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

*Decided on 20<sup>th</sup> February, 2015*

+ ITA 605/2014 & C.M.No.15765/2014

COMMISSIONER OF INCOME TAX-XI ..... Appellant

Through: Mr.Kamal Sawhney, Adv.

versus

RAJ KUMAR JAIN

..... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)**

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1. The Revenue is aggrieved by an order of the Income Tax Appellate Tribunal (ITAT) dated 08.08.2013 in ITA No. 1911/Del/2012 and 2340/Del/2012 and other connected appeals. The question of law urged is: "Whether the ITAT fell into error in upholding the assessee's contention that the value determined by the Assessing Officer (AO) in respect of the property was unsustainable".

2. The brief facts are that the property in question, i.e. E-24, South Extn., Part-I, New Delhi was agreed to be sold by one Sh.Gurdayal Singh, acting as the guardian of owner – Sh. Tarsem Singh who was the sole legal heir of the property by virtue of a Will of his grandmother dated 02.05.1979. The

agreement was between Sh.Gurdayal Singh and Sh.Tarsem Singh with the purchaser Sh.M.P. Jain. The latter was occupying a portion, being tenant, since 1985. ₹ 20 lacs had been apparently paid by the purchaser by a cheque dated 27.04.1989. Some disputes arose which led to the filing of the suit by Sh.M.P.Jain, being Suit No.1345/1989 on the file of this Court.

3. During the course of the suit proceedings, apparently a compromise was arrived at and Sh.M.P.Jain paid further ₹10 lakhs by way of an Account Payee cheque dated 06.09.1989. A compromise application under Order 22 Rule 3 CPC was moved and the statement of parties was recorded. Sh. Gurdayal Singh died on 13.12.1994 and the original owner of the property Sh.Tarsem Singh died on 13.08.1996. This, however, did not resolve the entire issue because some dispute between the LRs of Tarsem Singh broke out. By that time agreement to sell had not been acted upon and the conveyance deed had not been executed by Sh.Tarsem Singh. Ultimately, the LRs parted with the property for a consideration of ₹35 lakhs, which was received by them in equal shares on 18.12.2006. This was the total value of the property mentioned in the original Agreement to Sell. When these transactions were reported, the AO doubted the valuation; suspecting why the sale deed was not registered upto 2006, (he did not dispute all these facts) he formed an opinion that the agreement dated 27.04.1989 might have not been given effect to because the sale deed had been executed on 18.12.2006 – which ultimately led to the suspicion of under valuation of the property and was referred to the District Valuation Officer (DVO). Based upon his determination, the value of the property was decided to be ₹2,75,25,780/-. After adjusting the sum of ₹35 lakhs, the AO brought to tax the balance amount and determined the tax liability of ₹60,06,445/-.

4. The assessee's appeal was apparently accepted and the CIT (Appeals) directed that instead of market value indicated by the DVO, the circle rate was to be looked into. This decision was appealed against by both the Revenue and the assessee.

5. The ITAT, by its impugned order, accepted the assessee's appeals and directed that the additions made by the AO were not warranted. It is argued that the ITAT fell into error in accepting that the settlement arrived at in 2006 was genuine. Learned counsel highlighted that the entire sequence of events disclosed that there was no dispute, and through "the dispute" the LR's sought to take advantage to contrive a compromise and to avoid tax.

6. This Court has carefully considered the records. It is evident that the ITAT took into consideration the suit for injunction filed by the purchaser Sh. M.P.Jain and the compromise statement dated 18.09.1989. It is also evident that despite the statement being recorded on 18.09.1989, title was not conveyed to the purchaser even though he continued to be in the possession of the property. It is matter of fact that original owner Sh.Tarsem Singh died in 1996; Sh.Gurdayal Singh, his agent/guardian died in 1994. After his death, the LR's continued to contest the title and eventually the purchaser agreed to pay a further amount of ₹35 lakhs. The ITAT took note of several decisions, including *CIT vs. Naveen Gera* 2010 328 ITR 516 (Delhi) and other decisions, including that of *K.P. Varghese vs. Income Tax Officer* [1981] 131 ITR 597 (SC) of Supreme Court to show that the AO has to base his view with regard to under valuation, upon objective material.

7. In the present case, it is a matter of fact that on 18.09.1989, the statement was recorded by the Court. At the same time, equally the title was not conveyed to the purchaser. The intervening death of the original owner

only aggravated the problem inasmuch as the LR's apparently refused to honour the agreement which eventually forced the purchaser to shell out the further amount mentioned in the original agreement even though substantial amounts had been paid earlier. The fact that in the agreement, the parties ultimately agreed to abide by the statement recorded by the court in the year 1989, *ifso facto*, could not have been the ground for suspecting its bonafide. Given the fact that an order XXII Rule 3 CPC application was filed and the compromise duly recorded in the Court, we are of the opinion that the ITAT's order does not lead to any substantial question of law requiring consideration.

8. The appeal and the pending application are accordingly dismissed.

**S. RAVINDRA BHAT, J**

**R.K.GAUBA, J**

**FEBRUARY 20, 2015**

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