

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA-95-2017 (O&M)

Date of decision:- 18.01.2018

The Pr. Commissioner of Income Tax (Central), Ludhiana

...Appellant

Versus

Prem Pal Gandhi

...Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present:- Mr. Rajesh Katoch, Advocate,
for the appellant.

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S.J. VAZIFDAR, C.J. (ORAL)

This is an appeal against the order of the Income Tax Appellate Tribunal dated 20.07.2016 upholding the order of the CIT (Appeals) dated 14.02.2014. The matter pertains to the assessment year 2008-2009.

2. The following questions of law have been raised:-

(i) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in law in upholding the order of the CIT(A) deleting the addition of Rs. 4,11,77,474/- made by the AO on account of sham share transactions ignoring an important aspect that the transaction of shares showing their purchase price at Rs. 11,00,000/- and sale consideration at Rs. 4,23,45,295/- within a period of less than two years/purchases of shares made in cash not cheque that too before shares got dematerialized/worth of the company at the time of purchase/sale of shares not proved-All suggest non-genuineness of the said transaction?

(ii) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in law in upholding the order of the CIT(A) deleting the addition of Rs. 4,11,77,474/- made by the AO on account of sham share transactions, whereas the CIT(A) himself had held that the assessee had not been able to substantiate the source of investment of Rs. 11,00,000/- in the said shares purchased during the financial year 2005-06 and the AO was directed to reopen the case of the assessee for the assessment year 2006-07 on this issue?

(iii) Whether the Hon'ble ITAT has erred in ignoring an important aspect that in such cases of sham transactions of shares showing abnormal hike in their value, where the facts themselves speak loud and clear, the AO is justified to even draw an inference from the attendant circumstances?

(iv) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in law in upholding the order of the CIT(A) deleting the addition of Rs. 12,59,000/- made by the AO on the basis of seized document on the grounds that the Assessing Officer has not pointed out as to how the figure of Rs. 12.59 lacs has been worked out ignoring the fact that the assessee himself in his reply to the AO had tried to explain the source of the receipts of Rs. 12,59,000/- instead of challenging the working out of the said figure by the AO?

3. The first three questions of law raised in this appeal are covered against the appellant by an order and judgement of a Division Bench of this Court dated 16.02.2017 in ITA-18-2017 titled as *The Pr. Commissioner of Income Tax*

(Central), Ludhiana Vs Sh. Hitesh Gandhi, Bhatti Colony, Chandigarh Road, Nawanshahar.

4. The issue in short is this: The assessee purchased shares of a company during the assessment year 2006-2007 at ₹ 11/- and sold the same in the assessment year 2008-2009 at ₹ 400/- per share. In the above case, namely, ITA-18-2017 also the assessee had purchased and sold the shares in the same assessment years. The Assessing Officer in both the cases added the appreciation to the assessee's income on the suspicion that these were fictitious transactions and that the appreciation actually represented the assessee's income from undisclosed sources. In ITA-18-2017 also the CIT (Appeals) and the Tribunal held that the Assessing Officer had not produced any evidence whatsoever in support of the suspicion. On the other hand, although the appreciation is very high, the shares were traded on the National Stock Exchange and the payments and receipts were routed through the bank. There was no evidence to indicate for instance that this was a closely held company and that the trading on the National Stock Exchange was manipulated in any manner.

5. In these circumstances, following the judgement in ITA-18-2017, it must be held that there is no substantial question of law in the present appeal.

6. Question (iv) has been dealt with in detail by the CIT (Appeals) and the Tribunal. Firstly, the documents on which the Assessing Officer relied upon in the appeal were not put to the assessee during the assessment proceedings. The CIT (Appeals) nevertheless considered them in detail and found that there was no co-relation between the amounts sought to be added and the entries in those documents. This was on an appreciation of facts. There is nothing to indicate that the

same was perverse or irrational. Accordingly, no question of law arises.

7. In the circumstances, the appeal is dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

18.01.2018
Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No

