<u>Court No. - 35</u>

Case :- INCOME TAX APPEAL No. - 312 of 2008

Appellant :- Commissioner Of Income Tax
Respondent :- M/S Mahavir Sahkari Awas Samiti Ltd.
Counsel for Appellant :- S.C.(R.K.Upadhyaya)
Counsel for Respondent :- S.D. Singh

<u>Hon'ble Bharati Sapru,J.</u>
<u>Hon'ble Shashi Kant,J.</u>

This is department's appeal under Section 260A of Income Tax Act, 1961 *(hereinafter referred to as "Act")* against an order passed by Tribunal dated 28.9.2007 for the Block period ending on 17.10.2010.

The question of law, sought to be answered, are hereunder:

> *"1. Whether on the facts and circumstances of the case, the Hon'ble ITAT was justified in law in holding the decision of ld. CIT (A) in deleting the undisclosed income of Rs.43,63,821/- being unexplained investment in purchase of land holding that the assessee discharged the onus to prove the source of investment without appreciating the facts of the case and material brought on record by the A.O.*
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> *2. Whether on the facts and circumstances of the case, the Hon'ble ITAT was justified in law in holding the decision of ld. CIT (A) in deleting the undisclosed income of Rs. 43, 63, 821/- being unexplained investment in purchase of land holding that the assessee discharged the onus to prove the source of investment without appreciating that the assessee had failed to produce principal officer of M/s City Developers Ltd. from whom the money was*

alleged to be taken. Merely filing confirmation letter or that the amount was received through account payee cheques does not mean that the assessee has discharged his onus of proving the genuineness of transaction."

The facts of the case are :

A search operation was conducted under Section 132 of the Act on 17.10.2000 in the office premises of the assessee company 63/2, The Mall, Kanpur as well as at the residence of directors at 7/84, Tilak Nagar, Kanpur. Company's office at Vasant Kunj, New Delhi was also covered under the search. During the course of assessment proceedings in the case of M/s Shilpi Builders Ltd., various documents seized, revealed that M/s Mahavir Sahkari Awas Samiti invested in several plots of lands as per Annexure-SBPL 46 and SBPL 10 to 23.

Notice u/S 158BC read with Section 158BC was issued on 26.03.2004 and the assessee company, in compliance to the said notice, filed its return of income on 21.06.2005 in form No.2B declaring income NIL. The assessment was completed on 30.03.2006, after making the addition of Rs.43,64,821/- being unexplained investment in purchase of land holding.

During the course of search in the case of M/s Shilpi Builders Ltd., a sale deed of the property in the name of M/s Mahavir Sahkari Awas Samiti was found showing property has been purchased near Bithur. During the course of assessment proceedings, the assessee company was asked to furnish the source of investment in the property alongwith certain other information. The assessee replied that land has been purchased for a sum of Rs.40,92,000/- and the payment has been made out of bank account of the company and the amount was arranged by M/s City Developers Pvt. Ltd., Kolkata. It was also stated that Shri Sunil Khatri was the secretary of this society formed on 01.04.1992 and no return of income had been filed.

Accordingly, the A.O. came to the conclusion that the assessee has failed to produce the books of account and to discharge the onus to substantiate its claim that M/s City Developers Pvt. Ltd., Kolkata had provided the money invested in the said land. Accordingly, he held that the investment in purchase of land is unexplained and yearwise investment was worked out. In this way the assessment was completed at the total undisclosed income of Rs.43,64,821/-.

Against the said order the assessee company preferred an appeal before Ld. CIT (A). The CIT(A) vide her letter dated 12.09.2006 called for a remand report to make necessary inquiries from the bank to find out that from which account the deposits have been received in the bank account of M/s City Developers Pvt. Ltd., Kolkata from whom the assessee company had received the cheques and deposited in its bank account opened in Canara Bank, The Mall, Kanpur and whatever amount was advanced by them to the appellant company, the same amount had been deposited in its bank account a day or two before, by clearing.

