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IN THE HIGH COURT OF DELHI AT NEW DELHI

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DECIDED ON: 06.04.2015

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ITA 2/2014

VATIKA LIMITED (FORMERLY VATIKA LAND BASE
PRIVATE LIMITED)

..... Appellant

Through: Mr. C.S. Aggarwal, Sr. Advocate with
Mr. Prakash Kumar, Advocate.

versus

COMMISSIONER OF INCOME TAX

..... Respondent

Through: Mr. N.P. Sahni, Sr. Standing Counsel
with Mr. Nitin Gulati, Jr. Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

S.RAVINDRA BHAT, J. (OPEN COURT)

1. The assessee is aggrieved by the order of the Income Tax Appellate Tribunal (hereafter referred to as "the Tribunal") dated 8.3.2013 in IT(SS)A No.117/Del/2006. It urges the following substantial questions of law: -

(a) Whether, there was any material with the Income Tax Appellate Tribunal to hold that the addition made of Rs.1,35,00,000/- representing sale consideration and sustained

by the Commissioner of Income Tax (Appeals) was sustainable in law or on facts?

(d) Without prejudice to the aforesaid, whether on proper construction of the documents seized as Annexure – A1/60, could the Income Tax Appellate Tribunal validly and legally hold that the assessee had received any on money, and in the event it was so held that the assessee had received such an on money on the basis of one loose sheet (page 122 of Annexure A1/60), after having so held, has not the Tribunal acted arbitrarily in not having allowed a deduction of loss of Rs.17,93,217/- on the basis of same document?

(e) Whether, on the true and proper construction of the document (31-A) found from the possession of Shri Mrinal Nag, was the Income Tax Appellate Tribunal legally justified in holding that, an amount of Rs.49,64,904/- was received by the assessee in cash and was its income.

2. The facts are that the search and seizure operations were conducted in the assessee's premises on 8.5.2013. Notice was thereafter issued as to why block assessment should not be completed in respect of AY 1998-99 to AY 2004-05. The assessee filed the NIL assessment. On 31.5.2005, the AO framed the assessment bringing to tax the sum of ₹45,89,68,630/-. The AO, *inter alia*, held that the true value of the consideration received by the assessee towards the transactions entered into with the flat buyers has not been disclosed. These findings were sustained, *inter alia*, on the basis of a reworking of the consideration said to have been received. The AO took into account the materials secured and placed on record in the course of the search and seizure operations under Section 132 and

also the statements made by the individuals.

3. The assessee appealed to the CIT (Appeals). During the course of the appeal, the CIT (Appeals) sought a remand report. After taking note of the materials, the remand report was furnished to the CIT (Appeals). The assessee was afforded an opportunity as a result of which it filed a response/rejoinder to the remand report. The remand report and the rejoinder are part of the record. Based on the submissions made and all the available materials, the CIT (Appeals) accepted the assessee's contentions in regard to certain amounts and at the same time sustained the addition to the extent it pertained to ₹7,69,98,484/-. This included a sum of ₹1,35,00,000/- and a further figure of ₹49,64,904/-. This also included a sum of ₹17,93,217/-. The Tribunal on further appeal directed deletion of all amounts except these three amounts, i.e., ₹1,35,00,000/-, ₹49,64,904/- and ₹17,93,217/-.

4. It is argued on behalf of the assessee that the order of the Tribunal affirming the sum of ₹1,35,00,000/- is manifestly erroneous. To say so, learned senior counsel relied upon pages 484 and 483 of the paper book which is a part of Annexure A-1/60. It was submitted that the said amount represented the difference between the estimated value of the area booked by some individuals, i.e., Bhatias in Vatika Triangle, one of assessee's projects and the value of the area in another project, i.e., Vatika World. This difference was ₹17,93,217/-. It is evident consequently that the documents could be easily explained as determinative of the difference but not the value of the concealed or undeclared income as has been erroneously

assumed by the concerned authorities, i.e., CIT (Appeals) and the ITAT. Counsel also submitted that sum of ₹49,64,904/- was wrongly added. In this regard, he relied upon two sheets of paper which were taken into consideration by all the authorities (including the ITAT which has reproduced the scanned copies of those documents). It is submitted that this was in respect of the inclusion of an area of 1805.42 sq. ft. which was seized from one Mrinal Nag and not seized from the assessee. The statement of the individual, without any material to show what the amount represented, was attributed as the assessee's income. Such addition could not, therefore, have been made in the subject assessment, since it had nothing to do with the assessee at all.

