IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : I. T. A. No. 294 of 2014

Date of Decision : July 08, 2016

The Commissioner of Income Tax-II,
Amritsar .... Appellant

vs.

M/s V. M. Reality Pvt. Ltd., Amritsar .... Respondent

CORAM : **HON'BLE MR. JUSTICE S. J. VAZIFDAR, ACTING CHIEF JUSTICE.**

HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. Denesh Goyal, Advocate
for the appellant.

Mr. Sunil Mukhi, Advocate
and Ms. Prerna, Advocate
for the respondent.

* * *

DEEPAK SIBAL, J. :

Invoking the provision of Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as – the Act), the Revenue has preferred the instant appeal laying a challenge therein to the order dated 12.02.2014 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as – the Tribunal).

The issue raised in the present appeal pertains to the assessment

year 2007-08 and seeks to raise the following questions of law :-

> ***"1.*** *On the facts and the circumstances of the case whether the ld. ITAT is right in law in deleting the addition of Rs. 70 lacs made by the A.O. and confirmed by the Ld. CIT (A) ignoring the fact that the A.O. had sufficient evidence and reasons to make the addition.*
>
> ***2.*** *On the facts and the circumstances of the case whether the Hon'ble Tribunal is right in law in deleting the enhancement made by the CIT (A) on account of commission accrued to the assessee and ignoring the fact brought out by the CIT (A) that the assessee himself had been declaring commission income on accrual basis."*

In order to appreciate the issue involved in this appeal, it is necessary to set out the relevant facts in brief. For the assessment year in question, the assessee had filed his return showing therein a carried forward loss of Rs. 17,68,144/-. Such return was processed under Section 143(1) of the Act. However, later on, during the course of proceedings, under Section 132-A of the Act, in the case of one Vipin Verma, certain documents including an agreement dated 30.09.2006 between the assessee and one M/s Splender Land Base Ltd., New Delhi (hereinafter referred to as – the Company) came in the knowledge of the Department. According to the Assessing Officer, this agreement pertained to sale and purchase of about 68.45 acres of land and according to the same, in pursuance thereof, the assessee had received Rs. 5 crores from the Company, out of which Rs. 70 lacs had been received in cash. Resultantly, notice under Section 143-C of

the Act was issued to the assessee, in response to which, a reply was filed. The books of accounts of the Company were compared with that of the assessee and the Assessing Officer, finding the afore-referred amount of Rs. 70 lacs to be unaccounted for, ordered addition of the same to the income of the assessee. The order to make such addition was taken up in appeal by the assessee before the Commissioner of Income Tax (Appeals), Amritsar (hereinafter referred to as – the Commissioner), who dismissed the same. While dismissing the appeal, the Commissioner further directed enhancement to the already assessed income of the assessee to the tune of Rs.8.60 lacs on account of commission, found to have been earned by the assessee @ 2% on the transaction of sale and purchase of land on behalf of the Company for Rs.4.30 crores, which amount was admittedly received by the assessee from the Company for that purpose. On the passing of afore-referred order by the Commissioner, the assessee knocked the doors of the Tribunal, which, on the consideration of the entire record and arguments advanced before it on behalf of the contesting parties, came to a categoric conclusion that the agreement, on the basis of which the addition had been ordered to be made by the Assessing Officer to the income of the assessee, was half baked as it had admittedly not been signed by the Company and thus, could not be relied upon. It was further found that the amount of Rs. 70 lacs had been denied to have been paid by the Company and had also been denied to have been accepted by the assessee. In this regard, there being no further evidence brought on the record by the Revenue, findings recorded by the Assessing Officer, as also the Commissioner, were found to

be presumptuous and conjectural. It was further held by the Tribunal that even if the cash had been received by the assessee, the same had been received for and on behalf of the Company and had been paid to the farmers and such receipt could, at the most, be treated as a capital receipt, but in no circumstance, the same could be added to the income of the assessee, especially when the same had already been added to the income of the Company. The Tribunal further noticed that the agreement, which had been recovered from the afore-referred Vipin Verma, between the Company and the assessee, was for a total amount of Rs. 5 crores, out of which, the Commissioner held that for Rs. 4.30 crores, the assessee had purchased land on behalf of the Company and accordingly ordered the addition of commission @ 2% on Rs. 4.30 crores to the already assessed income of the assessee. It was held that once the Commissioner came to such a conclusion, then qua the same agreement, for a part amount thereof i.e. Rs. 70 lacs, no contrary opinion could have been formed to hold this amount to be the income of the assessee. The Tribunal further noted that the Commissioner had not denied that the assessee was not maintaining books of accounts on mercantile system. It was further found that the assessee had duly declared on behalf of the Company the completion of the transactions regarding sale and purchase of land with the money received from the Company and the commission received in pursuance to such deals in the returns filed for the following assessment year i.e. 2008-09, which fact was not disputed by the Department.

In view of the above, the Tribunal held that the addition of Rs.

70 lacs to the income of the assessee and the enhancement to the already assessed income of the assessee for having received commission to the tune of Rs. 8.60 lacs for the assessment year 2007-08 was not justified and resultantly, these additions were directed to be deleted.

On going through the record of the case, we are of the view that the decision of the Tribunal, which is impugned before us, essentially decides questions of fact and does not raise for our consideration any question of law, much less a substantial question of law, and therefore, requiring no interference on our part. Resultantly, the present appeal is dismissed with no order as to costs.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

July 08, 2016
monika