplained investment, we are of the view that the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal have deleted the said addition on examination of facts. In our view, no question of law arises for our consideration. The facts, as established on record, do not point conclusively to unexplained investment of Rs 1 crore in cash by the assessee particularly because the MoU as well as the receipt in question were unsigned documents and the transaction had not materialized.



7. Insofar as the deletion of the addition of Rs 57 lacs on account of the Udyog Vihar property is concerned, the difference is that there was not even an unsigned receipt nor any payment through cheque. Even the agreement was an unsigned document. The Tribunal found that there was not even an iota of evidence to establish the revenue's contention that any unexplained investment in cash had been made by the assessee in respect of the Udyog Vihar property. We are of the view that the findings of the Tribunal are also pure findings of fact and no question of law arises for our consideration on this aspect also.

8. In view of the foregoing discussion, since no question of law arises for our consideration, the appeal is dismissed.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

MAY 08, 2014
SR