5. This Court notices that so far as the sum of ₹1,35,00,000/- is concerned, the CIT (A) arrived at his findings on the basis of the following reasoning: -

- a) *“Computer file “Vatika World” in folder “My Documents” in C drive computer of Sh. Anupam Nagalia*

This file contains a copy of a letter from Sh. Pankaj Pal G.M. (Marketing) of the appellant to the investors of Vatika World. There is no mention of any specific sales instance. Thus, no addition is possible on account of this document.

- b) *Sale of Flat No.110 to Sh. Rajesh Bhatia & Smt. Poonam Bhatia*

This sales instance has been pointed out by the A.O. on the basis of seized document at page no.122 of annexure A-1/60. This paper was referred to in respect of discussion in the case of “Vatika Triangle” as well. Since, this document shows sale of flat in “Vatika Triangle” and purchase in

“Vatika Triangle” as it was not indicating the sale by appellant but, by these investors. This paper also indicates sale of flat no.110 of 10,000 Sq. Ft. In “Vatika World” towards which unaccounted receipt of Rs.1,35,00,000/- out of unaccounted sale receipt in “Vatika Triangle” of Rs.1,52,93,217/- has been adjusted. Thus, it is clear that in the sale of flat no.110 in “Vatika World” there is under statement of sale consideration of Rs.1,35,00,000/-. This addition is thus sustainable.”

6. Likewise as far as the sum of ₹49,64,904/- is concerned, the CIT (Appeals) had this to say: -

“Sale of Flat No.111 to 116 to Mr. Rajesh Tiwari

Regarding this sales instance the A.O. has referred to documents at pages 28, 15 and 30 of annexure A-9 seized from residence of Sh. Anupam Nagalia. He has also referred to the list of flat owners in the file “New Site Sales/My documents/C:/ computer of Jyoti Tiwari”. He has also referred to page no.31A of annexure A-13. As per the observation of the A.O. on page 28 of annexure A-9 there is evidence of sale of 6,000 sq. ft. In “Vatika World”. As per the A.O. the total sale consideration in respect of sale of the two flats was Rs.78,53,577/- and not Rs.28,88,672/-. The difference of Rs.49,64,904/- is mentioned as cash in various documents. These documents have been linked by the A.O. Thus, addition on account of undisclosed sale to this party to the extent of Rs.49,64,904/- is sustainable.”

7. The Tribunal took note of the submissions of the parties and had before it the primary material as well as the remand report on the basis of which the CIT (Appeals) arrived at his findings. It is to be noted that the impugned order has made a factual analysis of each of the amounts which was directed to be added by the CIT (Appeals) (who in turn had not sustained the entire larger sum of ₹45,89,68,630/-). The Tribunal dealt with the question of addition of

both the sums of ₹1,35,00,000/- as well as ₹49,64,904/- in the following terms:

“33. We have duly considered the rival contentions and gone through the record carefully. The first document considered by the learned Assessing Officer harbouring a belief that the assessee has received on money while making the booking of the flats which was not disclosed in the regular books of account is, page No.122 of Annexure A1/60. Basically, these are the three pages, they are available on page No.s120 to 122 of the paper book. On page 121 of the paper book i.e. page 122 of the seized material, there is a typed table which suggests that assessee has purchased flats bearing Nos.410, 414, 417, 504, 504A having total area of 48538 sq. ft. @ Rs.4800 and Rs.4682 per sq. ft. In this transaction, the cheque consideration is Rs.1600 per sq. ft. And rest of the amount was in cash. WE have noted down the details in paragraph 17 of the order, while taking note of the assessee’s arguments. Similarly, the assessee has sold 10,000 sq. ft. areas to Bhatias. It received a premium of 1350 per sq. ft. According to the assessee, it had suffered a loss of Rs.17,93,217 in the transaction whereas according to the Learned DR in the submissions extracted supra, assessee has made adjustment of unaccounted money of Rs,1,35,00,000/-. On due consideration of both these explanations, we are of the view addition of Rs.1,35,00,000/- has been rightly retained by the Learned CIT (Appeals). The assessee has repurchased the area in Vatika Triangle, thus its stock has been increased. In the calculation made by the assessee, it nowhere recognizing the increased area. The alleged unaccounted payment made to Mr. Bhatia’s was not paid in cash but, adjusted in the investment. In a way, it has considered value of Rs,1,35,00,000/- as premium for investment in Vatika World. Thus, at one place this amount has to be added as income of the assessee i.e. either at Vatika Triangle on account of value of enhanced stock or at Vatika World. Considering the findings of the Learned CIT (Appeals), we do not see any reason to interfere in it. Addition of Rs.1,35,00,000/- is confirmed.

