IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

I.T.A. No. 553 of 2006

DATE OF DECISION: 23.03.2007

The Commissioner of Income Tax-I, Chandigarh

…Appellant

Versus

M/s Metal Products of India, Chandigarh

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sanjeev Bansal, Advocate,
for the Appellant.

Mr. S.K. Mukhi, Advocate,
for the respondent.

JUDGMENT

M.M. KUMAR, J.

The revenue has approached this Court by filing the instant appeal under Section 260A of the Income Tax Act, 1961 (for brevity, 'the Act'), challenging order dated 27.4.2006, passed by the Income Tax Appellate Tribunal, Chandigarh Bench (A), while deciding ITA No. 77/Chandi/2005, in respect of the assessment year 1999-2000. The revenue has claimed that the following question of law would arise for determination of this Court:-

> "Whether in the facts and circumstances of the case, the Hon'ble ITAT was justified in law in upholding the order of ld. CIT(A) while ignoring the valuation of the subject properties as determined by the Registering Authority after taking into account all the prevailing factors and also ignoring the fact that the Assessing Officer had brought comparable evidence on record regarding the substantially higher value at which a plot in that particular area was sold during the same period of time.?"

The facts are not in dispute. However, it is appropriate to mention that the main controversy had centred around the insistence of the Assessing Officer to assess the property at the value for which it was registered and stamp duty was paid as against the actual price mentioned in the sale deed. As per the sale deed, the assessee had sold Shed No. 144, situated at Industrial Area Phase-I, Chandigarh, measuring 1477.73 Sq. Yds., to one M/s Boparai Industrial Corporation. As per the sale deed, sale consideration was Rs. 19,00,000/- whereas the Registering Authority had worked out the value of the property on the basis of the Collector's rates as Rs. 61,10,000/-. Accordingly, non-judicial stamp paper affixed on the sale deed was in the sum of Rs. 7,63,750/-. Another shed was sold by the assessee bearing No. 146, Industrial Area Phase-I, Chandigarh, for the similar amount of Rs. 19,00,000/- whereas the Registering Authority had valued the property at Rs. 52,00,000/-. The non-judicial stamp papers were purchased for Rs. 7,86,250/-. This

property was sold to one Shri Joginder Pal. The Assessing Officer insisted on in assessing the property at the rate the value was assessed by the Registering Authority, namely, Rs. 61,10,000 and Rs. 52,00,000/- and accordingly, framed its assessment. The Assessing Officer consequently made addition to that extent vide his assessment order dated 24.3.2003.

On 11.11.2004, the appeal filed by the assessee under Section 250(6) of the Act was partly allowed by the Commissioner of Income Tax (Appeals) Chandigarh, by observing as under:-

> "3.5 The submissions of the appellant have been considered carefully and I have gone through the facts, material and evidence available on record. It is observed that one of the buyers M/S Boparai was a tenant in the above property paying a monthly rent of Rs. 3,000/- p.m. and that the property was tenanted alongwith two other tenants paying monthly rent of Rs. 400/- and Rs. 850/- respectively. M/S Boparai who was one of the tenants agreed to purchase the said property ON "as is where is" basis including the litigation against the other two tenants in the Court." The said property has been registered on the basis of the Income Tax Clearance Certificate issued in Form No. 34-A for consideration amount of Rs. 19,00,000/-. The other property bearing no. 146 was also sold for Rs. 19,00,000/- to another tenant M/S Anju Industries which is one of the fourteen tenants occupying the property at the relevant point of

time. Proofs of litigation with the tenants in certain cases have been filed. Nowhere the Assessing Officer has brought out any positive material on record to prove that actual transfer of money is more than Rs. 19,00,000/- in each case as per the recordings in the registered deeds. The stamp duty on the same has been paid on the basis of the value fixed by the government. The decision of the Hon'ble Allahabad High Court in the case of Dinesh Kumar Mittal Vs. ITO & others (193 ITR 770) has a direct bearing to the case of the assessee wherein it has been held that the value taken for stamp duty is not the actual consideration. Further, the Hon'ble Supreme Court in case of K.P. Verghese Vs. ITO Emakulam & Another 131 ITR 597 (SC) has held that there should be proof of more amount changing hands than what has been declared or disclosed by the parties in the deed of transfer. In case of CIT Vs. Mahajan International 194 ITR 278 (P&H), the Hon'ble Punjab and Haryana High Court held that the onus is on the Assessing Officer to prove that the assessee has received more than what is declared by him. From a perusal of the above facts, it is clear that the addition is not justified as property transaction are covered by the actual consideration passing between the parties and not the value which has been recorded as per the Stamp Duty

Act. The addition is, therefore, not sustainable and so is ordered to be deleted."

The Revenue carried the appeal to the Tribunal, which was dismissed by upholding the findings recorded by the CIT (A) that the buyer M/s Boparai Industrial Corporation, Chandigarh, was a tenant in the property paying a rent of Rs. 3,000/- per month along with two other tenants paying Rs. 400/- and Rs. 850/- respectively. The buyer M/s Boparai Industrial Corporation, who was one of the tenant had agreed to purchase the said property on 'as is where is basis' including litigation against two other tenants in the Court. The other property was also sold for Rs. 19,00,000/-. The Tribunal also upheld the view taken by the CIT(A) that the valuation fixed by the Government for the purpose of stamp duty cannot form sole basis to assess the value under the Act. There was no evidence on record showing that the apparent sale consideration was different than the actual sale consideration and suspicion should not take the shape of evidence. On the aforementioned basis the appeal was dismissed.

We have heard Mr. Sanjeev Bansal, learned counsel for the revenue and have permitted Mr. S.K. Mukhi to appear for the assessee at this stage. Mr. Mukhi has placed on record an assessment order passed in the case of Shri Joginder Pal Verma, who had purchased one of the properties, wherein the Assessing Officer has accepted the sale consideration of Rs. 19,00,000/- on the ground that the assessee himself was a tenant in the property which was purchased by him, namely, 746, Industrial Area, Chandigarh, for more than 25 years along with others who had also been tenants for

the last 20 to 30 years at the time of purchase of the property by the assessee. No additions on the basis of valuation made by the Estate Officer, which was for the purposes of stamp duty, were made.

After hearing learned counsel for the parties, especially keeping in view the assessment made in the case of one of the purchaser of the plot, we are of the considered view that no question of law warranting admission of the appeal would arise because there are pure findings of facts that the purchasers were themselves the tenants in the property for the last number of years along with other tenants. It is not un-common that once the property is under the tenants then its market value is considerably depleted on account of protection provided by the Rent Laws. Therefore, there is no merit in the appeal. Accordingly, the same is dismissed.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

March 23, 2007

Pkapoor