Before Ajay Tewari & Avneesh Jhingan, JJ.

THE PR. COMMISIONER OF INCOME TAX-2, CHANDIGARH—*Appellant*

versus

RANDHIR SOOD—*Respondent*

ITA-356-2018

March 20, 2020

Income Tax Act, 1961—S.260A—Appeal against Tribunal's order with regard to deletion of addition of Rs.4,46,75,000/- made by the assessing officer for advance money received by the assessee to procure land for a housing project under authorization of M/s Hash Builders P. Ltd.—the agreement of authorization not produced, either by the assessee or Hash Builders—details of sale and purchase during the year also not furnished—huge transactions were made in cash—not substantiated whether seller(s) had received the same amount as paid by Hash Builders to the asssessee—Assessing Officer found, the advance money received by the assessee was being used for purposes other than procuring land.—Held, the appellate authority/Tribunal took tubular vision of the issue while ordering deletion of addition only on the basis that advance received could not be treated as income—the aspects of using the said money for purposes other than procuring land, absence of evidence to support the claim that no surplus was generated, and also that the assessee was getting the sale deeds executed as GPA of land owners, were totally ignored—the assessee avoided scrutiny by withholding the information in his possession—the deletion of addition therefore cannot be sustained—since the authorization agreement has now been produced—the matter remitted to the Assessing Officer for fresh decision.

Held that the appellate authority while deleting the addition has taken a tubular vision of the issue involved. The only basis was that advance received cannot be treated as income, the aspects mentioned in the above para were not considered. It was not merely that the advance received was treated as income, the addition was made as the said money was used for purpose other than procuring the land for TATA Housing Development Company's project and no document/ evidence was produced to support the claim that there was no surplus being generated from the said advance. The aspect that the assessee was

getting the sale deeds executed as G.P.A. of the land owners was totally ignored.

(Para 9)

Held that the assessee successfully by with-holding the information which was in his possession, avoided the scrutiny. The agreement of authorisation was not produced during the assessment proceedings or in the appellate proceedings thereby avoiding further investigation, the same has now been produced before this Court.

(Para 10)

Held that in such circumstances, the deletion of addition of Rs.4,46,75,000/- cannot be sustained. However, as now the agreement has been produced, the matter is remitted back to the assessing officer to decide the issue afresh after providing opportunity to the assessee. It is clarified that anything recorded hereinabove shall not be construed by the assessing officer as expression on merits of the issue while deciding the remand.

(Para 11)

Urvashi Dhugga, Senior Standing Counsel for the Revenue.

Radhika Suri, Senior Advocate with
Manpreet Singh Kanda, Advocate
for the respondent.

AVNEESH JHINGAN, J.

(1) This appeal is filed under Section 260-A of the Income Tax Act, 1961 [for brevity 'the Act'] against the order dated 01.01.2018 passed by the Income Tax Appellate Tribunal, Chandigarh. The assessment year involved is 2009-10. Following substantial questions of law are claimed:-

(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in upholding the order of the Ld. CIT(A), deleting the addition of Rs.4,46,75,000/- made by the assessing officer for advance money received or determining income earned in this transaction with M/s Hash Builders Pvt. Ltd., particularly when assessee had failed to bring on record any agreement/contract essential to ascertain the genuineness of transaction or adduce evidence in support

that no surplus was generated, since advance was made to potential sellers?

(ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is not perverse in upholding the order of the Ld. CIT(A) by deleting the addition of Rs.4,46,75,000/- made by the assessing officer for advance money received by assessee, even though Rs.3,91,75,000/- out of Rs.4,46,75,000/- was never utilized by the assessee for making advance to potential sellers, and neither were any sale deeds executed as per finding of facts by assessing officer?

(2) The issue involved in the present appeal is with regard to deletion of addition made of Rs.4,46,75,000/-.

(3) The facts in brief are that TATA Housing Development Company appointed M/s Hash Builders Pvt. Ltd. to procure land in Village Kansal, District Mohali for its project who further authorised the assessee to do the needful, advance payments were received by the assessee including the amount of addition. The Return for the assessment year was filed declaring the income of Rs.8,33,390/-. The case was selected for scrutiny and a detailed questionnaire was issued on 10.01.2011. The assessment was finalized on 29.12.2011, various additions were made and income was assessed as Rs.6,62,72,169/-. Aggrieved of the order, an appeal was filed. The first appellate authority partly allowed the appeal on 29.04.2015, the impugned addition was deleted. Aggrieved both the parties challenged order before the Tribunal, vide order dated 01.01.2018 deletion of Rs.4,46,75,000/- was upheld, hence the present appeal.

(4) Learned counsel for the Revenue argued that assessee had not produced the agreement with M/s Hash Builders Pvt. Ltd. authorizing him to purchase land for TATA Housing Development Company's project. She further argued that alleged advance received of Rs.4,46,75,000/- was not utilized by the assessee for advance to the proposed sellers, rather it was utilized elsewhere and the appellate authorities failed to appreciate the said aspects while deleting the addition.