The A.O. accordingly vide his letters dated 13.09.2006, 21.09.2006 and 25.09.2006 requested the Branch Manager, Canara Bank, The Mall, Kanpur to furnish the requisite information. The A.O. submitted the remand report vide his letter dated 19.02.2007 through J.C.I.T., Central Range, Kanpur vide his endorsement dated 26.02.2007 stating that Branch Manager has expressed his inability to produce required documents and information as they are very old i.e. more than 12 years.

The CIT (A) vide her order dated 26.03.2007 deleted the addition of Rs.43,64,821/- made by the A.O. by observing that from the copy of bank account, it is apparent that money had been given by M/s City Developers Pvt. Ltd., Kolkata to the appellant for which an opportunity was given, by way of remand report to verify this aspect but because of gap of 12 years this enquiry could not be made. In such a situation, it cannot be said that the amount taken from M/s City Developers Pvt. Ltd. was infact the undisclosed income of the assessee which has been routed through the bank account of this company.

Against the order of Learned CIT(A), department preferred an appeal before the Hon'ble ITAT. The Hon'ble ITAT vide their order in Income Tax Act, 1961 No.398/Luc/07 dated 28.09.2007 dismissed the appeal of the department by observing as under :

> *"We have considered the rival submissions and have perused the record of the case. During the course of search, sale deed of property in the assessee's name was found from which it transpired that assessee had purchased land for a sum of Rs.40,92,000/-. The assessee explained its source of funds from M/s City Developers Pvt. Ltd., Kolkata. The required documents could not be produced on account of theft in the office of assessee in confirmation of which the assessee had filed the cutting of newspaper. The assessee had pointed out that the investment in purchase of land had been made by M/s City Developers Pvt. Ltd. It is not disputed that M/s City Developers Pvt. Ltd. were interested in getting this project properly executed, therefore, it can reasonably be concluded that they must have provided the money also for the project. The Ld. CIT (A) has observed that from the copy of bank account it was quite apparent that money had been given by M/s City Developers Pvt. Ltd. of Kolkata to the assessee. This finding has not been controverted by the department. Adverse conclusion drawn by the Department is on the ground that assessee could not produce the required details from M/s City*

Developers Pvt. Ltd. But in the remand proceedings the bank pointed out that since the details required were beyond the period of 12 years, the same could not be provided. Under such circumstances, the Ld. CIT (A) has rightly concluded that assessee had discharged the onus to prove the source of money which had been invested in the said land and unless some facts were found from record which could not establish the prima-facie claim of the assessee, the assessee's primary onus stood discharged. We, therefore, confirm the findings of the LT. CIT(A). In the result the appeal filed by the department is dismissed."

We have heard learned counsel for the department and Sri S.D.Singh, Senior counsel assisted by Ms. Archi, Advocate, learned counsel for the assessee.

From a perusal of the record it becomes clear on facts that assessee had taken a loan from one M/s City Developers Pvt. Ltd., Kolkata and it has also come on record that infact money had come from M/s City Developers into the account of assessee. There is no denial of this fact by the department. The department had at no place alleged that there was any doubt about the fact that money, which had come into the account of the assessee, were from its transaction made with M/s City Developers Pvt. Ltd., Kolkata. The monies were also found actually credited in the bank account of the assessee. No allegation of any fraudulent dealing from Kolkata have been alleged by the department. The genuineness of the transaction, therefore, is not in doubt. There is no finding whatsoever with regard to that. On the contrary it is clear that provisions of Section 69 of Act are not contrary in order to make an addition to the assessee's income.

In view of this, the matter is concluded on facts and questions are answered in favour of the assessee and against the department.

The concurrent orders of the Commissioner and the Tribunal are upheld.

The appeal is accordingly dismissed.

Order Date :- 23.11.2016
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(Shashi Kant, J.) **(Bharati Sapru, J.)**