34. The next documents referred by the Assessing Officer are page Nos.28, 15 and 30 of Annexure A-9 which were found from the residence of Shri Anupam Nagalia. According to the learned Assessing Officer, on page 28, a mention of 6000, new sites @ Rs.2600 is mentioned. Similarly, on page 15 of Annexure A-9, he concluded that Mr. Tiwari, New Project Joint Name, 4000 sq. ft. is mentioned. On the basis of these pages, learned Assessing Officer has concluded that flat Nos.405 and 411 were sold to Shri Tiwari for an amount of Rs.78,53,577 and not for Rs.28,88,672 disclosed in the sales register. Learned CIT (Appeals) has also confirmed the addition of Rs.49,64,904/-. For appreciating this issue, we deem it appropriate to take note of the seized material whose photo copies are made part of this order.”

8. With regard to the addition of ₹1,35,00,000/-, the Tribunal’s findings are as follows: -

“38. On due consideration of the facts and circumstances, we are of the view that the ITAT in the case of Vatika Green Field has considered the documents found from the premises of Shri Anupam Nagalia. Learned CIT (Appeals) has made reference to page No.23 of Annexure 1 and page No.49 of Annexure A-11. These pages are available on page Nos.197-198 of the paper book. The Assessing Officer on page 27 of the assessment order has observed that these documents were confronted to Shri Anupam Nagalia in the post search inquiry and he disclosed that these are the estimated value of the flats at which the company would be willing to repurchase the same on the completion of the project which suggests that how much return the project can give to the investors. The paper in itself does not disclose the cash components, otherwise, Learned CIT (Appeals) instead of confirming the addition with regard to flat No.401 purchased by Shri D. Chahal ought to have considered the names of other persons available on this page. This document was used by the learned Assessing Officer as a corroborative evidence indicating the rate of the flats sold by

the assessee in Vatika World. It does not deal with a specific sale instances. However, on this paper, no where rates are written nor any cash component or cheque component is written. Therefore, this document cannot lead to the conclusion that the assessee has understated the sales consideration in the booking of the space at Vatika World. We do not find any merit in the ground of appeal raised by the revenue whereas grounds of appeal raised by the assessee bearing Nos.2 to 2.5 are partly allowed. The order of Learned CIT (Appeals) sustaining additions at Rs.1,35,00,000 and Rs.49,64,904 is confirmed whereas the addition of Rs.15,50,000 is deleted. ”

9. As stated earlier, the Tribunal took note of each of the adverse findings recorded against the appellant. In fact paragraphs 35-37 deal with other amounts and held that the sum of ₹15,15,000/- which was sustained by the CIT (Appeals) was unwarranted. Likewise, relief was granted in respect of addition of ₹20,00,000/- by the AO.

10. Having regard to this conspectus of facts, the submissions of the assessee in this Court's opinion amount to re-appreciation of circumstances at the third appellate level. Although, the interpretation of a document made in certain circumstances require interpretation of law, we are clear that in the overall circumstances of the case, given the concurrent nature of findings by the three authorities as far as the three amounts in question are concerned, at least no such question of law arises. As to whether the interpretation placed upon the document is such as to amount to patent error or not, in any case the interpretation given to the two documents in question and the inference drawn on the basis of the statements made are not such as to attract the jurisdiction of the Court which is confined to framing and

answering substantial question of law. Since no such substantial question of law arises for consideration, the appeal is devoid of merit and is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**R.K. GAUBA
(JUDGE)**

APRIL 06, 2015
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