(5) Learned senior counsel for the assessee contended that the advance received is not an income. She places reliance upon Section 2(24) of the Act. Further to buttress the contention states that Section 56(2)(ix) was only amended in the year 2014, it is by virtue of the said

amendment that advance received was brought within taxation ambit, the said amendment is not applicable for the year in question. It is submitted that the objection i.e. agreement of authorisation was not produced is duly met with as the agreement dated 09.03.2007 has been placed on record in the present appeal.

(6) From the perusal of the paper book, it is forthcoming that in spite of repeated requests agreement of authorisation was neither produced by the assessee nor by M/s Hash Builders Pvt. Ltd. The assessee failed to comply with the requirements of the summons issued under Section 131 of the Act. Assessing officer made specific requests to furnish the detail of purchase and sale during the year, needful was not done. The information was collected by the department from the Sub-Registrar's office, Chandigarh and from the banks. On perusal of the said information it was noticed that most of the land deals were executed by the assessee with TATA Housing Development Company through M/s Hash Builders Pvt. Ltd., further that in most of the cases the sale deeds were executed by the assessee as General Power of Attorney [G.P.A.] of the land owners. The case of the assesee was that during the relevant assessment year no sale deed could be executed as there was litigation pending. Certain information was furnished with regard to details of land procured for M/s Hash Builders Pvt. Ltd., both where the sale deeds were executed and where the advances were given but sale deed could not be executed but date wise and year wise details were not furnished. It is worth noting that huge transactions were made by the assessee in cash. Even evidence/information with regard to sale deed executed as G.P.A. was not complete in the sense that it was not substantiated that the seller had received the same amount as paid by M/s Hash Builders Pvt. Ltd. to the assessee. Without furnishing the relevant documents, the assessee claimed that no surplus was generated from the advance which was with the assessee to the tune of Rs.4,46,75,000/-.

(7) The assessing officer, from the information collected, made the following table to establish that the amount of advance received was being used by the assessee for the purpose other than procuring land for M/s Hash Builders Pvt. Ltd.:-

Sr. No.	Name of a/c holder	Nature of a/c holder	Amount	Remarks of assessing officer
1.	Gulmohar Landcon	Investment	1,00,00,000/-	During asstt. proceeding, it was confirmed that

				assesse had invested this amount with M/s Gulmohar Landcon Pvt. Ltd. in a project floated by the company.
2.	Sudhir Chadha	Loan	1,25,00,000/-	Assessee as well as Sh. Sudhir Chadha confirmed this transaction as unconfirmed loan.
3.	Darshan Singh	Investment	79,00,000/-	No documentary evidence this transaction furnished by assesse. Sh. Darshan MD of M/s Gulmohar Landcon Pvt. Ltd. refused to have received any such amount by the company or in his individual capacity during A.Y. 2009-10.
4.	Smt. Sumti Devi	Advance	55,00,000/-	It has been stated by the assesse that Rs. 55,00,000/- was paid in cash to Smt.Sumti Devi for purchase of land in A.Y. 2009-10. The detail discussion is being made in forth coming par.

(8) From the table reproduced, it is evident that unsecured loan was given to Sh. Sudhir Chadha and investment of Rs.1,00,00,000/- was made in the project of M/s Gulmohar Landcon Pvt. Ltd. It was claimed that Rs.79,00,000/- was invested with Sh. Darshan Singh who declined the said investment. There was one entry of advance made to Smt. Sumti Devi for purchase of land, it is worth noting that Rs.55,00,000/- was paid in cash.

(9) The appellate authority while deleting the addition has taken a tubular vision of the issue involved. The only basis was that advance received cannot be treated as income, the aspects mentioned in the above para were not considered. It was not merely that the advance received was treated as income, the addition was made as the said money was used for purpose other than procuring the land for TATA Housing Development Company's project and no document/ evidence was produced to support the claim that there was no surplus being generated from the said advance. The aspect that the assessee was getting the sale deeds executed as G.P.A. of the land owners was totally ignored.

(10) The assessee successfully by with-holding the information which was in his possession, avoided the scrutiny. The agreement of authorisation was not produced during the assessment proceedings or in the appellate proceedings thereby avoiding further investigation, the same has now been produced before this Court.

(11) In such circumstances, the deletion of addition of Rs.4,46,75,000/- cannot be sustained. However, as now the agreement has been produced, the matter is remitted back to the assessing officer to decide the issue afresh after providing opportunity to the assessee. It is clarified that anything recorded hereinabove shall not be construed by the assessing officer as expression on merits of the issue while deciding the remand.

(12) The appeal is allowed.

Tribhuvan Dahiya