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

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Decision delivered on: 03.11.2023+ **ITA 582/2023**

PR. COMMISSIONER OF INCOME TAX-10, DELHI Appellant

Through: Mr Sanjay Kumar, Sr Standing
Counsel with Ms Easha Kadian and
Ms Hemlata Rawat, Standing
Counsel.

versus

SHRI TARLOK SINGH PUNIHANI

..... Respondent

Through: None

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):****CM APPL.53744/2023**

1. Allowed, subject to just exceptions.

**CM No.53743/2023 [Application filed on behalf of the appellant seeking
condonation of delay of 39 days in filing the appeal]**2. This is an application filed by the appellant/revenue seeking
condonation of delay in filing the appeal.3. According to the appellant/revenue, there is a delay of 39 days in
filing the appeal.4. For the reasons given in the application, the delay in filing the appeal
is condoned.

5. The application is disposed of.

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6. This appeal concerns Assessment Year (AY) 2014-15.
7. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 10.03.2023 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].
8. The controversy that arises in the present appeal is whether the addition made by the Assessing Officer (AO) under Section 69 of the Income Tax Act, 1961 [in short, “the Act”] with regard to the purported cash paid by the respondent/assessee for purchasing 50% of the 10% share held by deceased Kulbir Singh, partner in a firm going by the name Punihani International, can be sustained?
9. It is not in dispute that the respondent/assessee, along with deceased Kulbir Singh, Narinder Singh Punihani and Amarjeet Singh Punihani were the partners in Punihani International.
10. According to the respondent/revenue, Tarlok Singh, i.e., the respondent/assessee, purchased 50% of the 10% share in the immovable property described as F-5, Radhey Mohan Drive, Bandh Road, Gadaipur, Mehrauli, New Delhi-110030 [in short, “the subject property”].
11. A perusal of the impugned order passed by the Tribunal shows that it proceeded to reverse the order dated 30.06.2022 passed by the Commissioner of Income Tax (Appeals) on several grounds, both legal and factual. Concededly the addition was made based on two documents which were recovered in a search action carried out at the premises of the aforementioned partnership firm, i.e., Punihani International.
12. The Tribunal appears to have taken the view that the documents found at the business premises could not have been used against the respondent/assessee, i.e., the partner. In other words, the Tribunal stated



that the incriminating document which constituted a receipt in full discharge of the claim *qua* the subject property and the receipt for payment *qua* the very same property could not have been used against the respondent/assessee, i.e., the partner.

13. The reference to the documents is made in paragraph 5 and 6 of the impugned order. The record also shows that according to the appellant/revenue, cash amounting to Rs.6.50 crores was paid by the respondent/assessee, i.e., Tarlok Singh and Mr Narinder Singh Punihani paid Rs.6.25 crores. The total consideration paid by the respondent /assessee, i.e., Tarlok Singh was Rs.8 crores and as noticed above, Rs.6.50 crores, according to the AO was paid in cash while the balance amount, i.e., Rs.1.50 crores, was paid by way of cheque(s).

14. The document based on which the addition was made by the AO is extracted in paragraph 12 of the impugned order. For the convenience, the same is extracted hereafter:

“12. The alleged document reads as under:

“We the undersigned legal heirs of late Shri Kulbir Singh Punihani hereby testify that we have examined all the documents in connection with the Farm House situated at F-5, Radhey Mohan Drive, Gadaipur, Mehrauli which originally belonged to Late Shri Kulbir Singh Punihani having 10% share in the said Farm House and found the same correct. And we hereby severally acknowledge to have this day received from Mr. Tarlok Singh Punihani one of the partner of M/s Punihani international .a sum of Rs. 8,00,00,000/- (Rs. 8 crores] only for relinquishing 50% share from the aforesaid 10% in favour of Mr. Tarlok Singh Punihani.

The details of payment is as follows:

Cash 6,50,00,000.00

Ch. No. 123053 dt. 10.06.2013 75,00,000.00

Ch. No. 123054 dt. 15.06.2013 75,00,000.00

Cheques are drawn on Oriental Bank of Commerce, Greater Kailash 11, New Delhi 110048.

We further certify that the payment of respective share of the Farm House in full discharge of ail our respective claims and demand for



relinquishing our shares as mentioned above.

Signed
Mr. Tarlok Singh

Punihani
Ms. Jaswani Kaur [Mother]
Ms. Saloni Punihani [Wife]
Ms. Sumeet Oberai [Daughter]
Ms. Simmarjeet Punihani [Daughter]
Ms. Jasmine Punihani [Daughter]
Witness."

15. The Tribunal has, in sum, concluded that this document cannot be relied upon for making the addition for the following factual reasons:

- (i) Kulbir Singh Punihani died in August 2011. The addition in issue towards cash was made in AY 2014-15.
- (ii) None of the legal heirs of Kulbir Singh Punihani were examined.
- (iii) The wife of the deceased Kulbir Singh Punihani, i.e., Ms Saloni Punihani filed an affidavit in which she *inter alia* asserted that neither did the respondent/assessee, i.e., Tarlok Singh nor Narinder Singh Punihani advanced any cash to her. The affidavit of Ms Saloni Punihani, which also forms part of the impugned order, avers that the share of the deceased Kulbir Singh Punihani was converted into a loan account and the amount reflected therein was paid thereafter over a period of time.
- (iv) The document (we have extracted hereinabove) is an unsigned document.
- (v) It is crucial to note that as per the AO the respondent/assessee, as noticed above, paid a cash amounting to Rs.6.50 crores while Narinder Singh Punihani paid cash amounting to Rs.6.25 crores for acquiring the share in the subject property. The total amount, thus according to the AO, which was paid in cash for acquiring respective shares in the subject property was Rs.12.75 crores.



16. The Tribunal notes that as per the valuation report, the worth of the subject property was Rs.2.10 crores as on 10.08.2011. Thus according to the Tribunal, it was incomprehensible as to why anyone would pay Rs.12.75 crores in cash for a property which is worth Rs.2.10 crores.

17. Given the aforesaid position, apart from other legal aspects which have been touched upon by the Tribunal, we are of the view that no interference is called for. The factual circumstances which have been brought to the fore by the Tribunal do not persuade us to interfere with the order.

18. As regards the other legal aspects which have been adverted to in the impugned order as to whether a document found at the business premises of the partnership firm could not be used against the partners is an aspect, that we need not touch upon in this case.

19. Furthermore, we may note that there is no question proposed by the appellant/revenue that any of the factual findings noted hereinabove are perverse.

20. The appeal is accordingly closed as no substantial question of law arises for our consideration.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

NOVEMBER 03, 2023/as

Click here to check corrigendum, if any